

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 1872 of 2017

1. The Maharashtra Krushna Valley Development Corporation Through, Executive Engineer, Medium Project No.2, Osmanabad, Dist. Osmanabad. ... **APPELLANT**
2. The State of Maharashtra, Through Collector, Osmanabad.
3. The Land Acquisition Officer and Sub-Divisional Officer, Bhoom. ... **Co APPELLANTS.**
(Ori. Resp. No. 1 & 2)

V E R S U S

Shankar Sayaji Bhillare,
Age: 70 years, Occu: Agril.,
R/o : Pandharewadi, Tq. Paranda,
Dist. Osmanabad. ...**RESPONDENT**
(Original Claimant)

...

Mr. Anil M. Gaikwad, Advocate for appellant No. 1
Mr. S. P. Deshmukh, AGP for co-appellants No. 2 and 3.
Mr. A. R. Deokate, Advocate for respondent.

...

CORAM : A.M. DHAVAL, J.

DATED : 1st AUGUST, 2018.

ORAL JUDGMENT :-

1. This appeal was one of the matters from the group of matters disposed of by this Court (Coram: Sunil P. Deshmukh,J.) by Judgment dated 10-04-2018. However, as it revealed that the sole respondent was dead one month before the said Judgment. The legal representatives of the sole respondent are brought on record. The appeal is being taken up for fresh arguments.

2. By notification dated 14-06-2001 under Section 4 of the Land Acquisition Act, 1894 (for short "Act of 1894"), lands of the deceased respondent bearing Survey No. 84/C admeasuring 37 R and Survey No. 86/C admeasuring 24 R, both situated at Pandharwadi Western Side, Taluka Paranda, District Osmanabad were acquired for the purpose of rehabilitation of village Pandharwadi. After hearing, the Land Acquisition Officer (LAO) awarded compensation. The deceased respondent preferred Land Acquisition Reference No. 672 of 2011 before the Civil Judge, Senior Division, Paranda (Reference Court). The learned Reference Court, by its judgment dated 09-09-2014, partly allowed the LAR and awarded compensation to the deceased respondent @ Rs. 1,00,000/- per Acre as against the demand of Rs. 1,52,500/- per Acre and also awarded statutory benefits i.e. solatium and third component. The Acquiring Body, aggrieved by the award of compensation, has preferred this Appeal.

3. This Court, in connected matters in respect of the lands acquired under the same notification from the same areas for same purpose, dismissed the appeals filed by the State and modified the Award passed by LAO and increased the rate to Rs.1,06,666/- per Acre under Order 41, Rule 33 of the Civil Procedure Code, 1908 (for short "CPC").

4. Heard learned counsel for appellant No.1- Acquiring Body, as well as, learned AGP for co-appellants.

5. The learned Advocate for the respondent-original claimant argued that the Judgment passed in connected appeals dismissing the appeals of State Government and enhancing compensation of Rs.100,000/- to Rs. 1,06,666/- per Acre should be followed in this matter.

6. A reliance is placed on the Judgment in the case of **Bhimasha Vs. Special land Acquisition officer, [2018 (10) SCC 797]**.

7. The points for my consideration and findings thereon are as follows :-

- (1). Whether the enhancement granted by the Reference Court is excessive and exorbitant? .. In the negative.
- (2). Whether the compensation granted @ Rs.1,00,000/- per Acre by the Reference Court deserves to be enhanced Rs.1,00,000/- to Rs.1,06,666/- per Acre in favour of respondent-original claimant ? ...In the affirmative.
- (3). What order ? ... As per final order.

8. In First Appeal No. 1873 of 2017 and connected matters, the Judgment of Reference Court enhancing the compensation awarded by LAO was under challenge and my learned Brother Judge found no substance in the appeals filed by the State and

held that the compensation rate awarded by Reference Court was not exorbitant. The said Judgment dated 10-04-2018 is accepted by the State Government and no appeal has been preferred. Therefore, the finding therein operates as *res-judicata*. Hence, Point No. 1 is answered in the negative.

9. Though, there are no cross-objections and cross-appeals by the claimants in the First Appeal No. 1873 of 2017 and connected matters, the compensation was increased to the tune of Rs. 1,06,666/- per Acre, taking into account Order 41, Rule 33 of the CPC by placing reliance on the judgment in the case of *Bhimasha (Supra)*. The defence in the said case is that, in that case appeal was preferred by the claimant, claiming enhancement to the tune of Rs. 58,500/- per Acre, but the High Court come to the conclusion that market value of the land comes to Rs.66,500/- per Acre. Since the claim was made for Rs. 58,500/- per Acre, the High Court allowed the claim of the claimant to the tune of Rs.66,500/- per Acre only. The Apex Court held that since market value was Rs.66,500/- per Acre, the compensation should have been granted as per the said rate subject to payment of deficit court fees. This ruling cannot be made directly applicable to the facts of the present case. A reliance is placed on the Judgment of the Apex Court in the case of ***Pralhad Vs. State of Maharashtra [2011(2) Mh.L.J. 519]***. In the said case, there was an appeal by the State and pending

the appeal there was amendment to the Act. The respondents-claimants therein claimed benefit under Section 23(1-A) of the Act of 1894 newly introduced. The Apex Court observed that as per Judgment in the case of *K.S. Paripoornan vs. State of Kerala [(1994)5 SCC 593]*, the respondents were entitled for the same benefits and Order 41, Rule 33 of the CPC can be invoked to grant reliefs. It is explained as follows :-

"20. In Vanarsi Vs. Ramphal, AIR 2004 SC 1989, this Court construing the provisions of Order 41, Rule 33 of Civil Procedure Code held that this provision confers powers of the widest amplitude on the appellate Court so as to do complete justice between the parties. This Court further held that such power is unfettered by considerations as to what is the subject matter of appeal or who has filed the appeal or whether the appeal is being dismissed, allowed or disposed of while modifying the judgments appealed against. The learned judges held that one of the objects in conferring such power is to avoid inconsistency, inequity and inequality in granting reliefs and the overriding consideration is achieving the ends of justice. The learned judges also held that the power can be exercised subject to three limitations: firstly, this power cannot be exercised to the prejudice of a person who is not a party before the Court; secondly, this power cannot be exercised in favour of a claim which has been given up or lost; and thirdly, the power cannot be exercised when such part of the decree which has been permitted to become final by a party is reversed to the advantage of that party (see para 15 at pg. 1997). It has also been held by this Court in Samundra Devi and others Vs. Narendra Kaur and others, 2009 (1) Mh.L.J. (SC)38 = (2008) 9 SCC 100

(Para 21) that this power under Order 41, Rule 33 of Civil Procedure Code cannot be exercised ignoring a legal interdict. "

This ruling is also not applicable on facts.

10. In the case of **State of Maharashtra Vs. Yeshwant Kashinath Mahale (1996(3) B.C.J. 105)**, the lands situated near Bombay-Agra road belonging to the claimants were acquired for development and entrusted to CIDCO. There were companion appeals by some of the aggrieved farmers for enhancement of the compensation. The enhancement was granted @ Rs.18/- per Sq. Meter. In the appeals before Division Bench of the High Court, the claimants were respondents and not the appellants. The Division Bench observed in the Judgment paragraph No.4.

"4. The learned Advocate for the respondents has very fairly conceded that this is a big plot and therefore should be 10% deduction while calculating the compensation payable to the respondents, as also held by the Division Bench in the judgment delivered in companion appeals. Relying upon the judgments of the Apex Court reported in 1993 2 SCC 639 Bihar Supply Syndicate Vs. Asiatic Navigation and others and 1987 Supp. SCC, 528, Mahant Dhangir Vs. Shri Madan Mohan, it was held that claimants were entitle to get the benefit for enhanced compensation in view of Order XLI, Rules 22 and 33 of Code of Civil Procedure even though no cross objections or cross appeals were filed by them. In view of this, we pass the following order."

11. Considering these observations, the compensation payable to the respondents was increased in the appeal filed by the State. It is also material to note that other land holders, whose lands were acquired from the same area, under same notification, for the same purpose, are entitled to get Rs.1,06,666/- per Acre. In the case of ***Dhiraj Singh (D) Tr. Vs. Haryana State [2015(2) SCC (Civil) 236]*** and ***Imrat Lal Vs. Land Acquisition Collector [2012(2) RCR (Civil) 437]***, the Apex Court has taken a view that all the land owners, whose lands are acquired under one notification, should get the same rate of compensation from the Acquiring Body. In the light of principle laid down in above referred Judgments, the respondent-original claimant is also entitled for enhancement of compensation @ Rs.1,06,666/- per Acre. Hence, I answer the point No. 2 in the affirmative and pass the following order :

ORDER

- (a) The First Appeal is dismissed. However, the rate of compensation granted by the Reference Court is modified from Rs.1,00,000/- per Acre to Rs.1,06,666/- per Acre with additional consequential benefits in accordance with increase in the basic value of the lands.

- (b) The respondent shall pay deficit Court fees.
- (c) On depositing Court fees within four weeks, the decree shall be drawn accordingly.
- (d) In case of failure to deposit the Court fees within stipulated period, the appeal simply stands dismissed.
- (e) It is reported that decretal amount has been deposited in the Court. The Registrar (Judicial) to pay the same to the claimant as per the Judgment, on verification of the Legal Heirship Certificate / Succession Certificate, if required, under the law.

[A.M. DHAVAL]
JUDGE

MTK.