

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

FIRST APPEAL NO.2959 OF 2018

Municipal Corporation, Aurangabad,
Through its Authorized Officer,
Aurangabad.

... **Appellant.**

... **Versus** ...

- 1 Bhujangrao Annasaheb Thorat (Patil),
 Age : major, Occ. Agri. & Business,
 R/o Nutan Colony, Aurangabad.
- 2 The State of Maharashtra,
 Through District Collector, Aurangabad.
- 3 Special Land Acquisition Officer,
 (Special Unit) Aurangabad.

... **Respondents.**

...

Mr. A.P. Bhandari, Advocate for the appellant
Mrs. Y.M. Kshirsagar, Advocate for the respondent No.1
Mr. R.B. Bagul, AGP for the respondent Nos.2 and 3

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 01st JULY, 2019

PRONOUNCED ON : 18th SEPTEMBER, 2019

JUDGMENT :

1 Present appeal has been filed by the original respondent No.3-Corporation challenging the Judgment and Award passed in L.A.R. No.1/2004 by learned Civil Judge Senior Division (Corporation Court), Aurangabad on 24.02.2017, thereby partly allowing the reference under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as “the Act”).

2 The facts leading to the reference were, that the original claimant was the owner of property bearing C.T.S. No.14405 situated at Tilak Peth, Aurangabad. Portion to the extent of 100.50 sq. mtrs. was acquired for road widening. Notification under Section 6 of the Act came to be issued on 25.07.1990 and then publicity was given to it in daily newspapers. Corrigendum was issued on 02.11.1990. Thereafter, the said acquisition proceeding was challenged in Writ Petition No.2935 of 1990 filed before this Court. However, thereafter acquisition work was completed. The Special Land Acquisition Officer passed Award on 25.02.1994. Amount of compensation was granted @ Rs.1,000/- per sq.mtr. to the claimant. Thus, the claimant was entitled to get compensation of Rs.3,72,193/-. Thereafter, notice under Section 12(2) of the Act was issued on 02.03.1994. It was served on respondent. Thereafter, respondent filed reference under Section 18 of the Act before the Special LAO, however, he did not pay the Court fee

and therefore, the said reference was refused by an order dated 03.12.1994. The said order was challenged before this Court again in Civil Revision application No.235/2003. The said Civil Revision Application was allowed on 22.09.2003 and then the land reference was registered as L.A.R. No.1/2004, wherein the claimant had claimed Rs.91,97,607/-.

3 Written Statement was filed by original respondent Nos.2 and 3 denying the averments in the reference to the extent of enhancement in the compensation. It was stated that the Special LAO has awarded just and reasonable compensation.

4 After the issues were framed, claimant has led oral as well as documentary evidence. Respondents did not adduce any evidence. Taking into consideration the evidence on record and after hearing both sides, the reference was partly allowed. It was held that the claimant is entitled to get compensation of Rs.4,11,096/-. The other statutory benefits were also given. Hence, this appeal by the acquiring body.

5 Heard learned Advocate Mr. A.P. Bhandari for appellant, learned Advocate Mr. Y.M. Kshirsagar for respondent No.1/claimant and learned AGP Mr. R.B. Bagul for respondent Nos.2 and 3.

6 It has been vehemently submitted on behalf of the appellant that

the claimant had not paid Court fee for the reference for about 9 years. Under such circumstance, claimant cannot take advantage of the said fact. Learned reference Court failed to consider this aspect because of the negligence of the claimant. The reference was not filed and registered. Therefore, interest ought not to have been granted by the learned reference Court on the enhanced amount. The learned reference Court relied on the sale instance while arriving at the market price. However, failed to consider that for the constructed shop, compensation has been separately given. The purpose of the Land Acquisition Act is not to make benefits. Further amount of Rs.50,000/- has been awarded by the reference Court towards loss of business, without any evidence led by the claimant, to prove that there would have been loss of income to the extent of Rs.50,000/- to the claimant. Therefore, compensation, that has been awarded, is very much exorbitant.

7 Per contra, the learned Advocate appearing for the respondent No.1 submitted that as regards Court fee is concerned, the Special LAO was at fault. Though the claimant had not paid Court fee before the reference Court along with the petition, yet, it was the job of the Special LAO to forward the said reference and leave it to the Court to decide on the point of Court fee. He relied on the decision in **Laxmibai and others vs. The State of Maharashtra and others, 2010 (6) ALL M.R., 735.** In this case reliance

has been placed on the decision in **Kashi Ram Namdeo vs. The State of Maharashtra, 1996(1) Mh.L.J., 652.** It was held that Special Land Acquisition Officer is bound to forward the reference to Civil Court by giving some time to the claimant for removing the deficiency regarding payment of the Court fee, either before him or before reference Court. When no such time was given and Special LAO himself had refused to forward the reference, though duty bound, the claimant cannot be said to be responsible for the said situation and therefore, interest could not have been curtailed. The interest has been rightly awarded, so also, note has been properly taken in respect of sale instance. The constructed shop was considered and compensation has been separately given. It had come on record that there are many commercial complexes around the shop acquired and therefore, it was rightly considered that it was potential for commercial activity. If it would have been put to commercial use then it would have definitely fetched Rs.50,000/- per month. No interference is required in the impugned Judgment and Award, as it is passed on sound principles and guidelines.

8 Learned AGP has supported the arguments advanced on behalf of the appellant.

9 At the outset, it is to be noted that the evidence before the learned reference Court was in the form of a sale instance and two

Judgments in land reference cases in respect of land acquired in the vicinity. It has not been brought on record uptill now that the decision in those sister matters or matters relating to the property adjacent to or in the vicinity of the acquired land, in this case, has been modified and brought down by any superior Court. There was no hurdle for the reference Court to consider the rate, that was given in respect of acquisition of the property in the nearby vicinity. As regards the sale instance is concerned, it was also in respect of the property in the vicinity. The sale deed was dated 06.10.1990 i.e. much prior to the date of acquisition of the property in question. Therefore, taking into consideration note of the said sale instance as well as the decision in another reference petition was justified for the learned Trial Court. If we peruse the cross-examination of the claimant conducted on behalf of the respondents/present appellant, it can be seen that except denial and some extraction of the factual situation there is nothing on record. Unless such evidence to disprove the evidence adduced by the claimant is advanced, no different conclusion can be arrived at. The acquisition of the property in question is, land plus constructed portion. Definitely, for constructed portion separate compensation amount was required to be given. Further, as regards loss of business is concerned, it is to be noted that the Special LAO had granted amount of Rs.4,000/- for loss of business, that means the said head is agreeable to the State as well as acquiring body. Now, how much amount

should be given under the said head would be a question. The property in question, especially, the structure was not put to any commercial use. However, the surrounding circumstances were brought on record to show that it was commercial potential. Therefore, the decision given by the learned reference Court of awarding Rs.50,000/- towards the loss of business is definitely justified.

10 Now, turning towards the point raised in respect of Court fee, though it has come on record that the reference was filed by the present claimant, only on one rupee Court fee stamp, yet, it was not accepted in full by the reference Court. It is stated that a notice to comply with the deficit Court fee was issued to the claimant on 01.09.1994. However, when Court fee was not deposited within the stipulated time the reference was refused. The said order of refusal of the reference was set aside by this Court in a proper proceeding i.e. Civil Revision Application. It cannot be said to be a fault on the part of the claimant, especially, in the light of decision in **Kashi Ram Namdeo vs. State of Maharashtra and Laxmibai and others vs. The State of Maharashtra and others** (supra). When claimant cannot be said to be responsible and thereafter he was agitating his rights before this Court, he cannot be put to peril. Awarding of interest is definitely within the discretion of the Court, but here in this case, the said delay has not been made

intentional. Under such circumstance, there is no reason to change the order in respect of grant of interest.

11 Therefore, taking into consideration all the aspects in the matter, no fault can be found in the impugned Judgment and Award passed by the learned reference Court requiring interference at the hands of this Court. Since there is no merit in the present appeal, it deserves to be dismissed. Hence, following order.

ORDER

1 Appeal is dismissed.

2 The respondent-claimant is allowed to withdraw the amount of compensation deposited, if any, in this Court as per the order passed on 27.09.2018. The remaining amount, on the part of the appellant, be deposited within a period of two weeks and then, the claimant is entitled to withdraw the said amount also.

3 No order as to costs.

(Smt. Vibha Kankanwadi, J.)