

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

FIRST APPEAL NO.72 OF 2015

City Industrial and Development
Corporation, through its
Administrator, CIDCO, Aurangabad.

Appellant.

Versus

1. Muzaffar Mahmood s/o
Haji Mahmood Khan
Age : major, occu.: business/agri.,
R/o Standard Silk Mills Compound
Road, Aurangabad.
2. The State of Maharashtra
Through Special Land Acquisition
Officer (Spl. Unit), Municipal
Guest House, Campus Railway
Station Road, Aurangabad.

Respondents.

Mr. S.V. Kurundkar, Advocate for the appellant.
Mr. R.B. Bagul, A.G.P. for respondent No.1.
Mr. A.D. Kasliwal, Advocate for respondent No.2.

CORAM : SUNIL K.KOTWAL, J.

Judgment reserved on : 16th October 2018.

Judgment pronounced on : 28th November 2018.

JUDGMENT.

1. This appeal is directed by original respondent No.2

i.e. Acquiring Body City Industrial Development Corporation (CIDCO), Aurangabad in L.A.R. No.620/2005 against the award passed by Civil Judge, Senior Division, Aurangabad dated 08.08.2014, awarding compensation for the acquired land Gut No.45, admeasuring 1 Hectare 45 Aar situated at Golwadi, at the rate of Rs. 21,700/- per Aar.

2. Respondent No.1 is the original claimant and respondent No.2 is State of Maharashtra.

3. Hereinafter the parties are referred to as per their status in the original proceeding.

4. The facts leading to institution of this appeal are that Gut No.45 admeasuring 1 Hectare 85 Aar situated at Golwadi was acquired by original respondent Nos.1 and 2. Notification under Section 126 (4) of the Maharashtra Regional Town Planning Act (hereinafter referred to as "M.R.T.P. Act") was published on 10.12.1998 and the award was declared on 19.03.2005. The claimant disputed the rate of compensation awarded by Land Acquisition Officer. However, under protest received compensation amount awarded by Special Land Acquisition Officer. Being dis-satisfied with the said award,

Land Reference was filed by claimant which was referred to Civil Judge, Senior Division, Aurangabad.

5. Respondents resisted the claim by filing written statements (Exhs. 9 and 28) and denied the entire contentions of the claimant. According to the respondents, Special Land Acquisition Officer, after following due procedure of law, has rightly passed award and compensation awarded is adequate and sufficient.

6. The Reference Court, after considering the sale instance and award passed by Civil Judge, Senior Division, Aurangabad in L.A.R. No.622/2005, enhanced compensation for the acquired land at the rate of Rs. 21,700/- per Aar with statutory benefits under Sections 23 (1A) and 23 (2) and interest under Sections 28 and 34 of the Land Acquisition Act.

7. Against the award passed sister L.A.R. No.622/2005, in which adjoining Gut No.47 was subject-matter, First Appeal No.732 of 2015 was filed by Acquiring Body CIDCO and even cross-objection was filed by the original claimants. That appeal is disposed of alongwith the present appeal and in that appeal for the for the adjoining Gut No.47 having similar advantageous and

dis-advantageous factors, compensation is awarded at the rate of Rs.13,560/- per Aar for seasonally irrigated land.

8. At the stage of arguments, learned Counsel for both the parties submit that the rate of compensation awarded in First Appeal No.732 of 2015 shall be awarded to the land which is subject-matter of the present appeal.

9. I have gone through the judgment and award passed by Reference Court in L.A.R. No.622/2005. In that matter, similar sale instance of Gut No.40 abutting to Paithan to Aurangabad road was considered by the Reference Court as well as in Appeal by this Court. The land under L.A.R. No.622/2005 is also well irrigated land and this Court held that it is seasonally irrigated land and while modifying the award, this Court reduced compensation to the tune of Rs. 13,560/- per Aar.

10. In the case at hand, Gut No.45 which is acquired land, is also irrigated with the help of well water situated in the said land. No positive evidence has been placed on record by claimant to prove that it is perennially irrigated land and well water is available throughout the year for irrigation of this land. Even the crop statement Gut No.45 shows that total area of Gut

No.45 is 11 Hectare and only one well is situated in the said land owned by claimant Muzaffar Mehmood. The crop statement shows that claimant Muzaffar Mehmood in his share had taken dry crop in most of the years and in the year 1990-91 he had taken crop of grass in 20 Aar and dry crop in remaining area of his share. Even in the year 1992-93 claimant has taken crops of Toor, Sunflower, Bajra and Jowar from his share. Only from the year 1996 onwards the claimant has taken sugarcane crop in 1 Hectare 60 Aar and 2 Hectare area.

11. Thus, it emerges that till the date of publication of notification under Section 126 (4) of M.R.T.P. Act, the claimant has taken dry crop from the acquired land for most of the years. In the circumstances, by no stretch of imagination it can be held that the acquired land is perennially irrigated land. Even the Reference Court has not taken pains to ascertain whether the acquired land is perennially irrigated or seasonally irrigated land. So also, as observed above in First Appeal No.732/2015, in Marathwada area due to meager rainfall generally ground water level is reduced after winter season and therefore, well irrigated land in this area is generally seasonally irrigated land and not

perennially irrigated land with the help of well water. Therefore, in the case at hand, compensation is to be awarded for the acquired land at the same rate which is awarded in First Appeal No.732 of 2015.

12. Thus, I hold that the award passed by Reference Court in L.A.R. No.620/2005 needs to be modified to reduce the rate of compensation to the tune of Rs. 13,560/- per Aar for the acquired land.

13. The learned trial Court rightly awarded statutory benefits under Sections 23 (1A) and 23 (2) and interest under Section 34 of the Land Acquisition Act and that part of the award needs no interference. However, the Reference Court awarded interest under Section 28 of the Land Acquisition Act from the date of possession which is erroneous for the simple reason that the possession of acquired land is taken by Acquiring Body prior to the date of publication of notification under Section 126 (4) of M.R.T.P. Act. Therefore, under Section 28 of Land Acquisition Act the interest is to be awarded from the date of award i.e. 19.03.2005 till the date of deposit of enhanced compensation, solatium and component amount in the Court by Collector or

Acquiring Body.

14. In view of the above discussion, the appeal deserves to be partly allowed. Accordingly, First Appeal No.72 of 2015 is allowed. The award passed by Civil Judge, Senior Division, Aurangabad in L.A.R. No.620/2005 is modified and compensation for the acquired land is reduced to the tune of Rs.13,560/- per Aar for Gut No.45, admeasuring 1 Hectare 85 Aar situated at village Golwadi.

15. The claimant is entitled to interest at the rate of 9% per annum under Section 28 of the Land Acquisition Act from the date of passing of award i.e. 19.03.2005 till 20.03.2006 and if the amount is not deposited till 20.03.2006, then at the rate of 15% from 21.03.2006 till deposit of enhanced compensation, solatium and component amount in the Court.

16. Remaining part of the award regarding statutory benefits under Section 23 (1A) and 23(2) and interest under Section 34 of the Land Acquisition Act is confirmed as it.

17. Parties to bear their respective costs of the appeal. The appeal is disposed of in the above-said terms.

18. For the reasons stated in Civil Application No.13408 of 2017 in First Appeal No.732 of 2015, the Civil Application No.11104 of 2018 in this appeal is rejected.

(SUNIL K. KOTWAL)
JUDGE

vdd/