

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2270 OF 2014

Pandhari s/o Dhondiba Nukulwad,
Age 50 years, Occupation Agricultre,
R/o Marajwadi Tq. Mukhed Dist.
Nanded.

**...Appellant.
(Ori.Claimant)**

VERSUS

- 1) The State of Maharashtra,
Through District Collector,
Nanded.
- 2) Special Land Acquisition Officer,
Krishna Khore, Vikas Mandal,
Nanded.
- 3) Executive Engineer,
Vishnupuri Project,
Division Jangamwadi, Nanded.

**...Respondents
(Ori.Respdts.)**

....

**WITH
FIRST APPEAL NO.665 OF 2013**

Jaiprakash s/o Malikarjun Rakte,
Age 33 years, Occupation Agriculture,
R/o Marajwadi Tq. Mukhed Dist.
Nanded.

**...Appellant.
(Ori.Claimant)**

VERSUS

- 1) The State of Maharashtra,
Through District Collector,
Nanded.
- 2) Special Land Acquisition Officer,
Krishna Khore, Nanded.

- 3) Executive Engineer,
Lendi Project Degloor,
Tq. Degloor Dist.Nanded.

**...Respondents
(Ori.Respdts.)**

....

**WITH
FIRST APPEAL NO.667 OF 2013**

Basavraj s/o Manohar Rakte,
Age 34 years, Occupation Agriculture,
R/o Marajwadi Tq. Mukhed Dist.
Nanded.

**...Appellant.
(Ori.Claimant)**

VERSUS

- 1) The State of Maharashtra,
Through District Collector,
Nanded.
- 2) Special Land Acquisition Officer,
Krishna Khore, Nanded.
- 3) Executive Engineer,
Lendi Project Degloor,
Tq. Degloor Dist. Nanded.

**...Respondents
(Ori.Respdts.)**

....

**WITH
FIRST APPEAL NO.862 OF 2019**

Hanmant s/o Vithalrao Hendge,
Age 30 years, Occupation Agriculture,
R/o Marajwadi Tq. Mukhed Dist.
Nanded.

**...Appellant.
(Ori.Claimant)**

VERSUS

- 1) The State of Maharashtra,
Through District Collector,
Nanded.
- 2) Special Land Acquisition Officer,
Krishna Khore, Nanded.

- 3) Executive Engineer,
Vishnupuri Project Division No.1,
Nanded.

**...Respondents
(Ori.Respds.)**

....
Advocate for Appellants : Mr. G. N. Chincholkar
AGP for Respondents No.1 and 2 : Mr. P. M. Kulkarni.
Advocate for Respondent No.3 : Ms. Ranjana D. Reddy.
....

CORAM : SMT.VIBHA KANKANWADI, J.

**Date Of Reserving The Judgment :
13/08/2019**

**Date Of Pronouncing The Judgment :
23/09/2019**

JUDGMENT :

1. All the appeals have been filed by the original claimants challenging the Judgment and award passed by Reference Court in their respective petitions under Section 18 of the Land Acquisition Act.

2. Heard learned advocate Mr. G. N. Chincholkar for appellants, learned AGP for respondents No.1 and 2 – State, and learned advocate Ms. Ranjana D. Reddy for respondent No.3.

3. It has been vehemently submitted on behalf of the appellants-original claimants in all the cases that, the point involved in these cases is that, the Reference Court has totally discarded the opinion / report given by the expert valuer who had valued the acquired properties and submitted his report. The said valuer was examined

by the claimants, however his testimony has been discarded only on the ground that his opinion is not binding. Other technical issues were raised by the respondents, however it cannot be taken as a cogent reason to discard an expert's opinion. No evidence was led by the respondents to arrive at a contrary conclusion or to disprove the report given by the expert, and therefore, in all the cases the Reference Court ought to have granted compensation based upon the expert's opinion.

4. Learned advocate appearing for the appellants has relied on the decisions of this Court in, *Nagnath s/o Dhondiba Nukulwad Versus The State of Maharashtra and others, (First Appeal No.693 of 2017, decided on 20-08-2018)*, *Bandappa s/o Shantappa Jalkote Versus State of Maharashtra (First Appeal No.1250 of 2009, decided on 06-10-2016)*, *Kondiba s/o Yadavrao Rasegave Versus State of Maharashtra (First Appeal No.868 of 2015, decided on 23-08-2016, and Venkati s/o Masnaji Susterphod Versus The State of Maharashtra (First Appeal No.832 of 2014, decided on 24-01-2018)*. He submits that, all these decisions relate to very same acquisition proceedings and in these decisions, this Court has awarded enhanced compensation as per the valuation report submitted by the valuer. He submits that, applying these decisions, these appeals should also be allowed and compensation should be enhanced.

5. Per contra, the learned advocate appearing for the respondents supported the reasons given by the Reference Court and submitted that, all the aspects were considered by the Reference Court. The expert who had allegedly assessed the acquired property and then given its valuation, had not given prior notice regarding his inspection of the properties to the acquiring body as well as concerned State officials so that they can remain present. The measurements have been taken in absence of respondents, and therefore, said report cannot be relied.

6. At the outset it can be seen from all the impugned Judgments that, though the expert P.W.2 was examined to prove his report regarding valuation of the acquired land yet the evidence of the valuer was brushed aside on the ground that his report cannot be accepted as gospel truth. The learned Reference Court has tried to replace that evidence with its own opinion without any evidence or base.

7. In *Kondiba (F.A.No.868 of 2015) (supra)*, in paragraph No.2, it has been observed that :

"2. The sole basis for enhanced compensation is the expert report. The expert was cross-examined. The learned Civil Judge disbelieved the evidence of the expert but practically did not record any reason as to why he had disbelieved the deposition. The expert is a third party, ideally not interested in the claimant. In this

case the expert was a Government approved one. His opinion, thus, should carry more weightage. In my view the learned Civil Judge committed serious error in disbelieving the expert's evidence. In a case of this nature, the Civil Judge ought to have believed the deposition of the expert and awarded compensation as per the expert's suggestion. The appeal should, therefore, succeed."

8. Similarly, in *Bandappa (F.A.No.1250 of 2009)*, it has been observed that :

"7. I have carefully perused the impugned judgment and the evidence which was adduced before the reference Court. The valuer's evidence is more material in the present matter. One Shrisanth Barbade, the approved Government valuer was examined by the appellant before the reference Court. I have gone through the evidence of the said witness and also the cross-examination of the said witness. It is revealed that, nothing has come in the cross-examination of the said witness, so as to disbelieve the evidence adduced by the said witness. The learned reference Court has not assigned any good reason for not accepting the evidence of the valuer. It is further not understood as to what was the basis for the reference Court to determine the amount of compensation. It appears that, the reference Court has erred in not relying upon the expert's evidence which was the only evidence available on record, admittedly, no evidence was adduced on behalf of the State."

"8. The learned reference Court has observed in para 16 of the impugned Judgment that the evidence of the claimant and his witness i.e. approved valuer has remained unshattered, in the cross-examination. The learned tribunal has also observed that for determining the market value of the acquired land or house one of the tested method is to get valued the property in question by the approved valuer. In the instant matter as has been observed by the reference Court P.W.3 Shrisanth Barbade, the witness examined by the claimant is qualified engineer and approved Government valuer. The reference Court has also observed that, the evidence so brought on record by the claimant and the Government valuer is worth considering, however, though all such observations are made by the reference Court, surprisingly, it has not accepted the report and has also not stated any cogent reason for not accepting the same."

"9. I have carefully perused the said valuation report which reveals that the Government valuer namely Shrisanth Barbade has prepared valuation of the acquired house in a scientific method. Nothing has come on record so as to discard the valuation so made by the said valuer. A mere observation by the reference Court that, the value estimated by the valuer is on higher side without assigning any reason cannot be sustained. After having considered the entire material on record, it appears to me, that the tribunal must have accepted the report of the valuer and enhanced the amount of compensation accordingly. I am therefore inclined to

allowed the present appeal."

9. Thus this Court consistently held that, when the evidence of the expert valuer has been adduced and the contents of the valuation reports have been explained as well as proved then there was no reason to discard such evidence. This Court on the basis of such report of valuer has then enhanced the compensation.

10. The objection regarding acceptance of valuation report cannot be taken on the ground that prior notice was not given by the valuer to the respondents before taking inspection is concerned. It will have to be observed that, the said expert was not a Court Commissioner nor he was under direction by any competent authority to value the land. Question of giving notice to the other side would then only arise but when he was engaged by the claimants to value their land / property, he was under no obligation to issue prior notice to the respondents. Evidence has not been led by the respondents to disprove the said valuation reports, and therefore, no hurdle to accept those reports.

11. The respondents have submitted that, the learned trial Courts in these appeals erred in granting interest under Section 28 of the Land Acquisition Act from the date of the notification which is contrary to the Full Bench decision in *State of Maharashtra Vs. Kailash Shiva Rangari*, reported in *AIR 2016 Bombay 14*. The

respondents submitted that, though no appeal or cross objection has been filed by them yet the said part of the award deserves to be corrected. The interest cannot run from the date of notification under Section 4 of the Land Acquisition Act, but it should be from the date of the passing of the award in view of said decision in *Kailas Shiva Rangari*. Same point has been reiterated in case of, *State of Maharashtra and Ors. Versus Ramesh s/o Tukaram Meshram and Ors.*, reported in 2018 (1) ALL MR 645. Therefore, the said error in award also deserves to be corrected though respondents have not filed any appeal or cross-objection.

12. For the above said reasons, following order is passed.

ORDER

(1) First Appeals No.2270 of 2014, 665 of 2013, 667 of 2013 and 862 of 2019 are hereby allowed.

(2) The Judgment and award passed in LAR No.73 of 2008 by learned Civil Judge, Senior Division, Link Court, Mukhed Dist. Nanded, dated 30-07-2014, is hereby set aside and modified to the extent of quantum and interest awarded under Section 28 of the Land Acquisition Act as follows ;

(i) The respondents are directed to pay compensation of Rs.1,61,243/- (in words rupees one lakh sixty one thousand two hundred and forty three) instead of Rs.81,303/- (in words rupees eighty one thousand three hundred and three) granted by respondent No.2 for the acquired House

Property Grampanchayat No.105 and 260/1 situated at village Marajwadi Tq. Mukhed Dist. Nanded.

(ii) The respondents shall pay interest as contemplated under Section 28 of the Land Acquisition Act @ 9 % per annum from the first order of award i.e. 26-03-2002 to 25-03-2003 and for the subsequent period from the 26-03-2003 @ 15 % per annum on enhanced amount of compensation till actual realization of the entire amount.

(iii) Rest of the award is kept as it is.

(3) The Judgment and Award passed in LAR No.16 of 2005 (New), LAR No.15 of 2005 (old), by learned Civil Judge, Senior Division, Kandhar Dist. Nanded, dated 05-02-2009, is hereby set aside and modified to the extent of quantum and interest awarded under Section 28 and 34 of the Land Acquisition Act as follows ;

(i) The respondents are directed to pay compensation of Rs.2,86,181/- (in words rupees two lakh eighty six thousand one hundred and eighty one) instead of Rs.1,33,334/- (in words one lakh thirty three thousand three hundred and thirty four) granted by respondent No.2 for the acquired House Property Grampanchayat No.161 and 162 situated at village Marajwadi Tq. Mukhed Dist. Nanded.

(ii) The respondents shall pay interest as contemplated under Section 28 and 34 of the Land Acquisition Act @ 9 % per annum from the first

order of award i.e. 26-03-2002 to 25-03-2003 and for the subsequent period from the 26-03-2003 @ 15 % per annum on enhanced amount of compensation till actual realization of the entire amount.

(iii) Rest of the award is kept as it is.

(4) The Judgment and award passed in LAR No.25 of 2005 (new), 24 of 2005 (old), by learned Civil Judge, Senior Division, Kandhar Dist. Nanded, dated 09-02-2009, is hereby set aside and modified to the extent of quantum and interest awarded under Section 34 of the Land Acquisition Act as follows ;

(i) The respondents are directed to pay compensation of Rs.96,103/- (in words rupees ninety six thousand one hundred and three) instead of Rs.25,851/- (in words twenty five thousand eight hundred and fifty one) granted by respondent No.2 for the acquired House Property Grampanchayat No.150/1 situated at village Marajwadi Tq. Mukhed Dist. Nanded.

(ii) The respondents shall pay interest as contemplated under Section 34 of the Land Acquisition Act @ 9 % per annum from the first order of award i.e. 26-03-2002 to 25-03-2003 and for the subsequent period from the 26-03-2003 @ 15 % per annum on enhanced amount of compensation till actual realization of the entire amount.

(iii) Rest of the award is kept as it is.

(5) The Judgment and award passed in LAR No.55 of 2008, by learned Civil Judge, Senior Division, Link Court, Mukhed Dist. Nanded, dated 10-06-2014, is hereby set aside and modified to the extent of quantum and interest awarded under Section 28 of the Land Acquisition Act as follows ;

(i) The respondents are directed to pay compensation of Rs.2,69,022/- (in words rupees two lakh sixty nine thousand and twenty two) instead of Rs.1,22,312/- (in words rupees one lakh twenty two thousand three hundred and twelve) granted by respondent No.2 for the acquired House Property Grampanchayat No.203 situated at village Marajwadi Tq. Mukhed Dist. Nanded.

(ii) The respondents shall pay interest as contemplated under Section 28 of the Land Acquisition Act @ 9 % per annum from the first order of award i.e. 24-03-2002 to 25-03-2003 and for the subsequent period from the 26-03-2003 @ 15 % per annum on enhanced amount of compensation till actual realization of the entire amount.

(iii) Rest of the award is kept as it is.

(6) Modified award be drawn accordingly.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.