

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

FIRST APPEAL NO. 4530 OF 2017

- 1 The State of Maharashtra, Through The Collector, Latur
- 2 The Executive Engineer, M.I.W. Division, Latur
- 3 The Special Land Acquisition Officer, M.I.W. Latur. **APPELLANTS**

V E R S U S

Balu Tukaram Badime, Age : 35 years,
occu.: agri., R/o Dagadwadi (Salgara Bk.), Taluka and District Latur **RESPONDENT**

WITH

FIRST APPEAL NO. 4531 OF 2017

- 1 The State of Maharashtra, Through The Collector, Latur
- 2 The Executive Engineer, M.I.W. Division, Latur
- 3 The Special Land Acquisition Officer, M.I.W. Latur. **APPELLANTS**

V E R S U S

- 1 Ram Bhimrao Narwate, Age : 60 years,
occu.: agri., R/o Dagadwadi (Salgara Bk.), Taluka and District Latur.
- 2 Mahadu Bhimrao Narwate, Age : 50 years, occu.: agri., R/o as above. **RESPONDENTS**

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Mr. B.V. Virdhe, A.G.P. for the appellants.

Mr. V.V. Bhavthankar, Advocate for sole respondent.

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CORAM : SUNIL K.KOTWAL, J.

Judgment reserved on : 6 June 2019.

Judgment pronounced on : 11 June 2019.

J U D G M E N T :

First Appeal No.4530 of 2017 is directed against judgment and award passed by Civil Judge, Senior Division, Latur in Land Acquisition Reference No.39/2001 and First Appeal No. 4531 of 2017 is directed against the judgment and award in Land Acquisition Reference No. 40/2001 by the same Reference Court. The appellant is State of Maharashtra and respondents are the original claimants.

2. To bring clear picture before the Court, the details in respect of Land References, Gut Numbers and areas under both Land References, name of respective owners, rate of compensation offered etc., are given as under :-

L.A.R. No.39/2001 :-

Acquired Land	Area	Name of owner/ claimant	Rate of compensation offered by Collector.
Gut No.128 situated at Salgara.	60 Aar	Balu Tukaram Badime.	Rs. 510/- per Aar.

L.A.R. No.40/2001 :-

Acquired Land	Area	Name of owners/ claimants	Rate of compensation offered by Collector.
Gut No.128 situated at Salgara.	1 H 61 Aar	1. Ram Bhirao Narwate. 2. Mahadu	Rs. 510/- per Aar.
Gut No.140	35 Aar	Bhimrao Narwate	Rs. 510/- per Aar.
Gut No.142	54 Aar		Rs. 470/- per Aar.

3. Notification under Section 4 (1) of the Land Acquisition Act (hereinafter referred to as the "Act") was published in Official Gazette on 10.03.1994. Possession of the land was taken before the date of publication of notification under Section 4(1) of the Act. The award was declared on 30.09.1998. The land was acquired for the purpose of percolation tank at village Salgara.

4. The Reference Court awarded compensation in both Land References at the rate of Rs. 2,000/- per Aar with statutory benefits under Sections 23 (1A) and 23 (2) of the Act. Interest under Section 28 and interest under Section 34 of the Act was awarded by Reference Court from the date of publication of notification under Section 4 (1) of the Act. That award is challenged by the State of Maharashtra in both these appeals, which are disposed of by this common judgment.

5. Heard learned A.G.P. for the State and Mr. Bhavthankar, learned Counsel for the respondents/claimants.

6. Learned A.G.P. submits that though the Reference Court enhanced compensation at the rate of Rs. 2,000/- per Aar on the basis of the award passed in L.A.R. No. 256/2001 regarding land situated at village Shivni (Bk.), neither copy of the award passed by Reference Court in L.A.R. No. 256/2001 is placed on record nor any other substance is placed on record to show that the land which was subject-matter in L.A.R. No.256/2001 is adjoining to the acquired land. According to learned A.G.P., the rate awarded in L.A.R. No.256/2001 cannot be considered while determining compensation in the case at hand.

Learned A.G.P. also submits that even the interest under Section 34 and under Section 28 of the Act is erroneously awarded from the date of publication of notification under Section 4 (1) of the Act.

7. Learned Counsel for the claimants submits that the claimants have filed sale deed dated 10.09.1984 (Exh.23) of the land situated in adjoining village. This sale instance was rejected by the Reference Court. He supports the judgment passed by the Reference Court on the basis of the award passed in L.A.R. No.256/2001.

8. After going through the record and proceeding, it emerges that though the Reference Court determined the rate of compensation for the acquired land on the basis of its own judgment and award passed in L.A.R. No.256/2001, the certified copy of that judgment and award is not placed on record in both Land References. Though the Reference Court observed that the land which was the subject-matter in L.A.R. No.256/2001 is situated at village Shivni (Bk.) and ascertained distance of that land from the acquired land as 5 to 6 kms on the basis of the map of Latur City, in fact I do not find the so called map of Latur City

on record. Otherwise also, on the basis of the map such distanced cannot be gathered. So also, no substance is on record to ascertain what was the nature of the land which was the subject-matter of L.A.R. No.256/2001 and whether the said land is proximate with the acquired land so far as date of notification under Section 4 (1) of the Act is concerned. As observed above, no substance is available to hold that the land under L.A.R. No.256/2001 is reasonably adjacent to the acquired land. So also, when the copy of judgment passed in L.A.R. No.256/2001 is not placed on record, on the basis of the said award the compensation of the acquired land cannot be determined. The Reference Court has committed grave error while relying on the award passed in L.A.R. No.256/2001 for determining the rate of compensation of the acquired land.

9. No doubt, sale instance (Exh.23) was rightly rejected by the Reference Court as it was executed prior to 10 years from the date of publication of notification under Section 4 (1) of the Act. So also, no substance is available on record to establish the proximity in between the land under sale instance (Exh.23) and the acquired land regarding situation and its quality. No

substance is available on record to show that the land under sale instance (Exh.23) is adjoining to the acquired land. Therefore, the sale instance (Exh.23) cannot be considered for determining the true and fair value of the acquired land.

10. So also, it cannot be ignored that though possession of the acquired land was admittedly taken prior to the date of publication of notification under Section 4 (1) of the Act, the Reference Court awarded interest under Section 34 of the Act on the compensation awarded by the Collector from the date of publication of notification under Section 4 (1) of the Act. In view of the law settled by Full Bench of this Court in the case of **“State of Maharashtra Vs. Kailas Shiva Rangari” reported in [2016 (4) ALL MR 513]**, under such circumstances interest under Section 34 of the Act can be awarded only from the date of passing of award under Section 11 of the Act. So also, the Reference Court erroneously awarded interest under Section 28 of the Act from the date of publication of notification under Section 4 (1) of the Act instead of from the date of passing of award.

11. In view of the above-said discussion, I am fully

satisfied that the award passed by Reference Court in L.A.R. No.39/2001 and L.A.R No. 40/2001 being bad-in-law, deserves to be set aside. However, to give fair opportunity to both parties to place on record appropriate sale instances or certified copy of the award passed in relevant Land Reference, for determining fair and true market value of the acquired land on the date of publication of notification under Section 4 (1) of the Act, both Land References need to be remanded to the Reference Court. Hence the following order.

ORDER

- (i) First Appeal No.4530 of 2017 and First Appeal No.4531 of 2017 are allowed.
- (ii) Judgment and award passed by Civil Judge, Senior Division, Latur in L.A.R. No.39/2001 and L.A.R. No.40/2001 is set aside.
- (iii) L.A.R. No. 39/2001 and L.A.R. No.40/2001 are remanded to Civil Judge, Senior Division, Latur for fresh consideration, after awarding opportunity to both the parties to lead additional documentary and oral evidence to substantiate their respective contentions.
- (iv) The Reference Court shall dispose of these both Land References within the period of six

months from the date of receipt of record and proceeding.

12. The record and proceedings of both Land References be immediately sent back to the Civil Court, Senior Division, Latur.

13. Both parties are directed to remain present before Civil Judge, Senior Division, Latur on 6 July 2019.

14. Parties to bear their respective costs of the appeals.

15. Pending Civil Applications are disposed of accordingly.

(SUNIL K. KOTWAL, J.)

vdd/-