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

64 FIRST APPEAL NO. 2108 OF 2012
WITH
CIVIL APPLICATION NO.222 OF 2019 IN FA/2108/2012

Sangram S/o Hanumant Dhanure
(Died) Through L.Rs.
Prabhakar S/o Sangram Dhanure
Age 55 years, Occ. Agril,
R/o Lohara, Tq. Udgir,
Dist. Latur.

... Appellant
(Orig. Claimant)

Versus

1. The State of Maharashtra,
Through, Collector, Latur.
2. The Executive Engineer,
Minor Irrigation (Local Sector)
Division Latur.

... Respondents

....
Mr. S.D. Hiwarekar, Advocate for Appellant.
Mr. P.M. Kulkarni, AGP for the Respondent-State.

...

CORAM : P.R. BORA, J.

DATED : 04th FEBRUARY, 2019.

ORAL JUDGMENT:-

1. Heard Shri Hiwrekar, the learned counsel appearing for the appellant and Shri Kulkarni, the learned AGP appearing for the respondent-State.

2. The claimant in L.A.R. No.1068/2010 (Old No.340/2006) has preferred the present appeal, seeking enhancement in the amount of compensation as has been awarded by the Court of Joint Civil Judge, Senior Division, Udgir in the aforesaid Reference Application decided on 26.07.2012 along with some connected L.A.Rs.

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3. The land admeasuring 56 R owned by the present appellant situated at vilalge Lohara, Tq. Udgir, Dist. Latur was acquired for the construction of minor percolation tank at village Lohara. The said land was originally owned by Sangram Hanumant Dhanure, after his death, the same came to be transferred in the name of his son Prabhakr Sangram Dhanure. The Notification under Section 4 of the Land Acquisition Act (hereinafter referred to as 'the Act') in that regard was published in the official gazette on 08.04.1999, whereas the award under Section 11 of the Act came to be passed on 09.12.2002. The SLAO had offered the compensation to the appellant, who is hereinafter referred to as 'the claimant' at the rate of Rs.52,500 per Hector. Dissatisfied with the compensation so offered, the claimant Prabhakar Dhanure presented an application under Section 18 of the Act, seeking enhancement in the amount of compensation offered by the SLAO, which was adjudicated by the Court of Joint Civil Judge, Senior Division, Udgir. The said Court, is hereinafter referred to as 'the Reference Court'.

4. In the Reference Application, the claimant had claimed the compensation at the rate of Rs.2,000/- per R. In order to substantiate the claim so raised, in addition to his own testimony, the claimant brought on record two sale instances and adduced oral evidence of one witness. The two sale instances, which were brought on record were marked as exhibit 20 and 31. No evidence was adduced on behalf of the respondents. The learned Reference Court, after having assessed the oral and documentary

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evidence brought on record before it, determined the market value of the acquired land at the rate of Rs.1,600/- per R, and accordingly enhanced the amount of compensation. It is the contention of the appellant that since the Reference Court also has not enhanced the amount adequately, he is constrained to file the present appeal, seeking adequate enhancement in the amount of compensation so awarded by the Reference Court.

5. Shri Hiwrekar, the learned counsel appearing for the appellant-claimant invited my attention to the sale deeds brought on record i.e. exhibit 20 and 31 and read out the discussion made by the Reference Court in para 32 of the impugned judgment. The learned counsel submitted that the Reference Court has preferred to rely upon the sale instance at exhibit 20 and has accordingly made the discussion in the aforesaid paragraph. The learned counsel submitted that in spite of reaching to the conclusion that on the basis of sale instance brought on record by the appellant, the subject land was liable to be given the market rate at the rate of Rs.1,897.50 paise per R, without assigning any reason, the Reference Court has restricted the said amount to Rs.1,600/- per R and thus deprived the appellant-claimant from getting the appropriate compensation.

6. The learned counsel further submitted that in fact sufficient evidence was brought on record to show that the acquired land was irrigated land. The learned counsel further submitted that the statement made by the claimant on oath sufficiently demonstrate

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that the acquired land was irrigated land. The learned counsel submitted that, in the circumstances, the Reference Court must have awarded the compensation at double rate since the land, which was the subject matter of the sale deed at exhibit 20 was the dry land. The learned counsel further submitted that the Reference Court has wrongly refused to enhance the amount of compensation towards the trees existing in the acquired land. The learned counsel, in the circumstances, prayed for adequate enhancement in the amount of compensation as awarded by the Reference Court.

7. Shri Kulkarni, the learned AGP appearing for the respondents supported the impugned judgment. The learned AGP submitted that the reference Court has duly appreciated the evidence on record, and as such no further enhancement is warranted. The learned AGP, therefore, prayed for dismissal of the appeal.

8. I have given due consideration to the submissions made by the learned counsel appearing for the appellant-claimant and the learned AGP appearing for the respondent-State. Perused the impugned judgment and the evidence on record. It appears that though two sale instances were brought on record by the appellant-claimant at exhibit 20 and 31, the reliance has been placed by the Reference Court on the sale instance at exhibit 20. The land admeasuring 42 R was the subject matter of exhibit 20 and the same was sold by registered sale deed executed on

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03.12.1997 for the total consideration of Rs.99,000/-, i.e. at the rate of Rs.2,357/- per R. The learned Reference Court in para 32 of the judgment has discussed in detail the evidence as about the said sale instance. As per the conclusion recorded in the said paragraph, the Reference Court had taken into account the fact that the land, which was the subject matter at exhibit 20 was purchased by a person whose another land was adjacent to the said land and as such there was every reason to believe that he might have given some higher price. In the circumstances while determining the market value of the subject land on the basis of the sale deed (Exh.20), the reference court has given negative allowance to the extent of 30% and has eventually determined the market value of the subject land at the rate of Rs.1,897.50 paise per R. However, in para 33, the learned Reference Court has recorded the contrary conclusion thereby determining the rate of the subject land at the rate of Rs.1,600/- per R.

9. I have carefully perused the discussion made by the Reference Court in para 32 and 33 of its judgment. The Reference Court has not provided any rational for reducing the market value of the acquired land to Rs.1,600/- per R from Rs.1,897.50 paise per R. Once the Reference Court has reached to the conclusion that the market value of the subject land was liable to be determined on the basis of and at par with the sale instance at Exh.20, and accordingly worked out the said market value at the rate of Rs.1,897.50 paise per R, it was unjust and incorrect to reduce the market value to Rs.1,600/- per R without assigning

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any reason therefor. In the circumstances, I hold the appellant-claimant entitled to receive the market value for his acquired land at the rate of Rs.1,897.50 paise per R.

10. Though it was sought to be contended by the learned counsel for the appellant that the Reference Court has erred in not enhancing the amount of compensation towards trees, I am not convinced with the argument so made. The material on record shows that the claimant has not adduced any evidence in order to prove his claim in that regard. Neither the expert witness has been examined, nor the valuation report is placed on record. In the circumstances, the prayer made by the appellant seeking enhancement in the amount of compensation towards trees does not deserve any consideration.

11. The learned counsel for the appellant further submitted that the Reference Court has not awarded interest under Section 34 of the Act, which must have been awarded by it. The learned AGP though did not dispute that the interest under Section 34 of the Act is liable to be awarded, brought to my notice that the interest under Section 28 of the Act has been wrongly awarded by the Reference Court from the date of taking possession of the land. The learned AGP submitted that in view of the law settled by the full Bench of this Court in the case of **State of Maharashtra Vs. Kailas Shiva Rangari, 2016 (4) All M.R. 513** and subsequent judgment delivered by the learned Single Judge of this Court in the case of **The State of Maharashtra and others Vs.**

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Ramesh Tukaram Meshram, 2018 (3) Mh. L.J. 616, the interest under Section 28 of the Act, could not have been awarded by the Reference Court from the date of possession and the same was liable to be awarded from the date of award under Section 11 of the Act, and not from any prior date. The learned AGP, therefore, prayed for modification in the award to that extent. Though the State has not filed any appeal, the mistake, which has occurred in awarding the interest under Section 28 of the Act can very well be rectified by invoking the provisions under Order 41 Rule 22 of the Code of Civil Procedure.

12. For the reasons recorded above, the following order is passed:-

ORDER

[i] The appellant-claimant is held entitled for the enhanced compensation for his acquired land at the rate of Rs. 297.50 paise per R.

[ii] The appellant - claimant shall be entitled for the statutory benefits in accordance with the provisions under Section 23(1A) and 23(2) of the Act on the enhanced amount of compensation.

[iii] The appellant-claimant shall also be entitled to receive the interest under Section 34 of the Act on the amount of compensation as determined by the Reference Court, and as has been enhanced in the present appeal from the date of passing of the award under Section 11 of the Act i.e. 09.12.2002.

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[iv] The impugned judgment and award so far it relates to grant of interest under Section 28 of the Act from the date of taking possession of the land is set aside; instead such interest is made payable on the entire amount of compensation awarded by the Reference Court, and enhanced by this Court in the present appeal from the date of passing of the award under Section 11 of the Act.

[v] The award be prepared accordingly.

[vi] The appeal stands allowed in the aforesaid terms.

[vi] Pending Civil Application, if any, stands disposed of.

**(P.R. BORA)
JUDGE**

Sudhir Rane