

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

FIRST APPEAL NO.351 OF 2005

Kishan s/o Santram Bondage
Died through L.Rs.

1-A) Bhausahab s/o Kisan Bondage
Age : 37 yrs, Occu : Agri,

1-B) Balaji s/o Kisan Bondage
Age : 34 yrs, Occu : Agri

1-C) Babasaheb s/o Kishan Bondage
Age : 31 yrs, Occu : Agri,

All R/o Hasalgaon, Tq. Ausa,
Dist. Latur

.. Appellants
(Orig. Claimant)

Versus

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

.. Respondent
(Orig. Respondent)

.....
Advocate for Appellants : Shri S.S. Manale
AGP for Respondent – State : Shri P.M. Kulkarni

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CORAM : P.R. BORA, J.
Dated: January 17, 2019

ORAL JUDGMENT :

1. The original claimant in LAR No.604/1998 had preferred the present appeal seeking enhancement in the amount of compensation awarded to him by the III Ad-hoc Additional District Judge, Latur in the aforesaid Reference

Application decided on 21.12.2004. After the death of the original claimant, his legal heirs have prosecuted the present appeal further. Appellants hereinafter are referred to as the claimants.

2. 6 acres, 12 gunthas land belonging to the present appellants was acquired for rehabilitation of village Hasalgan, Tal. Ausa. The notification under Section 4 of the Land Acquisition Act, 1894 in that regard was published on 08.02.1994 and the Award under Section 11 of the Act came to be passed on 31.03.1994. The SLAO had offered the compensation to the claimant had at the rate of Rs.24,000/- per hector. Dissatisfied with the amount of compensation so offered, the claimant had preferred an application under Section 18 of the Act and the same was adjudicated by the learned III Ad-hoc Additional District Judge, Latur. In the Reference Application, the claimant had claimed the compensation at the rate of Rs.40,000/- per acre. In order to substantiate his claim, the claimant had testified before the Reference Court and had also placed on record two sale instances and had also relied upon the earlier Judgment in LAR No.573/1997 with connected LAR's.

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.20,000/- per acre. Since according to the appellant, the Reference Court also did not award him the adequate compensation, he has preferred the present appeal seeking enhancement in the amount of compensation awarded by the Reference Court.

3. Shri Manale, learned Counsel appearing for the appellants submitted that, in view of the sale instance brought on record by the appellants and having regard to the market value as was determined in LAR No.573/1997 of the lands acquired for the same project vide the same notification from the same village, the Reference Court must have determined the market value of the acquired lands at the rate of Rs.35,000/- per acre. The learned Counsel therefore prayed for allowing the appeal and to hold the appellant entitled for the compensation at the rate of Rs.35,000/- per acre for his acquired land.

4. AGP Shri Kulkarni has resisted the submissions advanced on behalf of the appellants. The learned AGP has

supported the impugned Judgment and Award. According to the learned AGP, there is no apparent error in the impugned Judgment and Award and hence, no interference is required in the said Judgment. The learned AGP, therefore, prayed for dismissal of the appeal.

5. I have given due consideration to the submissions made by the learned Counsel appearing for the respective parties. I have perused the impugned Judgment and the evidence on record. As was argued by learned Counsel Shri Manale, in order to substantiate claim, the appellant – claimant had relied upon the sale instance at Exh.20 as well as the earlier Judgment delivered in LAR No.573/97 arising out of the same project. The land which was subject matter of Exh.20 was admeasuring 3 acres, 4 gunthas. It was sold by registered sale deed executed on 22.06.1989 for the consideration of Rs.90,000/- i.e. approximately at the rate of Rs.30,000/- per acre. The land which was the subject matter of Exh.20 was from the same village. Admittedly, the sale deed pertaining to the said land was executed prior to about 5 years of the acquisition of the subject land vide notification under Section 4 dated

08.02.1994. The Reference Court has not relied upon the aforesaid evidence for wrong reasons. In fact, since the said sale instance was pertaining to the land from the same village and was executed prior to about 5 years of issuance of Section 4 notification, there was no difficulty in placing reliance on the said sale instance. Having regard to the fact that, the said sale instance was executed prior to 5 years of issuance of Section 4 notification in the matter, the Reference Court could have given some increase in the price of the market value of the said land and even if the increase could have been given at the moderate rate of 6 or 7 percent per annum, even then the market price of the subject land could not have been determined by the Reference Court less than Rs.35,000/- per acre. Moreover, the claimant - appellant had also placed on record earlier decision in LAR No.573 of 1997 wherein the Reference Court has decided those reference Applications and awarded the compensation to the claimants therein at the rate of Rs.35,000/- per acre for dry land. On perusal of the Judgment in said LAR, it is revealed that, the lands which were the subject matter in the said appeals were acquired from the same project and were from the same village.

The notification under Section 4 of the Act in that regard was published on 08.02.1994 and the award was passed on 31.03.1994. In the circumstances, there was no difficulty in relying on the Judgment so passed in the said LAR. Though the learned AGP has submitted that the Reference Court has properly considered the evidence on record, it is difficult to accept his contention. As noted herein above, the Reference Court failed in appreciating the sale instance brought on record by the appellant and the import of the Judgment delivered in LAR No.573 of 1997.

6. After having considered the evidence on record, it appears to me that, the appellants – claimants are entitled to receive the market value of the acquired land at the rate of Rs.35,000/- per acre and the compensation amount needs to be enhanced accordingly. I am, therefore, inclined to partly allow the present appeal. Hence, the following order.

ORDER

(i) The appellants are held entitled to receive the compensation at the rate of Rs.35,000/- per Acre for his acquired land. The amount of compensation is accordingly enhanced.

(ii) The appellants are held entitled for the statutory benefits under Sections 23 (1A) and 23 (2) of the Act on the enhanced amount of compensation.

(iii) The appellants are also held entitled for the interest under Sections 28 and 34 of the Act from the date of passing of the Award under Section 11 of the Act.

(iv) The Award be modified accordingly.

(v) The appeal stands allowed in the aforesaid terms.

(PR. BORA, J.)