

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

**FIRST APPEAL NO.965 OF 2017
WITH CA/9579/2017**

1. Ashok s/o Rambhau Morale,
Age 48 years, Occupation Service,
R/o Wadaji Tq. Washi Dist.
Osmanabad. At Present R/o
Hiranandani Meadows, Ghod
Bandar, Thane Dist. Thane.
2. Arun s/o Rambhau Morale,
Age 58 years, Occupation Pensioner,
R/o Wadaji Tq. Washi Dist.
Osmanabad. At Present R/o
Plot No.29, Manisha Colony, Near
Subhash Nagar, Kolhapur
Dist. Kolhapur.

**...Appellants.
(Ori.Claimants)**

VERSUS

1. The State of Maharashtra,
Through Collector Osmanabad.
2. The Executive Engineer,
Medium Project, Osmanabad
Dist. Osmanabad.

**...Respondents
(Ori.Opponents)**

....
Mr. S. L. Bhapkar, Advocate, for Appellants.
Mr. R. B. Bagul, AGP, for respondent No.1-State.
....

CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Judgment :
11-07-2019.**

**Date of Pronouncing The Judgment :
17-07-2019.**

JUDGMENT :

1. Present appeal has been filed by the original claimants challenging the Judgment and award passed in common Judgment in LAR No.348 of 2009, by learned 4th Jt. Civil Judge, Senior Division, Osmanabad, dated 29-01-2014, whereby their reference was partly allowed and their claim in respect of compensation for trees was rejected.

2. The claimants are the agriculturists and their agricultural land is situated in village Wadaji Tq. Washi Dist. Osmanabad. In their land Gut No.579 and 580 admeasuring 2 H i.e. 5 Acres they had taken various types of fruits bearing trees as there was well in the land. So also there was a stone band. The property was acquired by the respondent No.1- State. Award was passed by Special Land Acquisition Officer bearing No.1997/LNQ/CR-85 dated 06-09-2000. Dissatisfied with the said award they made reference under Section 18 of the Land Acquisition Act for redetermination of the compensation. The matter was referred to District Judge, Osmanabad who had made it over to learned Civil Judge, Senior Division, Osmanabad for decision. It has been contended that the enhancement in the compensation was on the lower side as only Rs.43,750/- per acre was granted instead of prevailing market price. So also compensation for fruit bearing trees was not granted.

According to the appellants, the market price of the acquired land was not less than Rs.1,00,000/- per acre.

3. Heard learned advocate Mr. S. L. Bhapkar for appellants and learned AGP Mr. R. B. Bagul for respondent No.1- State. None for respondent No.2 though respondent No.2 was served.

4. It has been vehemently submitted on behalf of the appellants that, learned reference Court while granting the compensation has relied on the compensation awarded in LAR No.290 of 2003 which was in fact a *suo motu* reliance on the Judgment passed by 2nd Jt. Civil Judge, Senior Division, Osmanabad in the said matter. That order was in fact not binding on the parties as they were not parties in LAR No.290 of 2003, especially the present appellants. Further the said decision in LAR No.290 of 2003 is not even on record of this matter so as to conclude as to on what basis the compensation was fixed in that matter. The computation of compensation in this case is totally a guess work which cannot be allowed. So also there was absolutely no compensation awarded to the fruit bearing trees though reference and evidence regarding the same was found in the joint measurement report. By filing Civil application No.9579 of 2017 the appellant intends to bring the said document i.e. report of the joint measurement on record under Order 41 Rule 27 of Code of Civil Procedure.

5. Per contra, the learned AGP submitted that, by filing application under Order 41 Rule 27 of Code of Civil Procedure, the claimants intend to fill up the lacunae. They ought to have produced the said document before the learned trial Court. Learned AGP in all fairness admitted that the record and proceeding of the impugned Judgment in this case does not bear the Judgment passed in LAR No.290 of 2003.

6. At the outset it can be seen that, an application under Order 41 rule 27 can be filed and entertained if the concerned party though with due diligence could not bring the evidence before the trial Court and the said evidence is now available, may come with such application for adducing additional evidence. Here in this case we are required to consider that while passing an award under Land Acquisition Act, specific procedure is adopted, joint measurement of the land to be acquired is always done by the concerned competent government officers as per Section 104 (a) of the Land Acquisition Act. When any reference is made under Section 18 of the Land Acquisition Act then definitely entire record of the award passed by Special Land Acquisition Officer should be transmitted by the said competent authority to the reference Court. When the claimants would be challenging the compensation fixed by Special Land Acquisition Officer then definitely the reference Court is required to go

through the record before the Special Land Acquisition Officer to arrive at a conclusion as to what was the evidence on the basis of which the compensation was computed. In a way the reference Court would sit as appeal Court while fixing or redetermining the compensation. In this case also what was expected is that the Special Land Acquisition Officer or Collector who had transmitted the application under Section 18 of the Land Acquisition Act filed by the present claimants before it along with the entire award (with its annexures) to the reference Court. When such record would have been called, the document which the appellants – claimants intend to file on record is expected to be in the record of the Special Land Acquisition Officer itself. But since the said joint measurement report, as it is the contention of the claimants, was not considered by the Special Land Acquisition Officer as well as by the reference Court, they want to highlight and rely on that document. There was no question of producing that document by the claimants either before Special Land Acquisition officer or before the reference Court taking into consideration the procedure that is required to be adopted before both the authorities. Under such circumstance definitely a case is made out to allow the production of the said document under Order 41 Rule 27 of Code of Civil Procedure. There is no question of feeling up of the lacunae by the claimants for the simple reason and at the cost of repetition that they intend just to

highlight and bring it to the notice of the Court, the said document which is part of the record of the Special Land Acquisition Officer.

7. Now as regards the other points that is raised in this case, the impugned Judgment para No.08 speaks about itself. The concerned presiding officer of the reference Court had *suo motu* relied on the Judgment given by his own colleague i.e. 2nd Jt. Civil Judge, Senior Division, Osmanabad in LAR No.290 of 2003. It is stated that, the Court has determined the market value of the land in village Wadaji. It was also stated that the said land in that LAR was acquired for the same period from same village and under same award. The said Court while deciding LAR 290 of 2003 had fixed the market rate of the land @ Rs.35,000/- per acre for non-agricultural land and then it is stated that for determining the market value of seasonally irrigated land, the Court in impugned Judgment held that, it is necessary to give rise of 25 % and after giving rise the market value of seasonal irrigated land has been arrived at. Even if the compensation rate arrived at in LAR No.290 of 2003 would have become final or would have been approved by this Court or by Hon'ble Apex Court yet unless it is shown that the land in this case is adjacent to the land in the said reference, that award cannot be said to be binding on the present appellants. The entire record of LAR No.348 of 2009 does not show a copy of Judgment and award in LAR No.290 of 2003. Furthermore when parties were there and they

were represented by advocate, how the learned presiding officer could have justified himself in relying upon Judgment of his colleague *suo motu*, is a question. This cannot be the sound principle and criteria on which the compensation is to be arrived at. There are set principles to arrive at compensation to be given under Land Acquisition Act set out by Hon'ble Apex Court as well as this Court and they are required to be adopted. The reference in LAR No.290 of 2003 was decided by another Civil Judge, Senior Division and his Judgment cannot be said to be binding on Court who was dealing with the impugned reference. Merely because he was 4th Jt. Civil Judge, Senior Division, he cannot become subordinate in hierarchy so as to bind a decision to 2nd Jt. Civil Judge, Senior Division, Osmanabad. Therefore, the basic criteria adopted in the impugned Judgment is baseless and illegal. The compensation in this case ought to have been based on the evidence that is adduced before it. Even if a fact is taken into consideration that both the land references were in respect of same award and in respect of same village, that does not mean that the Court who is subsequently dealing with a reference should accept the same rate. As aforesaid the compensation is required to be arrived at on the basis of evidence in each case and in particular in this case without giving an opportunity to the claimants *suo motu* reliance on another Judgment cannot be justified.

8. Taking into consideration the aspect that the basis on which the compensation was fixed by the learned reference Court was baseless and illegal, and it ought to have been arrived at on the basis of evidence before it, appeal deserves to be allowed on that point, however at the same time if the award passed by the reference Court deserves to be set aside then the matter deserves remand as the compensation is required to be redetermined on the basis of evidence. It cannot be done in this case for the simple reason that there is no figure of compensation which can be assessed to be either inadequate or appropriate. Further an opportunity of appeal cannot be taken away from the appellants by fixing the said compensation amount in appeal. Therefore, for the aforesaid reasons following order is passed.

ORDER

- 1) Appeal is hereby partly allowed.
- 2) The Judgment and award passed in LAR No.348 of 2009 by learned 4th Jt. Civil Judge, Senior Division, Osmanabad, dated 29-01-2014, is hereby set aside. The said reference is remanded to the reference Court for redetermining the compensation on the basis of evidence adduced before it or / and on the set principles on the basis of pronouncements by Hon'ble Apex Court and this Court.
- 3) Civil Application No.9579 of 2017 is hereby allowed.
- 4) In view of the civil application under Order 41 Rule 27 of

Code of Civil Procedure being allowed, the reference Court is directed to give an opportunity to both sides to lead evidence, if any, on the point of measurement map for which the application stood allowed. It is clarified that, no other point should be allowed.

5) Since the reference of 2009 is required to be remanded, the reference Court should give utmost priority to decide the matter and it should be decided not later by the end of this year.

6) Record and proceeding be sent back immediately.

7) Both the parties to appear before the concerned Court on 29-07-2019.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.