

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

**902 FIRST APPEAL NO.1852 OF 2015
WITH
CA/7017/2013 IN FA/1852/2015**

1. The State of Maharashtra,
Through: Dist. Collector, Latur.
 2. The Spl. Land Acquisition Officer,
Swarna Project, Latur, Dist.Latur.
 3. Executive Engineer,
B & C Division, Latur,
Tq. & Dist.Latur.
- ..Appellants
(Ori. Respondents)

VERSUS

- . Rajasaheb s/o. Digambarrao Desai
Age: 40 yrs., Occu.: Service.
S.T. Mahamandal Osmanabad.
R/o. Latur, Tq. & Dist.Latur.
- ..Respondent
(Original Claimant)

...
AGP for Appellants - State : Shri A.M.Phule
Advocate for Respondent : Shri L.C. Patil
...

CORAM : P.R.BORA, J.

DATE: 18th January, 2019

ORAL JUDGMENT:-

1. The appellant State has preferred the present appeal against the Judgment and award passed by the Court of Joint Civil Judge, Senior Division, Latur, in Land Acquisition Reference (LAR) No.371 of 1988 decided on 29.09.2009.

2. The respondent herein had filed the aforesaid LAR under Section 18 of the Act seeking enhancement in the amount of compensation as was awarded by the Special Land Acquisition Officer (SLAO). The land which is the subject matter of the present appeal was acquired for ring road at Latur. Two Acres and Twenty Gunthas of land out of Survey No.31-A owned by respondent was acquired for the construction of ring road at Latur. The Notification under Section 4 of the Land Acquisition Act, 1894 in that regard was published on 14.01.1983 in the official Gazette and the award under Section 11 came to be passed on 23.09.1986. The SLAO had offered the compensation to the respondent (hereinafter referred to as 'the claimant') @ Rs.750/- per Are. Dissatisfied with the amount of compensation so offered the claimant had preferred the aforesaid application under Section 18 of the Act. Before the Reference Court, the claimant had claimed the compensation @ Rs.10/- to Rs.15/- per sq.ft. The Reference Court has determined the market value of the acquired land @ Rs.10/- per sq.ft. and has accordingly enhanced the amount of compensation. Aggrieved thereby, the State has preferred the present

appeal.

3. Shri A.M.Phule, learned AGP appearing for the appellant State submitted that the Division Bench of this Court in First Appeal No.408 of 1993 with First Appeal No.551 of 1993, decided on 21.11.2006, has affirmed the market value of the lands acquired for the purpose of ring road at Latur, vide the same Notification dated 14.01.1983 @ Rs.8/- per sq.ft. The learned AGP submitted that the aforesaid appeals were preferred by the claimants seeking enhancement in the amount of compensation. In the said matters, the Reference Court had enhanced the compensation @ Rs.8/- per sq.ft. and has directed 50% deduction out of the total amount of compensation towards open space, garden and other civil amenities. The learned AGP pointed out that the Division Bench of this Court upheld the market value of Rs.8/- per sq.ft. as was determined by the Reference Court but modified the impugned award in the said appeals only to the extent of 50% deduction in the amount of compensation as was directed by the Reference Court towards open space, garden etc. and decreased it to 30%. The learned AGP submitted that the same Division

Bench has earlier while deciding First Appeal No.666 of 1996, arising out of the same Judgment, has confirmed the rate of Rs.8/- per sq.ft. as was determined by the Reference Court and in the said Judgment also had modified the award of the Reference Court only to the extent of 30% deduction in place of 50% deduction as was directed by the Reference Court.

4. The learned AGP pointed out that yesterday this Court in group of appeals bearing First Appeal No.1255 of 2008 with connected appeals filed by the claimants has enhanced the market value of the acquired lands for the same project vide the same Notification @ Rs.8/- per sq.ft. and has directed the deduction of 30% amount towards roads, garden and other civil amenities from the amount of total compensation. The learned AGP submitted that since another Division Bench of this Court in First Appeal No.408 of 1993 and First Appeal No.666 of 1996 has confirmed the market value of the acquired lands therein @ Rs.8/- per sq.ft., the market value as has been determined by the Reference Court in the Judgment and award impugned in the present appeals @ Rs.10/- per sq.ft. cannot be

sustained. The learned AGP submitted that the land, which is involved in the present appeal stands at part with the lands, which were involved in the earlier decided appeals and in the circumstances, the same criteria would apply while determining the market value of the land, which is the subject matter of the present appeals. The learned AGP, therefore, prayed for allowing the appeal to the aforesaid extent and to modify the awards accordingly.

5. Shri L.C.Patil, learned Counsel appearing for the respondent i.e. original claimant has opposed the submissions advanced on behalf of the appellant – State. Taking me through the discussion made by the Reference Court and more particularly, inviting my attention to the observations made by the Reference Court in paragraph No.8 of the impugned Judgment, the learned Counsel submitted that since the land, which is the subject matter in the present appeal was abutting to the road and was surrounded by fully developed area, the Reference Court has rightly given some more value to the present land and has determined its market value @ Rs.10/- per sq.ft., whereas the other lands were given the rate of Rs.8/- per

sq.ft. The learned Counsel submitted that having regard to the special features attached to the present land, the rate of Rs.10/- per sq.ft. has been given by the Reference Court and no interference is required in the award so passed in favour of the respondent – claimant.

6. I have given due consideration to the submissions made by the learned AGP appearing for the appellant State and Shri L.C.Patil, learned Counsel appearing for the respondent – claimant. It is not in dispute that the lands, which were the subject matter of First Appeal Nos.408 of 1993, 551 of 1993, 666 of 1996, 1255 of 2008 and 118 of 2019, and the land, which is the subject matter of the present appeal, were acquired for the construction of ring road, Latur vide Notification under Section 4 of the Act published on 14.01.1983. It is further not in dispute that the award under Section 11 of the Act in that regard was passed on 23.09.1986. It is also not in dispute that in LAR Nos.300 of 1988 and 344 of 1988, which were challenged in First Appeal Nos.408 of 1993 and 551 of 1993, the Reference Court had fixed the market value of the lands, which were subject matter in the said appeals @ Rs.8/- per

sq.ft. Further it is not in dispute that the claimants therein had filed the appeals before this Court seeking enhancement in the market value as was determined by the Reference Court and this Court did not cause interference in the market value as was determined by the Reference Court. In other words, this Court has confirmed the rate of Rs.8/- per sq.ft. as was determined by the Reference Court in the said matters.

7. As pointed out by learned AGP Shri Phule, the land, which was involved in First Appeal No.1255 of 2008 decided by this Court yesterday, was acquired from Survey No.31-A and this Court has enhanced the amount of compensation in the said matter by determining the market value of the said land @ Rs.8/- per sq.ft. The land, which is the subject matter in the present appeal was acquired from same Survey No.31-A. Infact, the claimant in First Appeal No.1255 of 2008 and the claimant in the present appeal are the real brothers of each other and both were owning the lands adjacent to each other, which have been acquired for the ring road, Latur. In view of the fact that for the land, which was acquired from the same Survey number, this Court has

determined the market value @ Rs.8/- per sq.ft., the same criteria would apply while determining the market value of the land involved in the present appeal.

8. Though, it is contended by the learned Counsel appearing for the claimant that the land, which is involved in the present appeal, was abutting to the road and was surrounded by fully developed area and as such deserves to be given more value than the other lands, I am not convinced with the argument so made. I reiterate that the land, which was subject matter in First Appeal No.1255 of 2008 decided by this Court vide Judgment passed on 17.01.2019 is from the same Survey No.31-A and was having same features. Since this Court has determined the market value of the said land @ Rs.8/- per sq.ft., and has directed deduction of 30% of the amount towards roads, garden and other amenities, from the total amount of compensation, the same criteria would apply while determining the market value of the land, which is the subject matter in the present appeal. In the circumstances, it is evident that the market value as has been determined by the Reference Court of the land involved in the present

appeal @ Rs.10/- per sq.ft. cannot be sustained. In view of the fact that all other similar lands acquired for the same project vide the same Notification have been given the market value @ Rs.8/- per sq.ft, the market value of the land involved in the present appeal is liable to be fixed at the rate of Rs.8/- per sq.ft. with 30% deduction therefrom towards roads, garden and other civil amenities. The impugned Judgment and award, therefore, needs to be modified to the aforesaid extent. For the reasons stated above, the following order is passed:-

ORDER

I) The Judgment and award impugned in the present appeal so far as it relates to determination of the market value of the acquired land @ Rs.10/- per sq.ft. is set aside. Instead, the market value of the said land be determined @ Rs.8/- per sq.ft. with 30% deduction therefrom towards roads, garden and other civil amenities.

II) The claimant is held entitled for the statutory benefits under Section 23 (1A) and 23(2) of the Act, on the amount of compensation, which may be arrived at after modification of the award.

III) The claimant is also held 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 i.e. 23.09.1986 till the date of deposit of amount of compensation by the Acquiring Body in this Court, on the amount of compensation as per the modified award.

IV) The claimant has already withdrawn 50% of the deposited amount with interest accrued thereon.

V) The claimant is permitted to withdraw the balance amount, which may be noticed payable to him in view of the modified award with interest accrued thereon.

VI) The amount, which may remain in balance, shall be refunded to the appellants.

VII) The Appeal is partly allowed in the aforesaid terms.

VIII) Pending Civil Application stands disposed of.

(P.R.BORA)
JUDGE