

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

902 FIRST APPEAL NO.256 OF 2000

Pandurang s/o Vithalrao Saptal
Age: 62, Occu: Agril,
R/o. Chincholi (Rao),
Taluka & District : Latur.

... Appellant
(Orig. Claimant)

Versus

The State of Maharashtra
Through Collector, Latur,
Dist. Latur.

... Respondent

WITH

FIRST APPEAL NO.257 OF 2000

Babamiya S/o Fattekhan Patel
Age: 82, Occu: Agril,
R/o. Chincholi (Rao),
Taluka & District : Latur.

... Appellant
(Orig. Claimant)

Versus

The State of Maharashtra
Through Collector, Latur,
Dist. Latur.

... Respondent

WITH

FIRST APPEAL NO.1703 OF 2008

The State of Maharashtra
Through Collector, Latur,
Dist. Latur.

... Appellant
(Orig. Respondent)

Versus

Pandurang s/o Vithalrao Saptal
Age: 50, Occu: Agriculture,
R/o. Chincholi (Rao), Tq. Latur

... Respondent
(Orig. Claimant)

WITH

FIRST APPEAL NO.2572 OF 2008

The State of Maharashtra
Through Collector, Latur,
Dist. Latur.

... Appellant
(Orig. Respondent)

Versus

Bacchaesaheb s/o Krishnath Pandhare
Age: 35, Occu: Agriculture,
R/o. Chincholi (Rao), Tq. Latur

... Respondent
(Orig. Claimant)

WITH

FIRST APPEAL NO.2573 OF 2008

The State of Maharashtra
Through Collector, Latur,
Dist. Latur.

... Appellant
(Orig. Respondent)

Versus

Babamiya S/o Fattekhan Patel
Age: 82, Occu: Agril,
R/o. Chincholi (Rao),
Taluka & District : Latur.

... Respondent
(Orig. Claimant)

FIRST APPEAL NO.2849 OF 2008

Bacchaesaheb s/o Krishnath Pandhare
Age: 37, Occu: Agri,
R/o. Chincholi (Rao),
Tq. & Dist. Latur

... Appellant
(Orig. Claimant)

Versus

The State of Maharashtra
Through Collector, Latur,
Dist. Latur.

... Respondent

....

Mr. S.K. Adkine, Advocate for the Appellants-original claimants in
FA/256/2000, FA/257/2000 and FA/2849/2008
Mr. A.N. Nagargoje, Advocate for the respondents-original

claimants in FA/1703/2008, FA/2572/2008, FA/2573/2008.
Mr. A.M. Phule, AGP for Appellant-State in FA/1703/2008,
FA/2572/2008 & FA/2573/2008 and for Respondent-State in
FA/256/2000, FA/257/2000, FA/2849/2000.

....

CORAM : P.R. BORA, J.

DATED : 08th FEBRUARY, 2019

ORAL JUDGMENT:-

1. Since all these appeals are arising out of the common judgment and award passed by the Court of Extra Joint District Judge, Latur in L.A.R. No.647/1991, L.A.R. No.646/1991 and L.A.R. No.645/1991, I have heard common arguments in all these appeals and I deem it appropriate to decide all these appeals by a common reasoning.

2. Three appeal are filed by the State taking exception to the impugned judgment and award alleging that the Reference court has arbitrarily enhanced the amount of compensation. Whereas, three other appeals are filed by the claimants seeking enhancement in the amount of compensation. The lands, which are involved in the present appeals are all from village Chincholi (Rao), Tq. & Dist. Latur. The said lands were acquired for the construction of Wasengaon to Neweli road. Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') in that regard was published in the official gazette on 26.07.1990 and the award under Section 11 came to be passed on

19.07.1991. The possession of the lands was, however, taken much prior to that in the year 1971 i.e. on 01.04.1971.

3. The SLAO had offered the compensation to the respective claimants at the rate ranging between Rs.19,000/- to Rs.20,000/- per Hectar i.e. Rs.190/- to Rs.200/- per R. Dissatisfied with the amount of compensation so offered, the claimants preferred applications under Section 18 of the Act, which were adjudicated by the court of Extra Joint District Judge, Latur. The said court is hereinafter referred to as the Reference Court. In the Reference Applications, the claimants had claimed compensation at the rate of Rs.40,000/- per R in L.A.R. No.645/1991 and L.A.R. No.646/1991 and at the rate of Rs.5/- per Sq. Ft. in L.A.R. No.647/1991.

4. In order to substantiate the claim so raised, the claimants had relied upon only one sale instance pertaining to 800 Sq. Ft. land sold for the consideration of Rs.6,000/- in the year 1989. The learned Reference Court, after having assessed the oral and documentary evidence brought on record before it, determined the market value of the acquired lands at the rate of Rs.25,000/- per Hectar for the non-irrigated lands and Rs.37,500/- per Hectar for the irrigated lands, and accordingly enhanced the amount of compensation. Aggrieved by, the State as well as the claimants both have filed the appeals as stated herein above.

5. The impugned common judgment and award is challenged by the State on the various grounds and more particularly relying upon some earlier decisions in respect of the acquisitions made from Village Gangapur, the learned AGP submitted that the Reference Court has enhanced the market value without taking into account the fact whether the lands acquired from Village Chincholi (Rao) can be held to be at par with the lands at Gangapur in so far as nature and quality of lands is concerned. The learned AGP submitted that each matter needs to be decided on its own merit and the Reference Court could not have blindly accepted the market value given in the earlier judgment in respect of the acquisitions made from Village Gangapur. The learned AGP, therefore, prayed for setting aside the impugned judgment and award and to restore the award passed by the SLAO.

6. As against the argument made on behalf of the State, Shri Adkine, the learned counsel appearing for the claimants submitted that though the claimants had brought on record the sale instance at Exh.17 revealing that the land adjacent to the acquired land was sold at the rate of more than Rs.8,000/- per R, ignoring the said sale instance, without assigning any reason, the Reference Court has determined the market value at the lower side. The learned counsel further submitted that even if it is considered that the Reference Court had relied upon the earlier award passed, wherein the rate for the non-irrigated land was determined at the

rate of Rs.25,000/- per Hector and the Reference Court in no case could have determined the market value of the present lands, which are admittedly irrigated lands at the rate of Rs.50,000/- per Hector, the learned counsel, in the circumstances, prayed for adequate enhancement in the amount of compensation.

7. I have given due consideration to the submissions made by the learned AGP appearing for the appellant-State and Shri Adkine, learned Counsel appearing for the original respondents-claimants. It is not in dispute that the acquired lands were irrigated lands. In the award also, it is stated that the acquired lands are irrigated lands. From the discussion made by the Reference Court, it is revealed that the Reference Court had determined the market value of the dry lands at the rate of Rs.25,000/- per Hector. Though it was sought to be contended by the learned AGP that the price so determined was arbitrarily determined by the Reference Court, after having considered the discussion made by the Reference Court, the contentions so raised by the learned AGP has to be rejected. The Reference Court has assigned appropriate reasons for determining the market value of the acquired lands at the rate of Rs.25,000/- for non-irrigated lands. When the Reference Court has determined the market value of the non-irrigated lands at the rate of Rs.25,000/- per Hector, ordinarily, the Reference Court must have determined the market value of the acquired lands, which are admittedly irrigated lands,

at double of the said rate and thus must have determined the market value of the acquired lands at the rate of Rs.50,000/- per Hector. The Reference Court has however determined the market value of the acquired lands at the rate of Rs.37,500/- per Hector, and has accordingly enhanced the amount of compensation. For the reasons stated herein above, I hold the the market value of the acquired lands at the rate of Rs.50,000/- per Hector and eventually hold the claimants entitled for enhancement in the amount of compensation accordingly.

8. Though it was assertively contended by Shri Adkine, the learned counsel for the original claimants that the land involved in L.A.R. No.647/1991 is concerned, the market value is liable to be determined at the rate of Rs.5/- per Sq. Ft., I am not convinced with the argument so made by him. The market value of the land, which is the subject matter of L.A.R. No.647/1991 also has to be determined at the rate of Rs.50,000/- per Hector.

9. In the above circumstances, the objection raised on behalf of the State as about the market value determined by the Reference Court of the acquired lands at the rate of Rs.37,500/- per Hector alleging the same to have been fixed on higher side stands rejected. As against it, the appeals filed by the claimants seeking enhancement in the amount of compensation stand partly allowed, and the amount of compensation stands enhanced by Rs.12,500/- per Hector with all statutory benefits.

10. There appears substances in the another objection raised on behalf of the State in regard to the grant of interest under Section 28 of the Act by the Reference Court from the date of taking possession of the lands. In view of the full Bench Judgment of this Court in the case of ***The State of Maharashtra Vs. Kailash Shiva Rangari*** the interest under Section 34 of the Act can only be awarded from the date of passing of the Award under Section 11 of the Act and not from any prior date. The learned Single Judge of this Court while deciding the ***First Appeal No.383 of 2004*** in case of ***The State of Maharashtra & Ors Vs. Ramesh s/o. Tukaram Meshram & Ors.*** has held that, the interpretation given by the Full Bench of this Court to Section 34 of the Act would equally apply to Section 28 of the Act and the interest under Section 28 of the Act would also be payable only from the date of passing of the Award under Section 11 of the Act and not from any prior date. In the present matters, the Reference Court has admittedly awarded interest under Section 28 of the Act from the date of possession. In view of the law laid down in the aforesaid judgment, the order passed by the Reference Court to the aforesaid extent cannot be sustained and deserves to be set aside. The interest under Section 28 of the Act can only be made payable from the date of passing of the award under Section 11 of the Act i.e. from 19.07.1991 and not from any prior date.

11. Thus, appeals filed by the State also deserve to be partly allowed to the aforesaid extent.

12. In the foregoing circumstances and for the reasons discussed herein above, the following order is passed:-

ORDER

[I] The impugned common judgment and award in L.A.R. No.647/1991 with L.A.R. No.646/1991 and L.A.R. No.645/1991 so far as it relates to grant of interest under Section 28 of the Act from the date of possession i.e. 01.04.1971 is set aside; instead, such an interest is made payable from the date of passing of the award under Section 11 of the Act i.e. 19.07.1991. First Appeal Nos.1703/2008, 2572/2008 and 2573/2008 are, thus, partly allowed to the aforesaid extent.

[II] First Appeal Nos.256/2000, 257/2000 and 2849/2008 are partly allowed in the following terms;

- (i) The appellants-claimants in First Appeal Nos.256/2000, 257/2000 and 2849/2008 are held entitled for the enhanced compensation at the rate of Rs.12,500/- per Hecter for their acquired lands in addition to the compensation of Rs.37,500/- per Hecter awarded by the Reference Court.
- (ii) The appellants are held entitled to receive the statutory benefits under Sections 23(1A) and 23(2) of the Act on the enhanced amount of compensation.

- (iii) The appellants are held entitled for the interest under Section 28 of the Act on the enhanced amount of compensation from the date of passing of the award under Section 11 of the Act i.e. from 19.07.1991.
- (iv) The modified award be drawn accordingly.
- (v) Deficit Court fee, if any, be recored from the appellants-claimants.

(P.R. BORA)
JUDGE

Sudhir Rane