

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

6 FIRST APPEAL NO.1069 OF 2018

- 1 Sk.Mohammad s/o Sk.Zabbu
Age: 51 years, Occu.: Agri. & Service,
R/o.House No.1273, Gawalipura,
Cantonment Chhavani, Aurangabad,
Tq. & Dist.Aurangabad. ..Appellant
(Orig. Claimant)

VERSUS

- 1] The State of Maharashtra,
Through The District Collector,
Aurangabad, Dist.Aurangabad.
- 2] The Public Works Department,
Through Executive Engineer,
World Bank Project Division,
Bandhkam Bhavan behind
District Court, Adalat Road,
Aurangabad - 431 005. ..Respondents
(Ori. Opponents)

...
Advocate for Appellant : Shri Dhananjay Mane h/f.
Shri D.M. Pingale
AGP for Respondents - State : Shri A.M.Phule

...
CORAM : P.R.BORA, J.

DATE: 31st January, 2019

ORAL JUDGMENT:-

- 1 The appellant has preferred the present appeal against the Judgment and award passed in Land Acquisition Reference (LAR) No.572 of 2009, by Civil Judge, Senior Division, Aurangabad on 17.01.2018.

2 The aforesaid LAR was filed by the present appellant (hereinafter referred to as the claimant) seeking enhancement in the amount of compensation offered to him by the Special Land Acquisition Officer (SLAO) towards acquisition of his 36 Are land out of Gut No.188 situated at village Mitmita, Tq. and Dist.Aurangabad for the purpose of construction of bypass road. The land of the claimant was acquired vide Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) published in the official Gazette on 30.11.2006 and the award under Section 11 came to be passed on 21.04.2009. The SLAO had offered the compensation to the appellant - claimant @ Rs.8,600/- per Are. Dissatisfied with the amount of compensation so offered, the appellant - claimant filed the aforesaid application under Section 18 of the Act, which was adjudicated by the Civil Judge, Senior Division, Aurangabad (hereinafter referred to as the Reference Court). The Reference Court vide the impugned Judgment and award has dismissed the Reference Application of the present appellant mainly for the reason that the appellant failed in substantiating his claim as was raised in his application and could not adduce any evidence in support of his claim. Aggrieved thereby, the present appeal is preferred.

3 Shri Dhananjay Mane h/f. Shri D.M.Pingale, learned Counsel for the appellant submitted that because of lack of communication between the counsel, who was appearing for the present appellant in the Reference Court and the present appellant, the Reference Application before the Reference Court could not be properly attended by the appellant and that has resulted in dismissal of the Reference Application by the said Court. The learned Counsel pointed out that the same Reference Court in the LARs filed subsequent to filing LAR by the present appellant arising out of the same acquisition for the same purpose and by the same Notification, has allowed the said Reference Applications and has enhanced the amount of compensation by determining the market value of the lands, which were subject matter in the said appeals @ Rs.23,155/- per Are. The learned Counsel submitted that the lands, which were the subject matter of the LARs decided by the same Reference Court, were pertaining to the adjoining land of the present appellant. The learned Counsel submitted that in the circumstances, the Reference Application filed by the present appellant also requires to be allowed and the present appellant – claimant be granted the enhancement in the amount of compensation on the similar lines. The learned Counsel placed on record, a copy of the Judgment delivered by the said

Reference Court in LAR Nos.201 of 2010 to 205 of 2010 on 20.06.2017 and 21.06.2017. The learned Counsel, in the circumstances, prayed for allowing the present appeal on the similar lines.

4 Shri A.M.Phule, learned AGP appearing for the respondent State has strongly opposed for accepting the request so made on behalf of the appellant. The learned AGP submitted that no fault can be found in the impugned Judgment and award since the appellant did not discharge the burden to substantiate his claim by adducing necessary evidence in support of his claim. The learned AGP submitted that a well reasoned order has been passed by the Reference Court and no interference is required in the impugned Judgment and order.

5 I have given due consideration to the submissions made by learned Counsel for the appellant and learned AGP appearing for the respondent State. I have perused the impugned Judgment and award. I have also perused the Judgments and awards passed in LAR Nos.201 of 2010 to 205 of 2010 by the same Reference Court on 20.06.2017 and 21.06.2017. Perusal of the said Judgments and awards reveal that the lands, which were involved in the said appeals, were also from village Mitmita and

were acquired for the same purpose of bypass road. It is also revealed that the said lands were acquired vide Section 4 Notification dated 30.11.2006 and award under Section 11 of the Act, in respect of the said lands was passed on 21.04.2009. It is also revealed that the SLAO had offered the compensation to the respective claimants in the said LARs averagely at the similar rate i.e. @ Rs.8,600/- per Are. The Reference Court, while deciding the aforesaid LARs, has determined the market value of the acquired lands @ Rs.23,155/- per Are and has accordingly enhanced the amount of compensation.

6 The learned Counsel for the appellant submitted that to his knowledge and as per the instructions received to him, the State has not preferred the appeals against the aforesaid Judgments and awards passed in the said Reference Applications.

7 After having gone through the Judgments and awards passed in the aforesaid LARs by the said Reference Court, there has remained no doubt that the lands involved in those matters are adjoining lands of the land, which is subject matter in the present appeal. As noted herein above, the land, which is the subject matter in the present appeal, was forming part of Gut No.188 situated at Mitmita, whereas the land, which was

involved in LAR No.203 of 2010 was from Gut No.189/2. The land, which was subject matter of LAR No.202 of 2010 was from Gut No.187. It is thus evident that the Reference Applications, which have been decided by the same Reference Court, were pertaining to the adjoining lands. As noted herein above, there is no further dispute that the lands, which were involved in the said LARs and the land involved in the present appeal, were acquired by the same Notification and the award under Section 11 in respect of these lands was passed on the same date. Though, the learned AGP has opposed for accepting the request of the appellant – claimant, has not disputed the factual position insofar as the awards passed by the Reference Court in the aforesaid LARs pertaining to the aforesaid adjoining lands. Nothing has been brought on record by the learned AGP to show that the Judgments and awards passed in the aforesaid LARs are challenged in the High Court.

8 Having considered the material on record, it appears to me that only in the present matter the Reference Court has dismissed the Reference Application for want of evidence, whereas the LARs filed seeking enhancement in the amount of compensation by the adjoining landholders have been allowed by the said Court. Therefore, the same criteria needs to be applied

for the present matter also. In the circumstances, I have no hesitation in holding that the market value of the land acquired of the appellant was liable to be determined at the same rate of Rs.23,155/- per Are. The appellant is thus entitled for the enhanced compensation of Rs.14,555/- per Are for his acquired land. In the result, the following order is passed:-

ORDER

I) The Judgment and award passed in LAR No.572 of 2009 on 17.01.2018 is set aside.

II) LAR No.572 of 2009 stands allowed in the following terms:-

a) The appellant - claimant is held entitled for enhanced compensation @ Rs.14,555/- per Are.

b) The appellant is also held entitled for the statutory benefits under Section 23 (1A) and 23(2) of the Act on the enhanced amount of compensation.

c) The appellant is also held entitled for the interest on the enhanced amount of compensation under Section 28 as well as under Section 34 of the Act, from the date of passing of the award under Section 11 of the Act i.e. 21.04.2009.

- III) Award be prepared accordingly.
- IV) Appeal stands allowed in the aforesaid terms.

(P.R.BORA)
JUDGE

SPT