

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO. 1342 OF 2019

Vithoba son of Mangaru Barai,
aged about 65 years, Occ. Agriculture labour,
R/o Kholapur, Tahsil and District Bhandara.

...APPELLANT

Versus

1. The State of Maharashtra,
through its Secretary, Irrigation Department,
Mantralaya, Mumbai – 32.
2. The Managing Director,
Vidarbha Irrigation Development Corporation,
Sinchan Bhavan, Nagpur.
3. The Executive Engineer,
Gosikhurd Rehabilitation Extension,
Ambadi, District Bhandara.
4. The State of Maharashtra,
through its Secretary,
Department of Forest and Revenue,
Mantralaya, Mumbai – 32,
through Collector, Bhandara.
5. Special Land Acquisition Officer
(Bagh and Itiyadoh) Project No.1,
Bhandara, District Bhandara.

...RESPONDENTS.

Shri A.D. Dangore, Advocate for the appellant.
Shri A.M. Kadukar, A.G.P. for respondent Nos.1, 4 and 5.
Shri M.A. Kadu, Advocate for respondent Nos. 2 and 3.

.....

CORAM : PUSHPA V. GANEDIWALA, J.
DATED : OCTOBER 08, 2021.

ORAL JUDGMENT :

Heard finally with the consent of learned counsel for both the parties.

2. **Admit.** Shri A.M. Kadukar, learned A.G.P waives notice for respondent Nos.1, 4 and 5. Shri Kadu, learned counsel, waives notice for respondent Nos.2 and 3.

3. This Appeal is directed against the judgment and award dated 08/09/2017 passed by the Civil Judge, Senior Division, Bhandara in Land Acquisition Case No. 31/2007 whereby the learned Judge dismissed the reference filed by the appellant under Section 18 of the Land Acquisition Act, 1894 (“**the Act**”) mainly on the ground of bar of limitation. The appellant/ claimant in this Appeal has raised the issue with regard to enhancement in compensation so also the finding with regard to bar of limitation.

4. Shortly stated the appellant was the owner of land situated at Gat No. 27 admeasuring 3.75 hectares at Village

Kholapur, District Bhandara (hereinafter referred to as “subject land”). The subject land of the appellant came to be acquired by issuance of notification under Section 4 of the Act which was published in official gazette on 09/09/1988 for the submergence of Indira Gose Khurd Project. The date of notification under Section 9 of the Act is 25/02/1999 and the date of receipt of notice to the appellant under Section 12 of the Act is 20/08/2005 and the award came to be passed on 05/02/2001. The learned Special Land Acquisition Officer (“SLAO”) fixed the market rate of the acquired land @ Rs.83,195/- per hectare and awarded total compensation of Rs.3,11,981/-. Being dissatisfied with the amount of compensation, the appellant/ claimant filed reference proceedings under Section 18 of the Act before the SLAO on 21/09/2005. It is the grievance of the appellant in the proceedings under Section 18 of the Act that the respondents have awarded Rs.1,58,307/- per hectare to Gat No. 63, and therefore, the land of the appellant being similarly situated, he should have been given the same rate for his land. He has also claimed compensation of Rs.8,05,000/- towards various trees

standing on his land at the time of issuance of notification under Section 4 of the Act. The claimant accordingly demanded enhanced amount of compensation of Rs.10,86,670/- after deducting the amount of compensation received by him of Rs.3,11,981/-.

5. In response to the notice issued by the Reference Court, respondent Nos.2 and 3 filed the written statement below Exh.9 thereby resisted the claim of the appellant for enhancement in compensation. The respondents in para 3 of the written statement have admitted that the respondents have awarded Rs.1,58,307/- per hectare in respect of Gat No. 63 of Dayaram Gondane as his land being irrigated one and the land of the appellant on the contrary is non-irrigated land. It is also stated that the LAO has granted fair and reasonable compensation towards trees standing on the subject land. The learned Reference Court framed the following issues below Exh.12 :

1. Does the petitioner prove that the amount of compensation of acquired land determined by the SLAO in an award is insufficient and grossly inadequate ?
2. Is petitioner entitled for enhanced amount of compensation, statutory benefit, as sought ?
3. What award ?

6. The claimant examined himself as PW1 below Exh.28 and reiterated his pleadings in the petition. The respondents examined Ku. Sushma Sitaram Irpate – Talathi, Borgaon (Bk.).

7. The following documents have been brought on record by the parties :

- Copy of award at Exh.29
- E-Statements at Exh.30
- Notice under Section 9 of the Act at Exh.31
- Test certificate for ELCB + MCB at Exh.32.
- Electricity Bill issued by MSEB dated 27/01/1997 at Exh.33

- Notice under Section 12(2) of the Act at Exh.34
- 7/12 extract at Exh.35
- 7/12 extract at Exh.36

8. The learned Judge of the Reference Court on appreciation of evidence recorded the finding that the reference filed by the claimant is beyond the period of limitation and the appellant has failed to prove the existence of 373 trees. However, it is held that the award has accorded insufficient and inadequate compensation to some extent but since the reference is barred by limitation it is held that the claimant is not entitled to any of the relief sought. This judgment of the Reference Court is impugned in this Appeal by the appellant/ claimant.

9. I have heard Shri A.D. Dangore, learned counsel for the appellant, Shri A.M. Kadukar, learned A.G.P for respondent Nos.1, 4 and 5 and Shri Kadu, learned counsel for respondent Nos. 2 and 3.

10. It is the contention of the learned counsel for the appellant that the learned Judge of the Reference Court has erroneously recorded finding against the appellant with regard to period of limitation. The learned counsel pointed out from the record that the reference proceedings came to be presented in the office of SLAO on 21/09/2005 and considering the date of receipt of notice under Section 12(2) of the Act issued by the respondents which was received to the appellant was on 20/08/2005, the reference proceedings which was presented before the SLAO is well within period of limitation of six weeks from the date of receipt of notice under Section 12(2) of the Act. The learned counsel also pointed the written statement on behalf of the State at Exh.11 with regard to the receipt of proceedings.

11. As against this, learned counsel Shri M.A. Kadu for respondent Nos. 2 and 3 drew attention of this Court to the statement of the SLAO made under Section 19 of the Act would indicate the date of presentation of the proceedings by the appellant before the LAO is 07/02/2006.

12. I have considered the rival submissions put forth on behalf of both the sides.

13. At the outset, a careful perusal for the record and proceedings of the trial Court would indicate that along with proceedings under Section 18 of the Act, the appellant has made an application for grant of time to pay the Court fee on which the date of receipt is shown as 21/09/2005. Secondly, the written statement filed on behalf of the State in para 6 it is stated that the reference petition is filed on 21/09/2005. Thirdly, in the reference petition, the date of reference petition is mentioned as 21/09/2005 alongside the signature of the petitioner so also in the verification of the petition. At page No.30 which appears to be photocopy of the statement of the SLAO under Section 19 of the Act is showing date of reference application as 28/09/2005.

14. In these circumstances, in the opinion of this Court, there is ample material on record to show that the reference proceedings are filed on 28/09/2005 which is well within period of limitation although the issue of limitation is not

framed by the learned Reference Court.

15. With regard to adjudication of market value of the subject land, the learned presiding officer of the Reference Court answered issue No.1 with regard to amount of compensation in partly affirmative. In para 19 of the impugned judgment, the learned Reference Court has recorded the finding that the compensation in the award passed by the LAO is insufficient and inadequate to some extent. The appellant/claimant herein claimed parity on the ground that the learned LAO has granted compensation @ Rs.1,58,307/- for the land bearing Gat No. 63 on the ground that it is an irrigated land. Shri M.A. Kadu, learned counsel appearing for the M.I.D.C. on perusal of the document on record fairly concedes that the land of the claimant is irrigated land. The claimant has amply brought on record sufficient material to indicate that the subject land was an irrigated land i.e. Exh.32. the test certificate for Earth Leakage Circuit Breaker + Miniature Circuit Breaker issued by Datar Switchgear Pvt. Ltd. Secondly, electricity bill issued by Maharashtra State Electricity Board of Rs.2,270/-

dated 27/01/1997 (Exh.33). 7/12 extract (Exh.35) showing well in the land having pump and the claimant was cultivating both Kharip and Rabi crops.

16. Considering the aforesaid evidence on record, the appellant/ claimant is also entitled to receive compensation @ Rs.1,58,307/- per hectare as has been granted for the land bearing Gat No. 63.

17. In the light of the above discussion, the judgment and award dated 08/09/2017 passed by the Civil Judge, Senior Division, Bhandara in LAC No. 31/2007 needs to be quashed and set-aside and the same is accordingly quashed and set-aside. The Appeal is allowed in the following terms :

i. Respondent Nos. 2 and 3 – VI.D.C. is directed to pay compensation @ Rs.1,58,307/- per hectare to the claimant for his land bearing Gat No. 27 admeasuring 3.75 hectares situated at Village Kholapur, District Bhandara with all statutory benefits and interest within a period of six months.

18. The Appeal stands disposed of.

JUDGE

Sumit