

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

**FIRST APPEAL NO.118 OF 2019**

1. The State of Maharashtra  
Through Collector, Latur.
2. The Executive Engineer,  
Public Works Division, Latur

**.. Appellants**  
(Ori. Respondents)

Versus

Vilas Digambarrao Desai  
Died Through LR's :

1. Kaushalyabai Vilas Desai  
Age : 51 years, Occu : Agril,
2. Ganesh s/o Vilas Desai  
Age : 30 years, Occu : Agril,
3. Mahesh s/o Vilas Desai  
Age : 30 years, Occu : Agril,

All R/o. Signal Camp, Latur

**.. Respondents**  
(Orig. Claimants)

.....

AGP for Appellants – State : Shri A.M. Phule ;  
Advocate for Respondents : Shri S.S. Manale.

...

WITH

**FIRST APPEAL NO.1255 OF 2008**

Vilas s/o Digambarrao Desai,  
Died Through Legal Heirs :

1. Kaushalyabai Vilas Desai  
Age : 51 years, Occu : Household,

2. Ganesh s/o Vilas Desai  
Age : 30 years, Occu : Agril,

3. Mahesh s/o Vilas Desai  
Age : 30 years, Occu : Agril,

All R/o. Signal Camp, Latur  
Tal. & Dist. Latur

.. Appellants  
(Orig. Claimant)

**Versus**

1. The State of Maharashtra  
Through Collector, Latur

2. The Executive Engineer,  
Public Works Division,  
Latur

.. Respondents  
(Orig. Respondents)

...

Advocate for Appellants : Shri S.S. Manale  
AGP for Respondent – State : Shri A.M. Phule

.....

**CORAM : PR. BORA, J.**

Dated: January 17, 2019

**ORAL JUDGMENT :**

1. Since both the appeals are arising out of the Judgment and Award passed by Civil Judge, Senior Division at Latur in LAR No.319/1988 decided on 23.11.2007, I have heard the common arguments in both these appeals and I deem it appropriate to decide these appeals by a common reasoning.

2. First Appeal No.1255 of 2008 is filed by the original claimant (now the legal heirs of the deceased claimant),

whereas First Appeal No.118 of 2019 is filed by the State. The land involved in the present appeals was acquired for ring road Latur. Total 62 *Are* land was acquired from Survey No.31/A, which was owned by the appellant-claimant in First Appeal No.1255 of 2008. Notification under Section 4 of the Land Acquisition Act, 1894 in that regard was published in the Official Gazette on 14.01.1983 and the Award under Section 11 of the Act came to be passed on 23.09.1986. The SLAO had offered the compensation at the rate of Rs.750/- per *Are*. Dissatisfied with the amount of compensation so offered, the original claimant namely Vilas Digambarrao Desai had preferred an application under Section 18 of the Act, which was adjudicated by the Civil Judge, Senior Division at Latur. The said Court is hereinafter referred to as the 'Reference Court'.

3. In the Reference Application, the claimant had claimed the compensation at the rate of Rs.15/- per Sq. Ft. The learned Reference Court, however, determined the market rate of the acquired land at the rate of Rs.30/- per Sq. meter i.e. 2.79 per Sq.Ft. and enhanced the amount of compensation

accordingly. Since the compensation as awarded by the Reference Court is also felt inadequate by the original claimant, he has preferred this First Appeal No.1255 of 2008 before this Court. During pendency of the present appeal, the original claimant died and his legal heirs have prosecuted the claim further. The State has also challenged the said Judgment by filing First Appeal No.118 of 2019 alleging that, the Reference Court has exorbitantly enhanced the amount of compensation.

4. When the present appeals were taken up for hearing, learned Counsel Shri Manale tendered across the bar the copies of two judgments delivered by the Division Bench of this Court, one in First Appeal No.408 of 1993 with First Appeal No.551 of 1993 decided on 21.11.2006 and the another in First Appeal No.243 of 1994 decided on 28.11.2006. The learned Counsel submitted that, both the aforesaid appeals had arisen out of the same acquisition proceedings from which the present two appeals have arisen. The learned Counsel submitted that, the lands, which were involved in the aforesaid two appeals, were also acquired for the construction of ring road at Latur and were

acquired by the same notification under Section 4 of the Act issued on 14.01.1983 and the Award in respect of the said lands was also passed on 23.09.1986. The learned Counsel pointed out that, in First Appeal No.408 of 1993 with First Appeal No.551 of 1993 the decisions rendered by the Reference Court in LAR Nos.360/1988 & 344/1988 decided on 24.07.1992 were challenged. The learned Counsel submitted that, both the aforesaid land acquisition references were arising out of the acquisitions made for ring road Latur. The learned Counsel pointed out that, in First Appeal No.243 of 1994 the Award passed in LAR No.301 of 1988 was under challenge. The learned Counsel submitted that, the land, which was the subject matter in LAR No.301 of 1988, was also acquired for the ring road Latur vide the same notification dated 14.01.1983 and Award in respect of the said land was also passed on 23.09.1986.

5. The learned Counsel pointed out that, in LAR Nos.360/1988, 344/1988 and 301/1988 the Reference Court has determined the market value of the land, which were the

subject matter of the said LAR's, at the rate of Rs.8/- per Sq. Ft. and had deducted 50% of the said amount towards open space, garden, roads and for other civic amenities. In the aforesaid First Appeals decided by the Division Bench of this Court, the market value as was determined by the Reference Court to the tune of Rs.8/- per Sq. Ft. though has been maintained, the further order directing deductions from the amount of compensation to the extent of 50% has been modified and deductions are decreased to 30%. The learned Counsel submitted that, the decision of the Division Bench in the aforesaid First two Appeals has not been challenged in the Hon'ble Apex Court. The learned Counsel submitted that, in view of the fact that the lands, which were involved in the aforesaid two first appeals, were also acquired for the same purpose by the same notification and the Award in that regard was also a common Award and when the lands are admittedly adjacent to each other, the present appeals filed by the appellants deserve to be allowed in terms of the decision rendered by this Court in the aforesaid two first appeals.

6. Learned AGP Shri Phule though sought to contend

that, the decision of Division Bench of this Court in First Appeal No.408 of 1993 with First Appeal No.551 of 1993 as well as in First Appeal No.243 of 1994 may not apply to the facts of the present case, could not convince me as to which are the differentiating facts so as not to apply the said decision in the present case. On the contrary, when I perused the Judgment delivered by the Hon'ble Division Bench of this Court in both the aforesaid matters, it is revealed that, the lands which were involved in the said matter and the land which is the subject matter in the present appeals was acquired for the purpose of construction of ring road Latur vide the same notification under Section 4 of the Act.

7. Learned Counsel for the appellants invited my attention to the map placed on record in the trial Court to show that all these lands are adjacent to each other. It is further brought to my notice that, while deciding LAR No.319 of 1988 the Judgments rendered by the Referenced Court in LAR Nos.360 of 1988 & 344 of 88 were also placed on record, however, they were not considered.

8. I am fully convinced that, the land which is the subject matter in the present appeals in all respect stand at par with the lands which were the subject matter in the appeals decided by the Division Bench of this Court. In view of the fact that the decision of the Hon'ble Division Bench in the aforesaid two appeals has not been challenged before the Hon'ble Apex Court meaning thereby that, it has attained the finality. I see no difficulty in allowing the present appeals on the similar lines. It appears to me that, the market value of the land which is involved in the present matter deserves to be determined at the same rate of Rs.8/- per Sq. Ft. It need not be stated that, after the amount of compensation is assessed at the rate of Rs.8/- per Sq. Ft, of the acquired land, which is Rs.5,40,144/-, 30% of the said compensation would be liable to be deducted towards the construction of road, open space and other civil amenities. In view of the above, the following order is passed.

### **ORDER**

1. First Appeal No.118 of 2019 filed by the State is dismissed, however, without any order as to the costs.

2. First Appeal No.1255 of 2008 is allowed as follows:

|         |                                                                                                    |                                   |
|---------|----------------------------------------------------------------------------------------------------|-----------------------------------|
| (i) (a) | Market price of the land<br>Sy. No.31/A, Adm.62 Are<br>62 x1089 x 8                                | = Rs.5,40,144/-                   |
| (b)     | 30% deduction                                                                                      | = Rs.1,62,043/-                   |
| (c)     | Net Market Price                                                                                   | = Rs. 3,78,101/-                  |
| (d)     | 30% Solatium on Rs.3,78,101/-                                                                      | = Rs.1,13,430/-                   |
| (e)     | 12% component on Rs.3,78,101/-<br>for the period from 14.01.1983<br>to 23.09.1986 i.e. 44.3 months | = Rs.1,67,468/-                   |
|         | Total compensation payable                                                                         | -----<br>= Rs.6,58,999/-<br>----- |

(ii) The appellants shall be 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.

(iii) The Award be modified accordingly.

(iv) Pending Civil Application, if any, stands disposed of.

( PR. BORA, J. )