

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 858 OF 2003
WITH CIVIL APPLICATION NO. 1231 OF 1998

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| 1. The State of Maharashtra | | |
| 2. The Special Land Acquisition Officer,
II Upper Tapi Project, Hatnur, Jalgaon | .. | Appellants
(Original Respondents) |

Versus

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|---|----|------------------------------------|
| Shri Abhinandan Tukaram Chatur,
Occu. Agri., R/o. Edlabad, Taluka Edlabad,
District Jalgaon | | |
| | .. | Respondents
(Original Claimant) |

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Mr. B. V. Virdhe, AGP for Appellants
Mr. A. B. Kale, Advocate for Respondent-claimant

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CORAM : ANIL S. KILOR, J.
DATE : 28th APRIL, 2021

PER COURT :-

The appellant- State of Maharashtra has approached to this Court by way of present appeal challenging the Judgment and Award dated 30-01-1995 passed by the learned 2nd Joint Civil Judge, Senior Division, Jalgaon, in Land Acquisition Reference No. 254 of 1993, enhancing the amount of compensation by Rs.47,216/-.

2. The open land and house in-question have been acquired for II Upper Tapi Project, Hatnur, District Jalgaon. The notification under Section 4 of the Land Acquisition Act, 1894 (L.A.Act) was published in Government Gazette on 12-04-1984 and the Award was declared on 21-01-1987. The Special Land Acquisition Officer was granted Rs.15/- per Square Meter for open land and Rs.9/- per Square Meter to constructed house, which was found to be inadequate, therefore, Reference was made under Section 18 of the Land Acquisition Act, 1894, by the claimant, in which, the amount has been enhanced to Rs.200/- per Sq.M. for open land and Rs.37,216/- was granted towards house structure. The same is questioned in the present appeal.

3. I have heard learned AGP appearing for the appellants and Mr. Kale, learned counsel appearing for the respondent-claimant.

4. The learned AGP points out that the amount granted by the learned Reference Court is exorbitant. Moreover, the Reference Court has not taken into consideration the Award in its right perspective.

5. He has further pointed out that the amount of interest under Section 28 of the L.A.Act has been granted from the date of possession, whereas, it should have been from the date of Award as per well settled principle of law laid down in a Judgment of the Full Bench of this Court in the case of ***State of Maharashtra Versus Kailash Shiva Rangari***¹.

6. Per contra, Mr. Kale, learned counsel for the respondent-claimant supports the impugned Judgment and Award in this appeal and submits that, there is no perversity committed by the learned Reference Court while granting enhanced compensation. Whereas, he fairly states that the operative part of the order as regards grant of interest from the date of possession needs to be modified in view of the Judgment of Full Bench in a case of ***Kailash Shiva Rangari (supra)***.

7. To consider the rival contentions of learned AGP for appellant and learned counsel for claimant, I have gone through the record and proceedings and also perused the impugned Judgment and Award.

8. After going through the Judgment and Award, it is revealed that the learned Reference Court has considered all the relevant factors to consider the market value as per well settled principles of law. The learned Reference Court has discussed oral as well as documentary evidence on record in detail and after considering the sale instances and other relevant factors arrived at enhanced amount of compensation. The learned Reference Court has rightly considered the valuer's report and discussed the same and sale instances, in paragraphs No. 7, 8 and 9 of the Judgment.

1 2016(4) ALL MR 513 (F.B.)

9. The learned AGP failed to point out any contrary evidence in this matter and also failed to point of perversity in arriving at amount of enhanced compensation.

10. The learned Reference Court has considered the location of the land as well as the other factor namely sale instances produced by the claimant and recorded its findings in paragraphs No. 7 and 8 of the impugned Judgment. The learned AGP failed to point out any perversity in the findings recorded by the learned Reference Court and also failed to point out any contra evidence. In that view of the matter, I do not find any merit in the present appeal.

11. However, to the extent of grant of interest from the date of Award in view of the Judgment of Full Bench of this Court in the case of *State of Maharashtra Versus Kailash Shiva Rangari (supra)*, I am of the opinion that the operative part of the impugned Judgment and award needs to be modified. Accordingly, I pass the following order :-

ORDER

- (I) The first appeal is partly allowed.
- (II) The clause in regard to awarding of interest in the operative part of the Judgment and Award dated 30-01-1995 passed by the learned 2nd Joint Civil Judge, Senior Division, Jalgaon, in Land Acquisition Reference No. 254 of 1993, is modified, and, it is held that the claimant is entitled for the interest under Section 28 of the Land Acquisition Act, 1894, from the date of Award. For the first year the interest would be @ 9% per annum and for the subsequent period it would be @ 15% per annum till realization of the entire amount of the Award.
- (III) The appeal is disposed of.
- (IV) No order as to costs.
- (V) Pending civil application stands disposed of.

(ANIL S. KILOR)
JUDGE