

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

901 FIRST APPEAL NO.1507 OF 2004

Madhusudan Kanhaiyalal Toshniwal
Age 55 yrs. Occ. - agriculture
and business, R/o Hadgaon,
Tq. Hadgaon, District Nanded.

... Appellant

Versus

1. The State of Maharashtra.
 2. Special Land Acquisition Officer,
PT/MTW 2, Nanded.
 3. The Executive Engineer,
Upper Penganga Project,
Hadgaon Division, Hadgaon,
Tq. Hadgaon, Dist. Nanded.
 4. Godawari Marathwada Irrigation
Development Corporation,
Jalna Road, Aurangabad, through
Respondent No.3.
- ... Respondents.

WITH

FIRST APPEAL NO.1519 OF 2004

Krishnachanda Kanhaiyalal Toshniwal
Age 58 yrs. Occu. - agriculture
R/o Hadgaon, Tq. Hadgaon,
District Nanded.

... Appellant

Versus

1. The State of Maharashtra.
2. Special Land Acquisition Officer,
PT/MTW 2, Nanded.
3. The Executive Engineer,
Upper Penganga Project,
Hadgaon Division, Hadgaon,

2

Tq. Hadgaon, Dist. Nanded.

4. Godawari Marathwada Irrigation Development Corporation,
Jalna Road, Aurangabad, through
Respondent No.3. ... Respondents.

WITH

FIRST APPEAL NO.1528 OF 2004

1. Raghuveer Bhimrao Wategaonkar,
Age 36 yrs. Occ. - agriculture,
R/o hadgaon, Tq. Hadgaon,
District – Nanded.
2. Sau. Shalinibai Bhimrao Wategaonkar,
Age 61 yrs, Occ. - agriculture,
R/o. Hadgaon, Tq. Hadgaon,
District – Nanded. ... Appellants

Versus

1. The State of Maharashtra.
2. Special Land Acquisition Officer,
PT/MTW 2, Nanded.
3. The Executive Engineer,
Upper Penganga Project,
Hadgaon Division, Hadgaon,
Tq. Hadgaon, Dist. Nanded.
4. Godawari Marathwada Irrigation Development Corporation,
Jalna Road, Aurangabad, through
Respondent No.3. ... Respondents.

....

Mr. M.M. Patil Beedkar, Advocate for Appellants.
Mr. S.S. Wagh, Advocate for Respondent No.4
Mr. A.M. Phule, AGP for Respondent-State.

....

CORAM : P.R. BORA, J.

DATED : 10th JANUARY, 2019

ORAL JUDGMENT:-

1. Since all these appeals are arising out of the acquisition of lands for construction of Kayadhu main branch canal of *Upper Pen Ganga* project, I have heard common arguments in all these appeals and I deem it appropriate to decide these appeals by a common reasoning.

2. First Appeal No.1507/2004 is against the judgment and order in LAR No.344/1995. First Appeal No.1519/2004 is arising out of the decision rendered in LAR No.418/1995, whereas the First Appeal No.1528/2004 is filed against the judgment and award passed in LAR No.357/1995.

3. The lands which are the subject matter of First Appeal No.1507/2004 and First Appeal No.1528/2004 are of village Hadgaon, Tq. Hadgaon, Dist. Nanded, whereas the land which is the subject matter of First Appeal No.1519/2004 was acquired from village Wategaon, Tq. Hadgaon, Dist. Nanded. Notification under Section 4 of the land acquisition Act, 1894 (hereinafter referred to as the Act) in respect of the lands situated at village Hadgaon was published in the official gazette on 31.07.1991, whereas the same was published in respect of the land situated at

village Wategaon on 11.07.1991. Possession of the lands involved in all these three appeals was taken on 06.04.1989 i.e. prior to issuance of Section 4 Notification. The award under Section 11 of the Act in regard to the lands acquired from village Hadgaon was passed on 17.12.1994, whereas it was published on 07.05.1995 in regard to the land acquired from the village Wategaon. The SLAO had offered the compensation to the acquired land at the rate of Rs.320/- per R to the land involved in First Appeal No.1528/2004, at the rate of Rs.480/- per R for the land, which is the subject matter in First Appeal No.1507/2004, whereas at the rate of Rs.350/- per R for the land involved in First Appeal No.1519/2004. Dissatisfied with the amount of compensation so offered by the SLAO, the claimants in the respective appeals had filed the Reference Applications under Section 18 of the Act, which were adjudicated by the Court of Civil Judge, Senior Division at Nanded. The said Court is hereinafter referred to as the 'Reference Court'.

4. The claimants in First Appeal No.1528/2004 and First Appeal No.1507/2004 had claimed the compensation at the rate of Rs.1,00,000/- per Acre in the Reference Applications filed by them, whereas the claimant in First Appeal No.1519/2004 had claimed the compensation at the rate of Rs.60,000/- per Acre. The claimants in order to substantiate the claim made by them had testified before the Court, and they also placed on record certain

sale instances in support of their claim. No oral or documentary evidence was adduced on behalf of the State and/or SLAO. On the basis of the oral as well as documentary evidence brought on record, the Reference Court decided the respective Land Acquisition References. LAR No.357/1995 was decided vide judgment passed on 15.04.2004, LAR No.344/1995 was decided vide judgment delivered on 13.04.2004, whereas LAR No.418/1995 was decided by the judgment passed on 29.04.2004. The Reference Court enhanced the amount of compensation in First Appeal No.1507/2004 at the rate of Rs.16,000/- per Acre for dry land and Rs.24,000/- per Acre for the irrigated land. The enhancement was granted at the same rate in LAR No.357/1995. In LAR No.418/1995, the Reference Court granted rate of Rs.16,000/- per Acre. According to the claimants, since the Reference Court also did not award the just compensation, they have preferred the present appeals.

5. Shri M.M. Patil Beed kar appearing for the appellants-claimants in all these matters criticized the judgment and awards impugned in the present appeals on various grounds. The learned counsel taking me through the evidence on record submitted that though ample evidence has been brought on record by the claimants in order to substantiate their claim of enhancement in the amount of compensation, the Reference Court failed in properly appreciating the said evidence. The learned counsel

further submitted that total four sale instances were relied upon by the claimants, however, the Reference Court has declined to rely upon the said sale instances on erroneous grounds that the claimants or the witnesses did not file on record the agreement of sale executed between the parties to the said sale instances. The learned counsel further submitted that the claimants had reasonably claimed the enhancement in the amount of compensation at the rate of Rs.1,00,000/- per Acre and considering the evidence on record, the Reference Court must have been accepted the prayer so made by the claimants.

6. Learned AGP Shri Phule supported the impugned judgments and awards. Learned AGP submitted that the Reference Court has passed a well reasoned order in each of the matter and no further enhancement is warranted in any of the matters. He, therefore, prayed for dismissal of all the appeals.

7. I have given due consideration to the submissions made on behalf of the appellants as well as on behalf of the respondents. I have perused the impugned judgments and the evidence on record in each of the concerned LAR. In LAR No.357/1995 and LAR No.344/1995, the same four sale instances were relied upon though the Exhibit numbers given to the said sale instances in each of the matters are different. In LAR No.357/1995, the said sale instances are at Exhibit Nos.20 to 23, whereas in LAR

No.344/1995 the same are at Exhibit Nos. 26 to 29. In LAR No.418/1995, it appears that only one sale instance was relied upon, which is at Exhibit 25 in the record of the said case.

8. The material on record reveals that all the sale instances were of the period prior to issuance of Section 4 Notification. The market value received to the lands, which were the subject matter of the said sale instances was ranging between Rs.625/- per R to Rs.1,250/- per R. The material on record further reveals that the lands, which were non-irrigated lands were sold at the rate of Rs.625/- per R, whereas the lands having irrigation facility were sold at the rate of Rs.1,250/- per R. The sale instance at Exhibit 26 in LAR No.344/1995 and at Exhibit 20 in LAR No.357/1995 was pertaining to 80 R land and was sold in the year 1986 for the consideration of Rs.50,000/- i.e. approximately at the rate of Rs.625/- per R. The another sale instance pertaining to 1 Acre of land is at Exhibit 27 in LAR No.344/1995 and at Exhibit 23 in LAR No.357/1995. The said sale transaction had occurred in the year 1990, wherein 40 R land was sold for the consideration of Rs.50,000/-. The sale deed at Exhibit 25, which was relied upon in LAR No.418/1995 was pertaining to 3 Acres of land, which was sold in the year 1990 for the consideration of Rs.1,50,000/- i.e. at the rate of Rs.50,000/- per Acre.

9. The Reference Court has preferred not to rely upon the said sale instances for erroneous reasons. The Reference Court has disbelieved the said sale instances on the ground that neither the vendor nor the vendee were examined before the said Court, nor the agreement of sale pertaining to the said transactions were placed on record. Both the reasons as are assigned by the Reference Court are wholly unsustainable. From the evidence, which has come on record, it can be reasonably inferred that in the relevant period, the market value of the similar lands in the vicinity was above Rs.25,000/- per Acre for non-irrigated lands and Rs.50,000/- per Acre for the irrigated lands. The evidence on record sufficiently demonstrates that the lands, which are the subject matters of First Appeal No.1507/2004 and First Appeal No.1528/2004 arising out of LAR No.344/1995 and LAR No.357/1995 were the irrigated lands and the land, which is the subject matter of First Appeal No.1519/2004 arising out of LAR No.418/1995 was the non-irrigated land.

10. for the reasons recorded above, the following order is passed:-

[i] The market value of the lands, which are the subject matter in First Appeal No.1507/2004 (LAR No.344/1995) and First Appeal No.1528/2004 (LAR No.357/1995) be determined at the rate of Rs.50,000/- per Acre. The appellants in these appeals

thus entitled for the enhanced compensation at the rate of Rs.26,000/- per Acre. The enhanced compensation be assessed accordingly.

[ii] The appellants in both the aforesaid appeals are entitled for the statutory benefits under Sections 23 (1A) and 23(2) of the Act on the enhanced amount of the compensation. The appellants are also entitled to receive the interest under Sections 28 and 34 of the Act on the enhanced amount of the compensation from the date of passing of the Award i.e. 17.12.1994.

[iii] The market value of the land, which is involved in First appeal No.1519/2004 (LAR No.418/1995) be determined at the rate of Rs.25,000/- per Acre. The appellant in this appeal is thus entitled for the enhanced compensation at the rate of Rs.9,000/- per Acre. The enhanced compensation be assessed accordingly.

[iv] The appellant this appeal is entitled for the statutory benefits under Sections 23 (1A) and 23(2) of the Act on the enhanced amount of the compensation. The appellant is also entitled to receive the interest under Sections 28 and 34 of the Act on the enhanced amount of the compensation from the date of passing of the Award i.e. 07.05.1995.

[v] All the aforesaid appeals are partly allowed in the aforesaid terms.

**(P.R. BORA)
JUDGE**