

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

**1097 FIRST APPEAL NO.2864 OF 2018
WITH CA/4960/2018 IN FA/2864/2018**

1. The State of Maharashtra
Through: Collector, Osmanabad.
 2. The Special Land Acquisition Officer,
(P.T. & M.I.W.) No.1, Osmanabad,
Taluka and District – Osmanabad.
 3. The Executive Engineer,
Lift Irrigation Department, Osmanabad,
Tq. and Dist.Osmanabad.
- ..Appellants
(Original Respondents)

VERSUS

- .
- Kashinath Ambadas Magar
Age: 65 years, Occupation: Agri.,
R/o. Wagholi,
Tal. & Dist. Osmanabad.
- ..Respondent
v(Original Claimant)

...

**WITH
FIRST APPEAL NO.2865 OF 2018
WITH CA/4958/2018 IN FA/2865/2018**

1. The State of Maharashtra
Through: Collector, Osmanabad.
 2. The Special Land Acquisition Officer,
(P.T. & M.I.W.) No.1, Osmanabad,
Taluka and District – Osmanabad.
 3. The Executive Engineer,
Lift Irrigation Department, Osmanabad,
Tq. and Dist.Osmanabad.
- ..Appellants
(Original Respondents)

VERSUS

- .
- Popat Arjun Pawar
Age: Major, Occupation: Agri.,

R/o. Wagholi,
Tal. & Dist. Osmanabad.

..Respondent
(Original Claimant)

...
WITH

**FIRST APPEAL NO.2866 OF 2018
WITH CA/4962/2018 IN FA/2866/2018**

1. The State of Maharashtra
Through: Collector, Osmanabad.
 2. The Special Land Acquisition Officer,
(P.T. & M.I.W.) No.1, Osmanabad,
Taluka and District – Osmanabad.
 3. The Executive Engineer,
Lift Irrigation Department, Osmanabad,
Tq. and Dist.Osmanabad.
- ..Appellants
(Original Respondents)

VERSUS

Pandurang Gopal Shinde
Age: Major, Occupation: Agri.,
R/o. Wagholi,
Tal. & Dist. Osmanabad.

..Respondent
(Original Claimant)

...
WITH

**FIRST APPEAL NO.2867 OF 2018
WITH CA/4964/2018 IN FA/2867/2018**

1. The State of Maharashtra
Through: Collector, Osmanabad.
 2. The Special Land Acquisition Officer,
(P.T. & M.I.W.) No.1, Osmanabad,
Taluka and District – Osmanabad.
 3. The Executive Engineer,
Lift Irrigation Department, Osmanabad,
Tq. and Dist.Osmanabad.
- ..Appellants
(Original Respondents)

VERSUS

. Nivruti Gopal Shinde
Age: Major, Occupation: Agri.,
R/o. Wagholi,
Tal. & Dist. Osmanabad. ..Respondent
(Original Claimant)

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AGP for Appellants - State : Shri P.M.Kulkarni
Advocate for Respondents - claimants : Shri S.B.Wakure
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CORAM : P.R.BORA, J.

DATE: 15th February, 2019

ORAL JUDGMENT:-

1. Since these appeals are arising out of the common Judgment and award passed by the Court of Civil Judge, Senior Division, Osmanabad in Land Acquisition Reference (LAR) No.444 of 2008 with connected LARs on 28.10.2014, I have heard the common arguments in all these appeals and I deem it appropriate to decide all these appeals by a common reasoning.

2. The State has preferred these appeals being aggrieved by the common Judgment and award so delivered as above in the aforesaid matters. The lands, which are the subject matter of the present appeals were acquired for the construction of percolation tank at village Sarola (Sanja), Tq. And Dist.Osmanabad. The Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) in that regard was published in official Gazette on 12.04.2005 and the

award under Section 11 of the Act came to be passed on 08.11.2006. The possession of the acquired lands was taken on 07.02.2004 i.e. prior to issuance of Section 4 Notification. The Special Land Acquisition Officer (SLAO) had offered the compensation to the respective claimants at the rate ranging between Rs.880/- to Rs.935/- per Are. The SLAO had held the acquired lands to be non-irrigated lands and has accordingly offered the amount of compensation. Dis-satisfied with the amount of compensation so offered, the claimants had filed applications under Sections 18 of the Act, which were adjudicated by the Civil Court, Senior Division, Osmanabad (hereinafter referred to as the Reference Court). The present respondents are hereinafter referred to as the claimants.

3. In the Reference Applications, the claimants had claimed the compensation @ Rs.2,500/- per Are. In order to substantiate the claim so raised by them, the claimants in addition to their oral testimonies, placed on record one sale instance. No oral or documentary evidence was adduced by the respondents i.e. State. The learned Reference Court after having considered the oral and documentary evidence brought on record before it, determined the market value of the acquired lands @ Rs.3,360/- per Are for non-irrigated lands and Rs.6,720/- per Are for

irrigated lands. Aggrieved thereby, the State has preferred the present appeals.

4. Shri P.M.Kulkarni, learned AGP appearing for the appellant State has criticized the impugned common Judgment and award on various grounds. The main objection as has been raised by the State against the impugned Judgment and award is that it has determined the market value of the acquired lands on the basis of a small piece of land ad-measuring 6 Are and without considering the special features attached to the said piece of land. The learned AGP submitted that the Reference Court has arbitrarily enhanced the compensation by determining the market value of the acquired lands at unreasonable high price. The learned AGP in the circumstances prayed for setting aside the impugned Judgment and award and to restore the award passed by the Special Land Acquisition Officer (SLAO) under Section 11 of the Act. The learned AGP submitted that the SLAO had infact considered the overall circumstances and has correctly determined the market value of the acquired lands.

5. Shri S.A.Wakure, learned Counsel appearing for the respondents - original claimants has supported that the impugned Judgment and award. The learned Counsel submitted

that the Reference Court has not blindly accepted the sale instance, which was brought on record by the claimants. The learned Counsel submitted that the Reference Court while comparing the said sale instance for determination of the market value of the acquired lands had reduced the price received to the said land to the extent of 2/3rd of it and has determined the market value of the acquired lands. The learned Counsel in the circumstances submitted that no fault can be found in the market value as has been determined by the Reference Court of the acquired land. The learned Counsel in the circumstances has prayed for dismissal of the appeals.

6. I have given due consideration to the submissions made by the learned AGP appearing for the appellant State and learned Counsel appearing for the respondents – original claimants. I have perused the impugned Judgment and the evidence on record. From the discussion made by the Reference Court and from the submissions made by learned Counsel appearing for the parties, it is evident that the only evidence, which was before the Reference Court for determination of the market value of the acquired lands, was the oral testimony of the respective claimants and the sale instance brought on record by them. The material on record reveals that only one sale instance was

brought on record by the claimants, which has been marked as Exh.19 in the record of the Reference Court. The land, which was subject matter of the said sale deed at Exh.19 was ad-measuring 6 Are and was sold vide registered sale deed executed on 08.03.2004 for the consideration of Rs.51,000/- i.e. @ Rs.8,500/- per Are.

7. The discussion made by the Reference Court goes to suggest that the Reference Court while determining the market value of the acquired lands on the basis of the land, which was the subject matter of Exh.19, has given negative allowances to the extent of 2/3rd of the price, which was received to the said land and has accordingly determined the market value of the acquired lands. I deem it appropriate to reproduce herein below the discussion made by the Reference Court in that regard in paragraph No.18 of the said Judgment, which reads thus:-

“18] Now let us see what exercise the claimants have made in order to claim enhanced compensation of acquired land @ **Rs.2,500/- per R.** According to claimants, the acquired lands were meant for irrigation. The picture showing quality of the land is already made clear by me. Now may be at the cost of repetition I would like to note that according to me, the acquired lands Gat No.300 was meant for irrigation. Whereas remaining acquired lands Gat Nos.301 & 308 were meant for dry crop. There cannot be straight jacket formula for determination of compensation. The claimants in these cases

have submitted sale instances (Exh.19). The same is discussed herein after.

a) Let the geographical picture of village Sarola and Osmanabad city be produced on record since it is very important from the point of enhancement of compensation. Admittedly, village Sarola is situated on Eastern side of Osmanabad town, exactly by the side of Osmanabad-Ausa road. There is a ring road which passes between village Sanja and Osmanabad city. There is a distance of 3-4 k.ms. Between village and Osmanabad city. The acquired lands are situated on an average 1 or 2 k.ms. Away from village Sanja and exactly on Southern side of Osmanabad-Ausa road. All these details were submitted by the respondents during the course of arguments. It is to be noted that no attempt is made by claimants to falsify above submissions by submitting village map etc. It is because of these reasons I will have to accept submissions made on behalf of respondents.

b) As of rule, the LAO as well as reference court, cannot be compelled to consider sale instances from adjacent village or town in case sale instance from the village are available in which the acquired land is situated. In this case, the claimants have relied upon sale instance from village Sanja. I am going to consider the same later on.

c) The village map Exh.20 will show that the present acquired lands are situated on Northern side Osmanabad-Ausa road.

d) Now let us see what scope is left with claimants to seek enhancement with the help of the sale instance from village Sanja (Exh.19). The sale instance from adjacent village could be the best piece of evidence for grant of enhancement in the light of ratio from the case of **The Collector, Yeotmal ..Vs.. Laxman [2003 (3) All M.R. 342]** and **State of Maharashtra ..Vs.. Shrimant Ghorpade [2009 (4) Mh.L.J.]**

701. That apart, I came to know that this sale instance is dt. 08.03.2004, which is a year old to the notification u/sec.4 of the Act, dt.12.04.2005. It was not expected on the part of LAO to consider such sale instance because it is in respect of land situated at village Sanja, whereas the acquired lands are situated at village Sarola. Details in this sale instance will show that it was in respect of a piece of dry land adm. OOH:06R only from village Sanja and was sold to Rs.51,000/-. The particulars in the sale instance will show that the dry land of a small area which is located adjacent to the land of purchaser, is purchased for digging of a well. That means the purchaser has paid extra/additional amount than to the true market price of the land considering the utility of the land already owned by the purchaser. Some deductions are to be made to this effect. Admittedly, there is no evidence by claimants leading to such deductions. Learned Advocate for claimants submitted that Rs.5,000/- be deducted as extra price and the remaining price be treated as the price of the land so sold. According to me, it will not be fair to accept the submission of learned Advocate. There is no hard and strict yardstick to this effect. Something to be done by keeping interest by both the sides. The contents of sale instance will show that there was a strong desire of purchaser for creation of irrigation facility for the land already held by him. He was bound to pay huge price for that facility. I, considering this aspect of the opinion to deduct at least 2/3rd of the amount against extra charges paid by the purchaser. This amount will come to Rs.32,670/-. By this was there remains balance of Rs.51,000 - 32670 = 18,330/-. That means the dry land so referred in the sale instance was sold to Rs.3,055/- per R.

e] That apart, I, in the light of ratio from the cases of **The State of Mah. Vs. B.D.Misal [1996 (1) Mh.L.R. 292]** and **Laxman M. Nigrose ..Vs.. Spl. LAO [2009 (3) ALL MR 298]**, am of the opinion to grant increase by 10%. Resultantly the market price of the dry land will come to Rs.03,360/- per R in the year 2005. Here, I would like to mention that as a matter

of prudence, the rate of irrigated land will be double than to the rate of dry land. By this way, the rate from irrigated land will come to Rs.06,720/- per R.”

8. From the discussion made by the Reference Court reproduced herein above, it is apparently revealed that the purchaser of the land, which was the subject matter of the sale deed at Exh.19 had purchased the said land as because it was adjacent to his existing land and he was intending to dig a well in the said land. Thus, there were several reasons for the vendee of the said land to purchase the said land by giving high price. It is thus evident that price received to the said land could not have been the base for determining the market value of the acquired lands though, the said lands also are situated at village Sanja. Merely because the land, which was subject matter of Exh.19 was from village Sanja, the same rate as was given to the said land by it's purchaser because of special feature attached to the said land from his point of view, could not have been fixed for the lands, which are the subject matter of the present appeals.

9. It further appears to me that the Reference Court has lost sight of the fact that the claimants themselves have demanded the enhanced compensation of the acquired land @ Rs.2,500/- per Are. It was not their case that the market value of acquired lands was higher but they had restricted their claim to Rs.2,500/-

per Are. In the circumstances, according to me, if at all entire case of the claimants would have been considered and their applications under Section 18 would have been allowed in toto, even then the market value of the acquired lands could not have been determined by the Reference Court at the rate more than Rs.2,500/- per Are. The rate as has been determined by the Reference Court of Rs.3,360/- per Are for non-irrigated land and double of the said amount i.e. Rs.6,720/- per Are to the irrigated land, therefore cannot be sustained.

10. In the Reference Applications the claimants had claimed the compensation @ Rs.1,00,000/- per Acre i.e. Rs.2,500/- per Are. In their oral testimonies before the Reference Court also, the claimants reiterated their said demand. In addition to their oral evidence as I noted herein above, one sale instance was brought on record by them to substantiate their claim. For the reasons elaborated by me herein before, the sale instance brought on record by the claimants was not liable to be considered as the comparable sale instance. Admittedly, the respondents did not adduce any evidence. Perusal of the award passed under Section 11 of the Act, reveals that the SLAO had considered total 22 sale instances. The particulars of those sale instances are provided in the award in tabular form. From the

particulars, it can be gathered that the highest sale instance was of the rate of Rs.2,18,750/- per Hectare. Though, it is true that no oral evidence is adduced in relation to the said sale instance nor the certified copy of the said sale instance is placed on record before the Reference Court, it appears to me that the said sale instance can be taken into account for considering the claim of the claimants for enhancement in the amount of compensation. Considering the said evidence coupled with the oral evidence of the claimants, it appears to me that the enhancement sought by the claimants in the amount of compensation @ Rs.2,500/- per Are for non-irrigated land was genuine and reasonable one. In the circumstances, I hold that the market value of the acquired lands was liable to be determined @ Rs.2,500/- per Are for non-irrigated lands and @ Rs.5,000/- per Are for irrigated lands.

11. The Reference Court has erred in awarding the interest on the enhanced amount of compensation from the date of issuance of Section 4 Notification. In view of the law laid down by the Full Bench of this Court in the case of **State of Maharashtra Vs. Kailash Shiva Rangari [2016(4) ALL MR 513]** and the subsequent Judgment delivered by this Court in the case of **State and others Vs. Ramesh Tukaram Meshram, [2018 (3) Mh.L.J. 616]**, the interest under Sections 28 and 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 impugned order to that extent also will have to be modified. In the result the following order is passed:-

ORDER

I) The market value determined by the Reference Court @ Rs.3,360/- per Are for non-irrigated and @ Rs.6,720/- per Are for irrigated lands is quashed and set aside; instead the market value of the acquired lands is determined @ Rs.2,500/- per Are for non-irrigated lands and Rs.5,000/- per Are for irrigated lands.

II) The respondents - claimants are held entitled to receive the enhanced compensation at the aforesaid rates as per categorization of their lands as is made in the award passed by the SLAO under Section 11 of the Act.

III) The respondents - claimants shall also be entitled for the statutory benefits under Sections 23 (1A) and 23(2) of the Act, on the enhanced amount of compensation as per the aforesaid rates determined by this Court.

IV) The respondents - claimants shall also be entitled for the interest under Sections 28 and 34 of

the Act, from the date of declaration of the award under Section 11 of the Act i.e. 08.11.2006 on the enhanced amount of compensation as per the modified award .

V) Award be modified accordingly.

VI) The appeals thus stand allowed in the aforesaid terms.

VII) Pending civil applications stand disposed of.

(P.R.BORA)
JUDGE

SPT