

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

901 FIRST APPEAL NO.405 OF 1994

- 1 Jaiyendraprasad s/o Deviprasad Shukla
Died throughhis L.Rs.
- 1-A) Smt.Jayshree w/o. Jayendraprasad Shukla
Age: 60 years, Occu.: Household,
R/o. Katgharpura, Dharur,
Tq.Dharur, Dist.Beed.
- 1-B) Laxmanprasad s/o Jayendraprasad Shukla
Age: 18 years, Occu.: Student,
R/o. Katgharpura, Dharur,
Tq.Dharur, Dist.Beed.
- 1-C) Satendraprasad s/o. Jayendraprasad Shukla
Age: 43 years, Occu.: Agril.,
R/o. Katgharpura, Dharur,
Tq.Dharur, Dist.Beed.
- 1-D) Sachendraprasad S/o. Jayendraprasad Shukla
Age: 42 years, Occu.: Agril.,
R/o. Katgharpura, Dharur,
At present Bori Arab,
Tq.Darwha, Dist.yeotmal.
- 1-E) Sujata D/o.Jayendraprasad Shukla
i.e. now Sujata W/o. Alok Tiwari
Age: 39 years, Occu.: Household,
R/o. Revati Apartment,
Darwha Road, Near Zulelal Pride,
Yeotmal, Dist.Yeotmal. ..Appellants
(Appellant No.1 – Ori. claimant)

VERSUS

- . The State of Maharashtra ..Respondent
- ...
- Advocate for Appellants : Shri M M Patil (Beedkar)
AGP for Respondent – State : Shri A.M.Phule
- ...

CORAM : P.R.BORA, J.

DATE: 31st January, 2019

ORAL JUDGMENT:-

1 The present appeal is filed against the Judgment and award passed in Land Acquisition Reference No.18 of 1989 decided by the Court of Additional District Judge, Ambajogai on 05.12.1992.

2 One Jaiyendraprashad Deviprashad Shukla had filed the aforesaid Reference Application. After his death, his legal heirs have prosecuted this matter further. The land belonging to deceased Jaiyendraprashad bearing Gut No.581 situated at village Awargaon, Tq.Dharur, Dist.Beed, ad-measuring 3 Hectares 61 Are, was acquired for percolation Tank at Awargaon. 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 01.03.1984 and award under Section 11 came to be passed on 24.03.1988. The Special Land Acquisition Officer (SLAO) had offered the compensation @ Rs.100/- per Are. Dissatisfied with the amount of compensation so offered, deceased Jaiyendraprashad preferred application under Section 18 of the Act, which was adjudicated by the Additional District Judge, Ambajogai (hereinafter referred to as the Reference Court). Deceased Jaiyendraprashad and his legal heirs are

hereinafter referred to as the claimants. The claimants had claimed the compensation @ Rs.1,500/- per Are before the Reference Court. The Reference Court, however, dismissed the Reference Application vide the impugned Judgment on three grounds; first that the Reference Application was filed beyond the period of prescribed limitation, second that the claimants had withdrawn the amount without any protest and third that the sale deeds which were certified copies, are not admissible in the evidence and that the contents of the sale instances are not legally proved. Aggrieved thereby, deceased Jaiyendraprashad filed the appeal before this Court. During pendency of the appeal, appellant Jaiyendraprashad died and his legal heirs have prosecuted the appeal further.

3 Shri M.M.Patil, learned Counsel appearing for the appellants - claimants submitted that the connected Reference Applications were also dismissed by the Reference Court assigning the same reasons as are assigned while dismissing LAR No.18 of 1989. The learned Counsel further submitted that the respective claimants in the said LARs had preferred the appeals before this Court and the said appeals bearing First Appeal No.401 of 1994 and connected other appeals were decided by this Court (Coram: S.V.Gangapurwala, J.) vide order passed on

17.03.2011. The learned Counsel has tendered across the bar a copy of the said order. The learned Counsel brought to my notice that this Court vide the aforesaid order had remitted the matters to the Reference Court for deciding it afresh holding that the References were filed within limitation.

4 The learned Counsel further submitted that after the LARs, which were involved in the said appeals were remitted to the Reference Court, the Reference Court vide common Judgment and award passed in LAR No.4 of 1989 with connected LARs decided the said matters and determined the market value of the acquired lands @ Rs.30,000/- per Acre for non-irrigated land and Rs.40,000/- per Acre for irrigated land and has accordingly enhanced the amount of compensation. The learned Counsel submitted that to his knowledge and as per the instructions received to him from the present claimants, the state has not preferred the appeal against the said Judgment and award. In the circumstances, it is contended by the learned Counsel that the present appeal deserves to be allowed and since the land, which is involved in the present matter being acquired vide the same Notification for the same project from the same village, the market value, as has been determined by the Reference Court in its subsequent decision delivered on 14.03.2012 in LAR No.4 of

1989 with connected LARs, be given for the acquired land in the present matter also and accordingly amount of compensation be enhanced and appeal filed by the present appellants be allowed. The learned Counsel has also tendered across the bar a certified copy of the Judgment and award passed by the Reference Court on 14.03.2012 in LAR No.4 of 1989 with connected LARs.

5 Shri A.M.Phule, learned AGP appearing for respondent State opposed the submissions advanced on behalf of the appellants. The learned AGP submitted that while deciding LAR No.18 of 1989, the Reference Court has made elaborate discussion leading to the conclusion of dismissal of the said Reference Application and no interference is required in well reasoned Judgment and order so passed. The learned AGP, however, did not dispute the facts as are stated by the learned Counsel for the appellants that in the connected matters, the appeals were preferred before this Court and this Court vide order dated 17.03.2011 had remitted the said matters for deciding it afresh to the Reference Court. He also did not dispute the fact that after the matters were remitted by the High Court, the Reference Court decided LAR No.4 of 1989 and the connected appeals afresh. He, however, submitted that presently he is not in a position to state whether the State has

preferred any appeal against the impugned Judgment and award passed by the Reference Court on 14.03.2012 in LAR No.4 of 1989 with connected LARs.

6 The learned AGP further submitted that even if it is assumed that the case of the present appellants stands at par with the claimants in LAR No.4 of 1989 and connected LARs, the question would remain that in the event the present appeal is allowed by this Court, whether the appellants shall be held entitled for the interest of the whole of the period from the date of filing of the Reference Application. It is the contention of the learned AGP that having regard to the fact that the Reference Application was filed in the year 1989, and is likely to be decided in the year 2019, the burden of interest of whole of the said 30 years period shall not be saddled on the Government. The learned AGP pointed out that the present appeal was dismissed in default and was restored subsequently. Had it not been dismissed in default, perhaps it would have been decided in the year 2011 itself alongwith First Appeal No.401 of 1994 and the connected appeals arising out of the said acquisition. The learned AGP, in the circumstances, prayed for dis-entitling the present appellants - claimants from receiving the interest of the period from 2011 till this date.

7 I have given due consideration to the submissions made by learned Counsel appearing for the appellants and learned AGP appearing for the respondent State. I have perused the impugned Judgment and the award. I have also perused order passed by this Court in First Appeal No.401 of 1994 with connected appeals on 17.03.2011 and also the Judgment and award delivered by the Reference Court on 14.03.2012 in LAR No.4 of 1989 with connected LARs.

8 From the material on record, it is revealed that the lands, which were involved in LAR No.4 of 1989 with connected LARs in which Judgment and award has been passed on 14.03.2012, were acquired for the same project of construction of percolation tank of village Aregaon, Tq.Dharur, Dist.Beed. It is further revealed that the subject lands were also acquired by the same Notification under Section 4 of the Act, published in the official Gazette on 01.03.1984 and award under Section 11 of the Act in respect of said lands was also passed on 24.03.1988. The material on record further reveals that LAR No.4 of 1989 and connected LARs bearing Nos.1 of 1989, 3 of 1989, 7 of 1989, 10 of 1989, 11 of 1989, 12 of 1989, 14 of 1989 and 17 of 1989 were dismissed by the Reference Court on the same grounds on which LAR No.18 of 1989 has been dismissed by the Reference Court.

This Court in the order dated 17.03.2011 has turned down the ground on which the Reference Court had dismissed the said Reference Applications. I deem it appropriate to reproduce herein below, the discussion made by this Court in paragraph No.8 of the said order, which read thus:-

"8. As per Section 51A of the Indian Evidence Act [For short, 'Evidence Act '] the certified copies of the sale deeds are directly admissible in evidence and it can not be said that the rigours of the Evidence Act would apply stricto sensu to such proceedings. In light of the fact that the certified copies of the sale deeds were on record, the Reference Court was expected to consider the same. From the perusal of the Judgment, it is manifest that the sale deeds on record have not been considered nor the oral evidence has also been discussed. In view of that, the Reference Court has failed in its duty to scan and appreciate the total evidence on record, oral as well as documentary. In light of the same, I find it appropriate to relegate the parties to the Reference Court. It is also found that the State has also not led any evidence in the matter. The parties shall be at liberty to adduce the additional evidence."

9 I also deem it appropriate to reproduce paragraph No.1 of the said order, wherein the reasons on which the said Reference Applications were dismissed by the Reference Court, are reproduced, which read thus:-

"1. The present appellants are the original claimants. Their land was acquired for the Medium Project. The Notification under Section 4 was issued on 1/3/1984. The Award was passed on 24/3/1988. Notice under Section 12 (2) of the Land Acquisition

Act [For short, ' said Act '] was served upon the appellant on 24/3/1988. The claimants were awarded compensation @ Rs. 90/per R. to Rs. 115/per R. by the Special Land Acquisition Officer. The claimants being dissatisfied by the said amount of compensation awarded, filed Reference under Section 18 of the said Act. After considering the evidence on record, the Reference Court dismissed the said Reference. The Reference was dismissed on the ground that : (1) the said Reference is filed beyond the prescribed period of limitation (2) the claimants had withdrawn the amount without any protest (3) the sale deeds which are certified copies are not admissible in evidence and (4) the contents of the said sale instances are not proved and further the sale are in respect of small piece of fragments, which are not comparable and so also are of different village."

10 On reading of the order passed by this Court in the aforesaid First Appeals, there remain no doubt that the facts in the aforesaid cases are *pari materia* with the facts, which are involved in the present appeal. This Court has admittedly remitted the LARs for deciding it afresh to the Reference Court. As noted herein above, the learned Counsel for the appellants has tendered across the bar a certified copy of the common Judgment and award passed by the Reference Court in the said LARs after remand of the matters by this Court. The Judgment and award passed in the said LARs reveals that the Reference Court has determined the market value of the acquired lands @ Rs.30,000/- per Acre for non-irrigated land and Rs.40,000/- per Acre for irrigated lands. The Reference Court had directed the

payment of compensation at the said rate after deducing the amounts, which are already received to the respective claimants as per the awards passed by the SLAO.

11 It is contended by the learned Counsel for the appellants that the land, which is involved in the present matter, is also from the same village, acquired by the same Notification for the same project and the award under Section 11 was also passed on the same dated i.e.24.03.1988. On perusal of the Judgment, it is quite evident that LAR No.18 of 1989 was also dismissed by the Reference Court on the same grounds on which LAR No.4 of 1989 and connected matters were dismissed by the Reference Court. I have, therefore, no doubt that the same analogy, which was applied by this Court while deciding First Appeal No.401 of 1994 and connected matters, would apply in the present matter. In the present matter, however, I feel that in view of the material on record, there is no propriety now in remitting the present matter to the Reference Court for deciding it afresh for the reason that all connected matters having the same facts, have already been decided by the Reference Court and the market value of the lands involved in the said Reference Applications has already been determined by the Reference Court. In the circumstances, instead of remitting the present matter to the

Reference Court, I deem it expedient to apply the same criteria and allowed the present matter on the similar lines as has been done by the Reference Court while deciding the Reference Application No.4 of 1989 with connected LARs.

12 It is contended by learned Counsel for the appellants that the lands involved in the present matter was irrigated land. The learned Counsel submitted that existence of well is admitted, which squarely indicates that acquired land was irrigated land. The submission so made is strongly resisted by learned AGP. The learned AGP invited my attention to the discussion made by the Reference Court as about crop pattern and finding recorded by the Reference Court holding the land to be non-irrigated land.

13 After having gone through the discussion made by the Reference Court, I am convinced that the findings recorded by the Reference Court are sound and based on material which was there before the Reference Court. In the circumstances, I hold that the acquired land out of Survey No.581 ad-measuring 3 Hectare 61 Are was dry land. I, therefore, hold the appellants – claimants entitled for the compensation for the said land @ Rs.30,000/- per Acre.

14 The issue of interest has been discussed by me in the earlier part. Though, the learned AGP had prayed for dis-entitling the claimants for the interest of whole of the said period and grant the interest in the event of appeal is allowed only from the date of decision, it appears to me that it will be wholly unjust to deprive the appellants - claimants from the interest of whole of the said period. However, it would also be unjust to grant the interest for the entire said period. The material on record shows that the connected appeals were filed at the same time, the present appeal was filed, and were decided by this Court in the year 2011. I fully agree with the submission made by learned AGP that had the present appellants been diligent, their appeal must have been decided alongwith the said appeals in the year 2011. The record shows that because of inaction of the appellants, the present appeal was dismissed and subsequently, it was restored. In the circumstances, it appears to me that it would not be unjust, if the appellants are dis-entitled from claiming interest from 17.03.2011, the date on which the connected appeals were decided by this Court, till today. Needless to state that the appellants would be entitled for the interest for the remaining period.

15 Now, it also needs to be noted that in view of the Judgment

of Full Bench of this Court in the case of ***State of Maharashtra Vs. Kailash Shiva Rangari [2016(4) ALL MR 513]*** and in the case of ***State and others Vs. Ramesh Tukaram Meshram and Others [2018(3) Mh.L.J. 616]***, the interest under Sections 28 and 34 of the Act, can only be granted from the date of passing of the award under Section 11 of the Act. Thus, the appellants are entitled for the interest under the aforesaid Sections from the date of passing of the award under Section 11 of the Act. In the result, the following order is passed:-

ORDER

- I) The award passed in LAR No.18 of 1989 is set aside.
- II) LAR No.18 of 1989 is allowed in the following terms:-
 - a) The claimants are held entitled to receive the enhanced compensation @ Rs.26,000/- per Acre in addition to the amount of compensation already received by them as per the award passed by the SLAO.
 - b) The claimants are also held entitled for the statutory benefits and interest as provided under the Act, on enhanced amount of compensation.

c) The interest under Sections 28 and 34 of the Act, is made payable from the date of passing of the award i.e. 24.03.1988.

d) It is clarified that the appellants shall not be entitled for the interest of the period from 17.03.2011 till the date of this order.

e) The award be prepared accordingly.

III) The appeal stands allowed in the aforesaid terms.

(P.R.BORA)
JUDGE

SPT