

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

FIRST APPEAL NO.2896 OF 2019

The Executive Engineer,
Lower Terna Canal Division No.2,
Latur, through Godavari
Marathwada Irrigation Development
Corporation, Aurangabad

... APPELLANT

VERSUS

1) Baburao @ Govind s/o Narayan Patil,
Age major, Occu. Agriculturist,
R/o Chikhalthana, Tq. & Dist. Latur

2) The State of Maharashtra,
through the Collector, Latur.

3) The S.L.A.O., Latur

... RESPONDENTS

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Shri S.G. Bhalerao, Advocate for appellant
Shri N.D. Kendre, Advocate for respondent No.1.
Shri P.M. Kulkarni, A.G.P. for respondents No.2 & 3
.....

WITH

FIRST APPEAL NO.321 OF 2021

Baburao @ Govind s/o Narayan Patil,
Age major, Occu. Agriculturist,
R/o Chikalthana, Tq. & Dist. Latur

... APPELLANT

VERSUS

1) The State of Maharashtra,
through the Collector,
Latur, District Latur

- 3) The Special Land Acquisition
Officer, Swarna Project, Latur,
District Latur.
- 3) The Executive Engineer,
Nimna Terna Kalva Vibhag No.2,
(Medium Project, Divisionno.2)
Latur, District Latur ... **RESPONDENTS**

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Shri N.D. Kendre, Advocate for appellant
Shri P.M. Kulkarni, A.G.P. for respondents No.2 & 3
Shri S.G. Bhalerao, Advocate for respondent No.3
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CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 28th September, 2021

Date of pronouncing judgment : 20th April, 2022

J U D G M E N T :

Both these appeals under Section 54 of the Land Acquisition Act, 1894 (for short Act) are being decided by this common judgment and order since they are interconnected. Moreover, the challenge therein is to one and the same judgment and award dated 15/1/2018, passed by Jt. Civil Judge, Senior Division, Latur in Land Acquisition Reference (L.A.R.) No.586/2011. The First Appeal No.2896/2019 has been preferred by the acquiring body, taking exception to grant of enhancement in the amount of compensation while the other appeal, No.321/2021 has been preferred by the

original land owner for further enhancement of the amount of compensation granted under the impugned order. For the sake of convenience, the parties are referred to as per their original status in the Land Acquisition Reference.

2. Facts leading to the present appeals are as follows:-

81 R land (2 acres 1 R) in Gut No.102 belonged to the applicant – land owner. The said land came to be acquired for submergence of Khulgapur Upper Level Dam at village Bhatangali. The land was situated within the limits of village Chikhalthana, Taluka and District Latur. Notification under Section 4 of the Act was published on 2/1/2008. While the award under Section 11 of the Act was passed on 16/9/2011. The Land Acquisition Officer (L.A.O.) offered compensation amounting to Rs.21,34,559/-. The Reference Court enhanced it to Rs.13,610/- per R, which comes to Rs.11,02,410/- (Rs.13,610/- x 81 R), plus Rs.25,72,240/- for mango trees, besides 30% solatium thereon and 12% component. Interest on the amount under the impugned award has been directed to be paid from the date of

notification under Section 4 of the Act.

3. Heard. Learned Advocate for the acquiring body would submit that, a very exorbitant amount has been awarded towards compensation. According to him, the report of valuation of the mango/ fruit bearing trees submitted by the expert was a got up document. Interest has been awarded from the date of award. Grant of interest from the date of notification under Section 4 is in breach of Apex Court judgment and Full Bench judgment of this Court.

4. The learned Advocate for the applicant – land owner would, on the other hand, submit that, the interest has been rightly awarded from the date of notification under Section 4 of the Act. In support of his contention, the learned Advocate has relied on the judgment of the Apex Court in case of **Revenue Divisional Officer, Kurnool District Vs. M. Ramakrishna Reddy (Dead) by L.Rs. [(2011) 11 SCC 648]**. On the question of quantum of compensation awarded under the impugned award, the learned Advocate would submit that, the location, facilities available at and around the village whereat the land acquired was situated, its fertility etc., have

not been properly taken into consideration. Not less than four sale exemplars were relied on. The sale exemplar of highest value ought to have been considered by the Reference Court. On the question of quantum of compensation granted for the fruit bearing trees, it was submitted that, the valuer (C.W.2 Nandkumar Patil) had paid visit to the land. He had intimated the authorities concerned about his proposed visit. The valuation report submitted by him was based on all the scientific factors and the requirements under the Corrigendum dated 11/1/1991 to Government Circular dated 27/12/1990 necessary in this regard. According to him, it is a compulsory acquisition of land. The Reference Court ought to have granted compensation equal to that of the valuation made by the expert. On the principles of grant of compensation, the learned Advocate relied on the following authorities :-

- (1) Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona & anr. [(1988) 3 SCC 751]

Valuation of land for compensation – Allowance or deduction to be made for roads, open space, plottings etc. where large block of land is acquired – Extent of deduction to be made depends upon facts and circumstances in each case.

- (2) Union of India Vs. raj Kumar Baghal Singh (Dead) through

L.Rs. & ors. [(2014) 10 SCC 422]

Comparative sales method – Factors to be considered – Sale instance should be adjacent to acquired land, proximate to date of acquisition, possessing similar advantages – In absence of evidence of similar transaction, it is permissible to take into account transaction of nearest land around date of notification by making suitable allowance – However, no fixed criteria as to what would be suitable addition/ subtraction from value of relied upon transaction – Further held, other methods of valuation like opinion of experts and yield method, may also be used – On facts held, reliance on sale instances subject-matter of which was situated within 20 killas or less from land under acquisition was justified.

(3) Vithal Rao & anr. Vs. Special Land Acquisition Officer etc.
[(2017) 8 SCC 558]

Comparative sales method – Factors to be considered – Sale instance to be If land nearby/ adjacent to acquired land, and sale to be proximate to date of acquisition, possessing similar advantages -17 Principles laid down in Chimanlal Hargovinddas, (1988) 3 SCC 751 and Raj Kumar Baghal Singh, (2014) 10 SCC 422 reiterated and applied.

(4) Ravinder Narain & anr. Vs. Union of India
[(2003) 4 SCC 481]

Compensation – Determination of, for a large area – Rate fixed for smaller plots in the same vicinity, held, can be the basis for fixation of rate for large area acquired – There is no absolute prohibition against it – Therefore, where there is no other

material, it is open to the adjudicating Court to make comparison of the prices paid for small plots of land subject to necessary deductions/adjustments.

- (4) U.P. Awas Evam Vikash Parishad Vs. Asha Ram (D) Thr. L.Rs. & ors. (2021 SCC Online SC 250]
- (5) Vidarbha Irrigation Development Corporation, Nagpur Vs. Laxman Seetaram Neulkar & anr. [2021(2) Mh.L.J. 198]

Acquisition of land – Claim of compensation – Duty of Court – It is duty of Court to award just and fair compensation taking into consideration true market value and other relevant factors, irrespective of claim made by claimant.

- (6) Special Land Acquisition Officer & anr. Vs. Sidappa Omanna Tumari & ors. [1995 Supp (2) SCC 168]

Compensation – Reference Court under S. 18 can determine amount of compensation exceeding that determined by award under S. 11 – But that can be done only by recording a finding about inadequacy of amount awarded under S.11 – Finding has to be based on proper evidence and relevant material – Burden of proving inadequacy of amount determined under the award on the claimant – Once burden is discharged onus would shift on the collector to adduce sufficient evidence to sustain the award.

- (7) Kerala State Electricity Board Vs. Livisha & ors. [(2007) 6 SCC 792]

Land Acquisition and Requisition – Telegraph Act,

1885 – S.10 – Setting up of telegraph and electrical lines in exercise of power under – Compensation payable – Compensation payable for (fruit bearing) trees cut down and diminution in value of land over which such line drawn – Principles for determination of, laid down – Electricity – Electrical lines.

- (8) Navanath & ors. Vs. State of Maharashtra
[(2009) 14 SCC 480]

Interference by High Court merely on conjectures and surmises, held, not sustainable – Acquisition of land having fruit-bearing trees – LAO fixed compensation for land as well as to the fruit-bearing trees as per guidelines of State Government – Reference Court enhanced compensation on basis of bhagayat (irrigated) and jirayat (non-irrigated) land and also granting compensation for fruit-bearing trees since no objection from State – It made scrupulous enquiry in regard to each and every claim – High Court reclassifying lands and redetermining market value setting aside award of Reference Court and LAO – Sustainability – Held, High Court could not have redetermined value based on surmises and conjectures as each case must be considered on its own facts.

- (9) Nelatur Sampooramma w/o Srinivasulureddy Vs. Special Deputy Collector, Land Acquisition, Telugu Ganga Project, Podalakur at Nellore, Andhra Pradesh & anr. [(2017) 12 SCC 835]

Compensation – Computation of – Orchard land – Fruit-bearing trees – Planting, raising and making commercial use of fruit-bearing trees is a painstaking affair and cost of same is consistently on rise as years are passing by which is to be kept

in view – Award of compensation in relation to fruit-bearing trees depends on facts and circumstances of each case – Claim on yield basis is relevant for determining amount of compensation payable in such cases.

- (10) Chindha Fakira Patil (Dead) through L.Rs. Vs. Special Land Acquisition Officer, Jalgaon [(2011) 10 SCC 787]

Land Acquisition Act – Ss. 23, 18 and 54 – Market value – Determination – Comparable sales method – Reliance on sale instance denoting highest purchase price as against transactions denoting substantially less, upheld – Exh. 28 whereby jirayat land was sold for Rs.2.76 lakhs per hectare was one year prior to acquisition in instant case – Applying 10% annual increase in price, Reference Court determining Rs.3 lakhs for jirayat land which was reduced to Rs.1 Lakh by High Court finding that there had to be some special reason for purchase to offer such high price – Held, there was no basis for such assumption – Exh.28 was proved by witness A who was available for cross-examination to elicit special reasons, if any – But he was not cross-examined on that aspect – Besides, it was neither pleaded nor argued that Exh.28 was not proved or price paid therein was not highest price for jirayat land – Mere fact that average sale price of transactions relied upon by respondent State was substantially less could not be a ground for discarding Exh.28 – High Court erred by refusing to rely on Exh.28 on that ground – Constitution of India – Art. 300-A – Valuation – Evidence Act, 1872 – Ss. 64 and 59 – Civil Suit – Document – Proof.

- (11) Vidarbha Irrigation Development Corporation Vs. Prakash

Namdeo Dive & ors. [2017(6) Mh.L.J. 904]

Land Acquisition Act – Ss. 18 and 23 – Acquisition of land – Compensation – Value of land and trees enhanced by Reference Court – Validity – Relevant sale instances considered by Reference Court – claimant has given details of number of trees, kind of trees, their age and their overall health and also yields given out per annum by them – No effective cross-examination of claimant in this regard by acquiring body as well as State – Therefore, evidence of claimant accepted as reliable and inspiring confidence – Reference Court considered cumulative effect of evidence of claimant and expert witness in ascertaining valuation of trees – These conclusions cannot be said to be suffering from any factual or legal error – Compensation awarded by Reference Court is just and proper.

- (12) Vidarbha Irrigation Development Corporation, Nagpur Vs. Champatrao s/o Amrutrao Bhaswar & ors. [2020(4) Mh.L.J. 297]

Market value of land – Determination – Land of claimant is irrigated land with fruit bearing trees – Sale instances of adjacent land shows rate of Rs.1,50,000/- per hectare in year 1995 – 10% increase should be added for every year – Hence, claimant is entitled for compensation of Rs.1,80,000/- per hectare and also compensation at rate of Rs.5,000/- per tree for orange and mosambi trees.

- (13) The Collector, Yavatmal & anr. Vs. Laxman Tanba Jumle [2010(3) ALL MR 342]

Land Acquisition Act (1894), S.23 – Compensation

– Comparable sales instances – Reference Court considered sale-deeds of similar lands in the vicinity of 1-2 Km.- Also considered judgment passed in said awards and market value on date of notification – Compensation need not be considered on basis of income and yield of land when sale instances are available – Award of compensation by Reference Court not liable to be interfered with.

5. Considered the submissions. Perused the evidence relied on. Gone through the authorities placed on record.

81 R land in Gut No.102, belonging to the applicant – land owner was acquired for submergence of Khulgapur Upper Level Dam at village Bhatangali. Notification under Section 4 of the Act was published on 2/1/2008. the award under Section 11 of the Act was passed on 16/9/2011. The LAO offered the amount of Rs.3,93,29,094/- (Rs.2720 per R.) as compensation. The Reference Court enhanced it to Rs.13,610/- per R for land value, Rs.25,72,240/- for fruit bearing trees, besides additional statutory monetary benefits.

6. Before the Reference Court, the applicant – land owner has relied on 4 sale instances. The details thereof have been given in paragraph No.17of the impugned judgment.

Sale instance mentioned at Sr.No.3 was effected post publication of notification under Section 4 of the Act. One 1 R land was sold thereunder for Rs.50,000/-. In fact, it is a sale of well. The average price of other three sale instances was Rs.13,610/- per R, since under the sale instances at Sr.No.1 and 2, 1 acre and 45 R land in August/ September 2005 was sold for Rs.4,80,000/- and Rs.5,00,000/- respectively, the Reference Court has rightly, after making addition @ 10% p.a. from the date of sale instances to the date of notification under Section 4 of the Act, awarded a sum of Rs.13,610/- per R. This Court finds no reason to interfere therewith.

7. On the question of valuation of the mango trees is concerned, admittedly there were 161 mango trees. It is upon the land owner to prove his entitlement for amount of compensation claimed by him. The Reference Application is silent to state the description of the mango trees, particularly their age, girth, fruit production etc.

8. Keeping on mind the observations of the Apex Court and the High Court in the cases relied on by the learned Advocate for the applicant – land owner, let us ascertain what

shall be the compensation in respect of fruit bearing trees in the land acquired. Needless to mention, it is a matter of question of facts to be decided on the basis of evidence obtainable in the case. The claim for compensation in respect of the fruit bearing trees is based on the valuer's report (Exh.74). The valuer quantified the valuation of the mango trees at Rs.91,92,387/-. The valuer was examined as a witness. It is in his evidence that, he paid visit to the land on 7/5/2019. He had issued notice to the revenue officials of his proposed visit. None of them remained present. After having inspected all the trees, he prepared a panchanama of the spot inspection. He considered the rate of fruits in the year 2008-2009 prevailing at Agricultural Produce Market Committee, at Solapur. He also considered the Government Resolution in that regard. All those papers have been placed on record by the witness.

9. The question is, whether the valuation report is a reliable document. The Reference Court, for the reasons that no Government Officer was present when the expert paid visit to the land, his Inward/ Outward register was not placed on record, he was a land valuer and not valuer of the Orchard,

did not place reliance on the expert's report. This Court too finds the report of the expert to be unreliable. The expert claimed to have paid visit to the land on 7/5/2009 and handed over the same to the applicant – land owner the same day. Had this really been so, the applicant – land owner would have placed the said report before the LAO to claim compensation in consonance therewith. There is on record response filed by the applicant– land owner to the notice under Section 9 of the Act. It is dated 16/9/2009. It has been filed under the signature of the applicant – land owner and his Advocate as well. In the said response, there is no whisper about the land having been visited by the valuer and receipt of the valuation report. In the said response, grant of sum of Rs.4,02,500/- towards loss of income from mango trees per year was urged. Same indicates that, the valuation report, as was said to have been prepared and delivered to the land owner on 17/5/2009 itself is untrue. The expert/ valuer claimed to have relied on the rates of fruits in A.P.M.C., Solapur. According to him, he had obtained report in that regard from Solapur A.P.M.C. Exhibit 67 indicates that, such report was received by the expert/ valuer in December 2009 i.e. long after he gave valuation report. As such, this Court is

of the view that the valuation report is a got up document. The valuer could have placed on record photographs of the mango trees or a video clip of his visit on the given day. The same could have been the best evidence. For want of cogent and reliable piece of evidence, this Court is not inclined to place reliance on the valuer's report Exh.74.

10. The LAO had awarded compensation for the mango trees relying on the valuation made by the District Superintendent/ Agricultural Officer, Latur. The Government Resolution dated 24/3/2009 issued in that regard was relied on. The Reference Court has enhanced the amount of compensation double of the one awarded by the LAO. Admittedly, compensation has also been granted in respect of the land. It is difficult to imagine when there are 161 mango trees in the land, how the land could be brought under cultivation for raising other crops. Be that as it may. The amount of compensation awarded by the Reference Court is found to be very just, reasonable and even, might be more than the market price. This Court is, therefore, not inclined to interfere with the impugned award.

11. So far as regards grant of interest is concerned,

the Full Bench judgment of this Court in case of **State of Maharashtra Vs. Kailash Shiva Rangari [2016 (3) Mh.L.J. 457]** mandates that it should be from the date of award. The learned Advocate for the applicant – land owner has relied on the judgment of the Apex Court in case of **M. Ramakrishna Reddy (supra)**, wherein it has been observed by the Apex Court as under :

“Land Acquisition Act, 1894 – S.28 – Interest under – Date from which may be awarded – Held, interest under S.28 may be awarded only from the date of preliminary notification, even if possession is taken prior to date of preliminary notification.”

12. The learned Advocate for the acquiring body has, on the other hand, relied on the judgment of the Apex Court in case of **Lila Ghosh (Smt.) (Dead) through L.R., Tapas Chandra Roy Vs. State of W.B. etc. [(2004) 9 SCC 337]**, wherein it has been observed by the Apex Court as under :

“Land Acquisition Act, 1894 – Ss.34 & 28 – Interest on compensation – Held, can be allowed under, only if compensation is payable but has been paid – In that case interest can be paid from the date of award – Where an amount had been paid in advance of acquisition, if after giving credit to that amount any amount of compensation payable is found to have not been paid, then interest thereon would be payable

from the date of award.”

13. It is a settled legal proposition that, in case of a conflict between two judgments of a coordinate Bench, the first in point shall prevail.

The Reference Court, therefore, ought to have awarded the interest from the date of award and not from any other earlier date. To this extent, the appeal preferred by the acquiring body deserves to be allowed. With this, both the appeals stand disposed of in terms of the following order :-

ORDER

- (i) First Appeal No.321/2021 is dismissed.
- (ii) First Appeal No.2896/2019 is partly allowed. Clause (5) of the operative order of the judgment and award dated 15/1/2018, passed by Jt. Civil Judge, Senior Division, Latur in L.A.R. No.586/2011 is modified and it is directed that the interest be paid from the date of award. Rest of the terms of the impugned award to stand unaltered.
- (iii) The amount in deposit be paid to the claimants –

land owners in terms of this order along with interest accrued thereon and the balance amount be paid back to the acquiring body along with interest accrued thereon.

**(R. G. AVACHAT)
JUDGE**

fmp/-