

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

FIRST APPEAL NO.264 OF 2017

Gangabai w/o Gulabrao Vitore,
Age 65 yrs., Occ. Agri. & retired,
R/o Sahajapur, Tq. & Dist. Aurangabad.

... Appellant.

... **Versus** ...

- 1 State of Maharashtra,
Through Deputy Collector/
(Land Acquisition Officer),
Aurangabad.
- 2 The Executive Engineer,
PWD, Aurangabad.

... Respondents.

...

Mrs. A.N. Ansari, Advocate for the appellant
Mr. R.B. Bagul, AGP for the respondent No.1

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 26th AUGUST, 2019

JUDGMENT :

1 Present appeal has been filed by original claimant for the enhancement in the compensation amount granted by the reference Court under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as

“the Act”).

2 Appellant-claimant was the owner of Gat No.3 situated at village Sahajapur, Tq. & Dist. Aurangabad. Out of the same 50 R land was acquired for road widening of Aurangabad-Lasur-Vaijapur-Yewla road. Notification under Section 4 of the Act was published on 03.07.1998. The Award under Section 11 of the Act was passed on 22.05.2003. Prior to that on 24.04.1997 the possession of the acquired land was taken by private negotiation. Notice under Section 12(2) of the Act was given to the claimant on 23.07.2003. She accepted the amount under protest. On 04.08.2003 Special LAO had granted compensation @ Rs.744/- per R. Being dissatisfied with the said Award the reference under Section 18 of the Act was filed.

3 The claimant contended that the Special LAO had not considered the sale instances and the fact that the acquired land was irrigated. It was stated that acquired land is at a distance of about 3 k.ms. from camp area of Aurangabad and 1 k.m. away from M.I.D.C.. It is near to State Highway. It is of good quality and there were fruit bearing trees in the said acquired land.

4 The petition was resisted by the respondents by filing written statements. It was contended that all the aspects were taken into consideration by the Special LAO and adequate amount of compensation had

been granted.

5 After the issues were framed the claimant led oral as well as documentary evidence. No evidence was led on behalf of the respondents. After hearing both sides, the learned reference Court had come to the conclusion that the rate of the acquired land on the date of Notification under Section 4 of the Act was Rs.7,081/- per R and therefore, the claimant is entitled to get enhancement in the compensation. Accordingly, the said amount was granted at the said rate, so also, compensation of Rs.4,49,578/- was granted for the trees from the acquired land. Being dissatisfied with the said Award present appeal has been filed.

6 It has been vehemently submitted on behalf of the appellant that the learned reference Court failed to consider that initially when the valuation of the trees was made, it was Rs.7,15,077/- in the year 2001, however, again the valuation was done and it has been reduced to Rs.4,49,578/-. The learned reference Court ought to have, in fact, granted the compensation as per the first valuation. Further, the sale instance has not been properly considered by the reference Court.

7 Learned AGP submitted that in the year 2001 though the valuation of the trees was made, it was wrongly made at the then prevalent

rate. When in fact, the acquisition was made and the possession was taken on 24.04.1997. Therefore, the valuation of the trees ought to have been given as on the date of possession and therefore, the reduction was made by the valuer. Though the Special LAO had considered only Rs.1,59,680/- towards the trees those were from the acquired land, the learned reference Court has granted it as per the second valuation report. Therefore, there is absolutely no necessity to change or modify the Award in that respect. It was also submitted that the sale instance has been properly considered and therefore, the enhancement has been made. The learned AGP further submitted that in fact, the reference Court has made error in granting interest under Section 34 of the Act from the date of publication of notice under Section 4 of the Act, when in fact, as per the decision in **State of Maharashtra vs. Kailas Shiva Rangari, 2016 (4) ALL M.R., 513 (FB)** it ought to have been from the date of the Award passed by Special LAO. He prayed to correct the said part of the Award.

8 At the outset, it can be seen, except the oral evidence of the claimant she has not examined any expert to support her contention that the valuation of the lands was Rs.7,15,077/-. As per Exh.17, which is the certified copy of letter filed by the claimant herself which was between the Agriculture Officer to the Collector dated 19.12.2002. It clearly stated that

though the valuation has been done in respect of the trees in the acquired land, yet, the rate ought to have been fixed on the date of the possession i.e. 24.04.1997, therefore, it has re-valued and it was held to be at Rs.4,49,578/-. The reference Court has considered the second valuation report though the said valuation has not been examined. There was no reason given by Special LAO for further reducing it to Rs.1,59,680/- and therefore, the reference Court was justified in enhancing the said amount. What was necessary for the Special LAO to consider the valuation of the trees, was the valuation of those properties prior to the possession was taken by the Government i.e. prior to 24.04.1997. Hence, no fault can be found in the said part of the Award passed by the reference Court.

9 Now turning towards the sale instance, the sale instance was of non irrigated land dated 05.09.1989, which was about 8 years prior to the acquisition of the land belonging to the claimant. When separate amount has been awarded towards the fruit bearing trees, the rate, that has been corrected, taking into consideration the sale instance so also by including 10% increase in the value, the valuation arrived at by the reference Court @ Rs.7,081/- per R appears to be the correct valuation requiring no interference. Thus, there is no merit in the present appeal. It deserves to be dismissed. However, before parting it can be seen, that the error that has

been committed by the reference Court in respect of awarding interest under Section 34 of the Act from the date of Notification under Section 4 of the Act deserves to be corrected, in view of the ratio laid down in **The State of Maharashtra vs. Kailas Shiva Rangari, 2016 (4) ALL M.R. 513 (FB)**. To that effect the award deserves modification. Hence, following order.

ORDER

1 Appeal is hereby dismissed.

2 However, taking into consideration the fact that there is error in granting interest under Section 34 of the Act, the Judgment and Award passed by learned 3rd Joint Civil Judge Senior Division, Aurangabad dated 15.03.2016 in L.A.R. No.28/2004 is hereby set aside and modified to the extent of interest under Section 34 of the Act.

3 The claimant is entitled to get interest under Section 34 of the Act from the date of the Award i.e. 22.05.2003 and not from the date of Notification under Section 4 of the Act.

4 Modified Award be prepared accordingly.

5 No order as to costs.

(Smt. Vibha Kankanwadi, J.)