

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

FIRST APPEAL NO.192 OF 2012

Umrao s/o Eknathrao Pawar
(Since deceased through L.Rs.) -

1. Sampadabai Umrao Pawar
Age: 65 Yrs. Occu. Household,
R/o Inamwadi (Nilanga)
Tq. Nilanga, Dist. Latur.
2. Sanjay s/o Umrao Pawar,
Age: 30 Yrs., occu. Nil.
R/o Inamwadi (Nilanga)
Tq. Nilanga, Dist. Latur. = **APPELLANT**
(orig.Claimant)

VERSUS

1. The State of Maharashtra,
Through Collector, Latur,
District Latur.
2. The Executive Engineer,
(Local Section), Latur. = **RESPONDENTS**

Mr. LH Kawate, Adv. h/for Mr.Kamlakar J.Suryawanshi,
Advocate for Appellant/s;

Mr. AM Phule,AGP for Respondents

CORAM : P.R.BORA, J.
DATE : 7th February, 2019

ORAL JUDGMENT

1. Claimant in LAR No.210/2003 decided by the court of Civil Judge, Senior Division, at Nilanga on 14th July, 2009, has preferred the present appeal, seeking further enhancement in the amount of compensation awarded by the said court.

The aforesaid LAR No.210/2003 was decided, vide common judgment delivered by the Civil Judge, Senior Division, at Nilanga in LAR No.208/2003 with connected LARs. The said Court is herein after referred to as the Reference Court and the appellant is hereinafter referred to as the claimant.

2. Land Gut No. 44 admeasuring 2 acres and 4 gunthas, situated at village Inamwadi, Nilanga, Tq. Nilanga, owned by the present appellant claimant, was acquired for construction of percolation tank at Nilanga. Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act) in that regard was published in the official Gazette on 23rd February, 2001 and Award under Section 11 came to be passed on 1st July, 2002. The Special Land Acquisition Officer had offered the compensation to the claimant @ Rs.855/- per Are. Dissatisfied with the amount of compensation so offered, the claimant preferred an application under Section 18 of the Act and the same was adjudicated along with the other LARs by the Reference Court. Before the Reference Court,

the claimant had claimed the market value of his acquired land @ Rs.6,646/- per Are. In order to substantiate his claim, the claimant had placed on record two sale instances. The respondents also placed on record one sale instance.

3. The learned Reference Court, after having considered the oral and documentary evidence brought on record before it, determined the market value of the acquired land @ Rs.1130/- per Are and accordingly enhanced the amount of compensation. According to the claimant, since the Reference Court has also not awarded adequate compensation, he has preferred the present appeal seeking further enhancement.

4. Learned Counsel appearing for the appellant claimant submitted that two sale instances were filed on record by the claimant in order to substantiate his claim. The learned counsel submitted that the land, which was the subject matter of Exhibit-35, was admeasuring 2 hectares and 77 Ares from out of Gut No. 146, situated at Inamwadi and was sold for the

consideration of Rs.18,41,000/- by registered sale deed executed on 25.10.2001, i.e. @ Rs.6,646/- per Are. The learned counsel further submitted that the land which was the subject matter of the said sale instance, was in all respect comparable to the land which was acquired in the present appeal. However, the Reference Court for wrong reasons, refused to rely upon the said sale instance. The learned counsel further submitted that the Reference Court relied upon the sale deed at Exhibit-65, which has been brought on record by the respondents. The learned counsel submitted that the land, which is the subject matter in the present appeal was in all respects superior to the land which was the subject matter of Exhibit-65, and as such, even if the Reference Court was to rely upon the said sale instance, the market value of the subject land must have been determined by the Reference Court on higher side than the price received to the said land. The learned counsel further submitted that the Reference Court has also committed an error in not awarding the interest under Section 34 of the Act. The learned counsel, therefore, prayed for adequate enhancement in the

amount of compensation and also for grant of interest under Section 34 of the Act.

5. Shri Phule, learned AGP opposed the submissions made on behalf of the appellant claimant. The learned AGP, inviting my attention to the discussion made by the Reference Court in paras 11 and 12 of the its judgment, submitted that the Reference Court has correctly determined the market value of the acquired land and no interference is required in the finding so recorded by the reference court. The learned AGP, therefore, prayed for dismissal of the appeal.

6. I have given due consideration to the submissions made by the learned counsel appearing for the appellant claimant and learned AGP appearing for the Respondent-State. I have also perused the impugned judgment. The Reference Court has declined to take into account the sale instance at Exhibit-35 brought on record by the claimant for the reason that the said sale instance is of the period after issuance of Section 4 notification. I, therefore, do not see any reason to take any

contrary view. The Reference court has rightly refused to rely upon the said sale instance. Perusal of the judgment further reveals that the Reference Court has relied upon the sale deed at Exhibit-65. The land which was the subject matter of Exhibit65 was admeasuring 2 acres and 14 Ares, situated at village Inamwadi and was sold by the registered sale deed executed on 13th April, 1999 for the consideration of Rs.2,42,000/-, i.e. @ Rs. 1130/- per Are. In para 12 of the judgment, the Reference Court has made elaborate discussion in respect of the said sale instance. The Reference Court has taken into account the fact that the land, which was the subject matter of Exhibit-65, was abutting to highway and obviously was, therefore, liable to receive some more price than other lands. The learned Reference Court, after observing that position, has given negative allowance by decreasing the market value of the said land to the extent of 15% so as to determine the market value on that basis of the acquired land. The Reference Court has further taken into account that the sale instance at Exh.65 was entered into prior to issuance of Section 4

notification, and as such, has given the positive allowance by increasing the market value of the said land by 10% and has accordingly reached to the conclusion that the market value of the acquired land was liable to be determined @ Rs.1,056/- per Are.

7. After having considered the discussion made by the Reference court, though apparently it does not appear that any patent error has been committed by the Reference Court, there is substance in the argument made by the learned counsel appearing for the appellant that notional increase in the price of the land at the usual rate of 10% per annum must have been given for two years, since the sale deed at Exh.65 was executed prior to about 1 year and 10 months of issuance of Section 4 notification. The learned counsel submitted that to that extent, at least, the market value of the acquired land needs to be enhanced and consequently the amount of compensation also require to be enhanced.

8. After having considered the submissions,

I find substance in the argument so made. By considering the sale deed at Exh. 65 as a base for determining the market value, if the negative allowance is to be given by 15% on account of the fact that the said land is abutting to the road and the acquired land is at the interior part, while giving increase in the price, the period of two years must have been considered by the Reference Court and the price must have been increased notionally by 20% so as to determine the market value of the acquired land. After having considered the entire material on record, it appears to me that the Reference Court must have determined the market value of the acquired land at the same rate, i.e. @ Rs.1130/- per Are, which is the rate at which, the land which was the subject matter of Exhibit-65, was sold. I am, therefore, inclined to enhance the amount of compensation to the aforesaid extent.

9. The second objection raised by the learned counsel is that the Reference Court has not awarded the interest under Section 34 of the Act. There cannot be a dispute that the claimant is

entitled to said interest. For the reasons stated above, following order is passed, -

ORDER

i. The appellant-claimant is held entitled for the enhanced compensation for his acquired land @ Rs. 74/- per Are in addition to the amount of compensation offered by the SLAO.

ii. The appellant claimant is also held entitled for the statutory benefits under Sections 23(1A) and 23(2) of the Act in accordance with law on the enhanced amount of compensation;

iii. The appellant claimant is also held entitled for the interest under Section 28 of the Act on the enhanced amount of compensation from the date of passing of the Award under Section 11 of the Act, i.e. 1st July, 2002;

iv. The appellant claimant is also held entitled for the interest under Section 34 of the Act on the entire amount of compensation, including the amount of enhanced compensation from the

date of passing of the Award i.e. from 1st
July, 2002;

v. Award be prepared accordingly.

vi. The appeal stands allowed in the
aforesaid terms. Pending civil
application, if any, stands disposed of.

(P.R.BORA)
JUDGE

bdv/