

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3315 OF 2011

Vasant Vishwanath Shejul
age 49 years, occ. agril
r/o Zodegaon, Tq. Gangapur
Dist. Aurangabad

Appellant

Versus

1. The State of Maharashtra
Through the Special Land Acquisition Officer
For K.T. Bandhara, Khopeshwar
Aurangabad.

2. The Executive Engineer
Irrigation Zilla Parishad,
Aurangabad

Respondents

Mr. A.B. Kale, advocate for appellant.
Mr. P.M. Kulkarni, A.G.P. for respondent-State.

CORAM : P.R. BORA, J.
DATE : 4th March, 2019

JUDGMENT :

1. Claimant in LAR No. 516/1996 decided by the Court of 2nd Joint Civil Judge, Senior Division, Aurangabad on 18.08.2009, has preferred the present appeal seeking enhancement in the amount of compensation awarded by the said Court.

2. Land admeasurng 1 Hectore 95 Are situate at village Zodegaon, Tq. Gangapur, Dist. Aurangabad owned by the present appellant was acquired for the purpose of construction of K.T. Bandhara. Notification under section 4 of the Land Acquisition Act (hereinafter referred to as 'the Act') in that regard was published in

the official gazette on 14.07.1992 and the award under section 11 of the Act came to be passed on 28.01.1993. The Special Land Acquisition Officer offered compensation at the rate of Rs. 200/- per Are to the claimant. Dis-satisfied with the amount of compensation so offered, the appellant-claimant filed reference application under section 18 of the Act which was adjudicated by the 2nd Jt. Civil Judge, Senior Division, Aurnagabad (hereinafter referred to as the Reference Court). In the reference application, the appellant had claimed compensation at the rate of Rs. 50,000/- per acre. In order to substantiate his claim, in addition to his own testimony, the appellant-claimant had placed on record certain sale-deeds. The Reference Court, however, after having considered the oral as well as documentary evidence brought on record, partly allowed the reference application and thereby enhanced amount of compensation at the rate of Rs. 625/- per Are. Since according to the claimant, the Reference Court has also not awarded appropriate amount of compensation and also not awarded statutory benefits and interest in accordance with law, the present appeal is filed by him.

3. Mr. Kale, learned counsel for the appellant-claimant submitted that though the sale instances of higher price were brought on record by the appellant-claimant, the Reference Court has ignored the same without assigning any reason. Learned counsel further submitted that the sale-instance at Exh. 43 was relied upon by the reference Court. The market value received to the land, which was subject matter of the said sale-instance, was Rs. 1250/- per Are, however, while determining the market value of the acquired land in the instant appeal, on the basis of the said

sale instance, the Reference Court has reduced it to 50% and determined the market value at Rs. 625/- per Are. Learned counsel submitted that even if all negative factors are considered, the market price of the land could not have been determined by the Reference court at such a lower rate. Learned counsel submitted that even if it is assumed that the sale-instance was pertaining to a smaller piece of land, at the most, 10% to 20% deduction could have been given by the Reference Court while determining the market value of the acquired land. Learned counsel further submitted that in the order passed by the Reference court, it is not clarified whether the appellant-claimant will be entitled for interest under section 28 and 34 of the Act on the amount of solatium and 12% interest on the enhanced amount of compensation. Learned counsel further submitted that the Reference Court without assigning any reason has deprived the appellant-claimant from interest under section 28 and 34 of the Act for the period from 24.02.1995 till 30.09.2005. Learned counsel on all above grounds prayed for adequate enhancement in the amount of compensation and to pass necessary orders as about interest on the amount of solatium as well as 12% component on the enhanced amount of compensation.

4. None appears for the acquiring body. Learned AGP Mr. Salgare supported the impugned award.

5. I have given due consideration to the submissions made by Mr. Kale, learned counsel for the appellant-claimant and Mr. Salgare, learned AGP for the respondent-State. I have perused the impugned judgment as well as evidence on record. It is not in

dispute that the sale-instance at Exh. 43 which has been relied upon by the Reference Court pertains to a land adjacent to the acquired land. However, admittedly, the land which was subject matter of Exh. 43 was a smaller piece of land admeasuring 20 Are whereas the land acquired in the instant appeal is a bigger piece of land admeasuring 195 Are. In no case, same market value could have been earned by the acquired land which is a big chunk of land. Moreover, the Reference Court has discussed the merits and plus points of the land which was subject matter of Exh. 43 and considering this aspect, the Reference Court has preferred to determine the market value of the acquired land at half of the price which was received to the land which was subject matter of Exh. 43. It does not appear to me that the Reference Court has committed any error in determining the market value as above. I, therefore, see no reason to cause interference in the market value of the acquired land determined by the Reference Court.

6. There however appears substance in the objection raised by the appellant that without assigning any reason the Reference Court has deprived him of the interest on the enhanced amount of compensation from 24.02.1995 to 17.08.2009. I have carefully gone through the impugned judgment. The Reference Court has nowhere discussed why it has disentitled the appellant from claiming interest on the enhanced amount of compensation of the period from 24.02.1995 till 17.08.2009. Learned AGP also could not point out any reason for not awarding interest on the enhanced amount of compensation by the Reference Court of the aforesaid period. It need not be stated that the appellant-claimant is

statutorily entitled to receive interest on the enhanced amount of compensation in accordance with the provisions of sections 28 and 34 of the Act. Without assigning any reason, the appellant could not have been deprived of the said interest. The impugned order to that extent certainly require to be set aside.

7. It was further contention of learned counsel Mr. Kale that the impugned judgment is not clear on the point whether interest would be payable on the amount of solatium payable on the amount of compensation enhanced by the Reference Court. Infact, in the judgment, the Reference Court has made the appellant-claimant entitled for interest on the amount of solatium on the enhanced amount of compensation. However, there appears some ambiguity in the manner the operative part of the order is couched. The learned counsel has relied upon the judgment of the Honourable Apex Court in the case of Sundar Vs. Union of India reported in **AIR 2001 Supreme Court 3516** to urge that enhanced compensation would include the amount of solatium as envisaged in Section 23(2) of the Act and the interest shall be payable to the entire said amount.

8. In the aforesaid judgment, the Honourable Apex Court has held that :

"In calculating the interest, as mentioned in the provisions of Ss. 34 and 28 of the Act, the amount of solatium envisaged in S. 23(2) of the Act should be included. The State liable to pay interest on the amount of solatium envisaged under S. 23(2) of the Act. The compensation awarded would include not only the total sum arrived at as per sub-section (1)

of S. 23 but the remaining sub-sections thereof as well. It is clear from S. 34 that the expression 'awarded amount' would mean the amount of compensation worked out in accordance with the provisions contained in S. 23, including all the sub-sections thereof. It is inconceivable that the solatium amount would attract only the escalated rate of interest from the expiry of one year and that there would be no interest on solatium during the preceding period. What the Legislature intended was to make the aggregate amount under S. 23 of the Act to reach the hands of the persons as and when the award is passed, at any rate as soon as he is deprived of the possession of his land. Any delay in making payment of the said sum should enable the party to have interest on the said sum until he receives the payment. Splitting up the compensation into different components for the purpose of payment of interest under S. 34 was not in the contemplation of the Legislature when that section was framed or enacted.

Interest has to accrue as per S. 34 and S. 28 of the Act on the compensation awarded, whether it is as per the award initially passed by the Collector or by the Court later. For understanding what is meant by 'the compensation' awarded, in the context of land acquisition, what the Court has to decide is how the Act has designed the compensation vis-à-vis the liability to pay interest. Section 26 which provides for 'form of award' is not intended to show that the compensation awarded would be benefit of the additional amount and the solatium envisaged under sub-section (1-A) or sub-section (2) of S. 23. This can be clearly discerned from the commencing words of S. 26 itself. They are : Every award under this part shall be in writing signed by the Judge. "What is referred to therein is Part III of the Act which comprises of a fasciculus of twelve provisions starting with S. 18 and ending

with S. 28-A of the Act. There can be no doubt that all the three head specified in the three sub-sections in S. 23 are the sums to be "awarded by the Court." Hence the words 'every award under Part' cannot be treated as the award after delinking the amounts awarded under subsection (A-1) or sub-section (2) of S. 23.

Section 24 emphasises that no amount on account of any disinclination of the person interested to part with the land shall be granted as compensation. That aspect is qualitatively different from the solatium which the Legislature wanted to provide "in consideration of the compulsory nature of the acquisition." No doubt what is intended under S. 23(2) is additional to the market value of the land and "in consideration of the compulsory nature of the acquisition". But it cannot be equated with any damage caused on account of "any disinclination of the person to part with the land acquired." In the compulsory acquisition, the landowner is deprived of the right and opportunity to negotiate and bargain for the sale price. it depends on what the Collector or the Court fixes as per the provisions of the Act. The solatium envisaged in sub-section (2) "in consideration of the compulsory nature of the acquisition" is thus not the same as damages on account of the disinclination to part with the land acquired. hence, the person entitled to the compensation awarded is also entitled to get interest on the aggregate amount including solatium.

9. In view of the law laid down by the Apex Court in the aforesaid matter, there can be no doubt that the enhanced amount of compensation would include the amount of solatium and 12% component and the claimant has to be held entitled for the interest under Sections 28 and 34 of the Act on the said aggregate amount

from the date of passing of the Award under Section 11 of the Act. The reference Court has committed an error in not awarding such interest on the aggregate amount. The mistake so occurred needs to be rectified in the present appeal.

10. For the reasons stated above, the following order is passed.

ORDER

i) The impugned judgment and award sofar as it relates to refusal of interest on the enhanced amount of compensation for the period from 24.02.1995 till 17.08.2009 is quashed and set aside. It is held that the appellant-claimant is entitled for interest of the said period also.

ii) It is clarified that the enhanced amount of compensation would include the amount of solatium and 12% component payable on the said amount and the interest under Sections 28 and 34 of the Act would be payable on the said aggregate amount from the date of passing of Award i.e. from 28.02.1994.

iii) Appeal thus stands partly allowed in the aforesaid terms.

(P. R. BORA, J)