

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1 OF 2022

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| 1. | The Executive Engineer,
Latur Minor Irrigation Division,
Dist. Latur, Through;
Rajendra s/o Gurappa HuLsure,
Age : 57 years, Occ: Service as
Sub-Divisional Engineer at
Minor Irrigation Sub-Division, Latur,
Dist. Latur. | ...Appellants
(Orig. Resp.No.2) |
| 2. | State of Maharashtra,
Through Collector Latur. | ...Appellant
(Orig. Resp.No.1) |

Versus

Ratnabai w/o Narayan Phule Age: 50 years, Occ: Agriculture & Household, R/o. Pangaon, Tq. Renapur, Dist. Latur	...Respondent (Orig. claimant)
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AND
FIRST APPEAL NO. 4 OF 2022

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| 1. | The Executive Engineer,
Latur Minor Irrigation Division,
Dist. Latur, Through;
Rajendra s/o Gurappa Husure,
Age : 57 years, Occ: Service as
Sub-Divisional Engineer at
Minor Irrigation Sub-Division, Latur,
Dist. Latur. | ...Appellants
(Orig. Resp.No.2) |
| 2. | State of Maharashtra,
Through Collector Latur. | ...Appellant
(Orig. Resp.No.1) |

Versus

Mahadu s/o Sopan Phule Age: 42 years, Occ: Agriculture & Household, R/o. Pangaon, Tq. Renapur, Dist. Latur	...Respondent (Orig. claimant)
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Mr Shyam C. Arora, Advocate for Appellants
Mr V.D. Gunale, Advocate for Respondent/sole

CORAM : SHRIKANT D. KULKARNI, J.

Reserved on : 14.03.2022
Pronounced on : 29.04.2022

JUDGMENT :

1. Heard finally at admission stage with consent of both the sides.
2. The facts giving rise to these appeals in narrow compass are as under :-
 - (a) The land admeasuring 71 R owned and possessed by claimant Mahadu in LAR No. 684/2000 and the land admeasuring 70 R owned and possessed by claimant Ratnabai in LAR No. 683/2000 from land survey No. 49 situated at Bhandarwadi, Tq. Renapur, Dist. Latur came to be acquired by the State of Maharashtra for the purpose of Renapur Medium Project at village Bhandarwadi.
 - (b) The notification under section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act' for brevity) came to be published on 14.03.1996. The possession of the above said acquired land was taken by the State by way of private negotiation.
 - (c) According to the claimants, the lands under acquisition were of good quality land and they were getting net income more than

Rs. 20,000/- per annum per acre. All the basic facilities are available at village Pangaon and Bhandarwadi.

(d) The Special Land Acquisition Officer was pleased to pass an award in respect of acquired land on 22.03.1999 and awarded compensation @ Rs. 600/- per R.

(e) Feeling aggrieved by the rate of compensation given by the Special Land Acquisition Officer, both the claimants had preferred references under Section 18 of the Act before the Reference Court and claimed compensation of the acquired land @ Rs. 3,000/- per R.

(f) The Reference Court considered the rival pleadings of the parties, evidence on record and the argument advanced on behalf of both the sides, was pleased to enhance the compensation @ Rs.25,00/- per R along with statutory benefits.

(g) Being dissatisfied by the common impugned Judgment and award passed by the Reference Court in LAR No. 684/2000 and 683/2000, the acquiring body has preferred these two appeals by taking aid of Section 54 of the Act of 1894 on various grounds.

3. Heard Mr S.C. Arora, learned counsel for the appellant/acquiring body and Mr V.D. Gunale, learned counsel for the claimants.

4. Mr Arora, learned counsel for the appellant vehemently submitted that the compensation enhanced by the Reference Court is very much exorbitant having regard to the quality and fertility of the acquired land, its location and market price at the time of notification under section 4 of the Act. The Reference Court has committed an error while appreciating the evidence and awarded the compensation by relying upon earlier Judgment and award passed in another land acquisition proceedings in LAR No. 235/2001.

5. Mr Arora, learned counsel for the appellant submitted that the Reference Court has relied on that Judgment which cannot be said to be binding with respect to determination of price. The Court has to apply judicial mind and is supposed not to follow previous awards without due consideration of facts and circumstances and evidence adduced in case in question. The Judgment and award passed in another proceedings is required to be proved like any other comparative exemplar.

6. Mr Arora, the learned counsel has placed his reliance in case of ***Manoj Kumar Etc Vs. State of Haryana and Ors. Etc.*** reported in ***AIR 2018 SC (Supp) 247*** in support of his argument.

7. Mr Arora, learned counsel for the appellant further invited my attention to the impugned Judgment and submitted that in this case, possession was obtained from the claimants by way of private negotiation. The urgency clause was not invoked even then the Reference Court has awarded the compensation under Section 28 of the Act from the date of

notification under section 4 which is incorrect in view of the Full Bench decision in case of ***State of Maharashtra Vs. Kailash Shiva Rangari*** reported in ***2016 (4) ALL MR 513***. Mr Arora, learned counsel also referred the citation in case of ***Bhule Ram Vs. Union of India & Anr. Civil Appeal No. 6251/2010 SC*** on the point as to how market value of the acquired land needs to be determined in view of section 23 of the Act. He submitted that while determining the market value of the acquired land on the basis of comparable sale instances from different villages, it needs to be considered with close scrutiny in order to find out whether they are identical and similar.

8. Mr Arora, learned counsel submitted that the compensation enhanced by the Reference Court has unnecessarily put financial burden on the acquiring body. The compensation enhanced by the Reference Court needs to be set aside. The Special Land Acquisition Officer has considered the sale instances and accordingly determined the compensation which is adequate. No case is made out by the claimants for enhancement. He therefore, urged to allow the appeals and quash and set aside the common impugned Judgment and award passed by the Reference Court.

9. Mr Gunale, learned counsel for the respondents/original claimants supported the findings recorded by the Reference Court. He submitted that sale instances even from different villages can be taken into consideration while determining the market value of the acquired land. The Reference Court has considered that the lands involved in both the

proceedings and lands involved in the sale instances are identical and similar and situated at adjacent villages. Those have been acquired for the same project. He further submitted that the Reference Court has rightly relied upon the Judgment delivered in another LAR proceedings arising from the same project. He submitted that the Reference Court has not committed any error while determining the amount of compensation having regard to the facts of the case and evidence on record.

10. Mr Gunale, learned counsel for the respondents/original claimants has placed his reliance in case of ***Union of India Vs. Bal Ram and Anr.*** reported in ***AIR 2004 SC 3981*** and ***Ali Mohammad Beigh and Ors. Vs. State of Jammu and Kashmir*** reported in ***(2017) 4 SCC 717*** on the point of determination of market value of the acquired land on the basis of lands which are identical and similar acquired for the same project though from different villages which are adjacent. He submitted that in this case, the possession was taken by the State much before the date of award. As such, the claimants are entitled to get interest from the date of possession under section 28 of the Act. He has placed his reliance in case of ***Gayabai Digambar Puri (Died) thr.L.R. Vs. The Executive Engineer and Ors.*** reported in ***MANU/SCOR/00127/2022***. He submitted that decision of this Court in First Appeal No. 692/2019 (The Executive Engineer, Lower Dudhana Project, Division Selu, Thr. Jalna Irrigation Division, Jalna Vs. Gayabai Digambar Puri (Died) Thr. Lrs Rangnath and Ors.) was challenged before the Supreme Court referred above and the Hon'ble Supreme Court was pleased to partly allow the appeal and

modified the order passed by this Court and held that the appellant/claimant would be entitled for interest on or from date when the possession of the land was taken. He therefore, submitted that the order passed by the Reference Court regarding award of interest under section 28 of the Act from the date of Notification under section 4 cannot be said to be defective in the eye of law. He submitted that there is no merit in the appeal and the appeal may be dismissed.

11. I have considered the submissions of the learned counsel for both the sides. Perused the impugned Judgment and award passed by the Reference Court by way of common Judgment and relevant evidence.

12. The Reference under Section 18 of the Act is not an appeal. Whatever material relied upon by the Special Land Acquisition Officer while passing the award, cannot be relied upon unless it is produced and proved according to the provisions of the Act. Secondly, award of the Special Land Acquisition Officer is not to be treated as a Judgment of the trial Court and thirdly, the Court has to consider a Reference as an original proceedings before it and the claimant is in the position of a plaintiff, who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court.

13. The Hon'ble Supreme Court in case of **Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona** reported in **1988 (3) SCC 751** has laid down the guidelines in what manner a Reference under Section 18 of the Act is to be decided by the Reference

Court. By keeping in mind those guidelines by the Hon'ble Supreme Court, let me examine whether the market value determined by the Reference Court in both the LR proceedings is proper, correct and reasonable having regard to the facts of the case and evidence on record.

14. On going through the impugned Judgment para No. 20, it is revealed that the claimants have placed on record two sale instances, one from village Pangaon and another from village Bhandarwadi in order to show market price of the acquired land at the relevant point of time. Apart from that, the claimants have also placed on record the copy of Judgment passed in another LAR arising from same project. The claimant has stated in his evidence about quality and fertility of the acquired lands and developments and facilities available at the relevant point of time in the village. While facing the cross-examination, he went on admitting that village Bhandarwadi is situated at a distance of 4 to 5 Kms. away from Pangaon-Renapur Road. As such, sale instance placed on record by the claimants from Bhandarwadi cannot be accepted to determine the market value of the acquired land in view of the above, factual scenario brought on record from the cross-examination of the claimant. Moreover, it is rightly observed by the Reference Court that when sale deed from Pangaon itself is available, no need to consider the sale instance from village Bhandarwadi. The Reference Court after taking into consideration the sale instance from village Pangaon, has observed that the said sale instance is placed on record by the claimants after the cross-examination of claimant is recorded. The State has disputed the consideration shown in

the said sale deed from village Pangaon. The Reference Court has rightly discarded the sale deed from village Pangaon vide Exh.18 by placing reliance in case of ***Subhashchandra Bobhe Vs. Balram and Anr.*** reported in ***1994 (2) Mah. L.R. 830 Bombay.***

15. The only evidence available for determining the compensation of the acquired land is the Judgment delivered by the Reference Court in another land acquisition proceedings vide L.A.R. No. 235/2001 vide Exh. 28. On going through the impugned Judgment para No. 22, it is observed by the Reference Court that the land under acquisition in L.A.R. No. 235/2001 and the land of the claimants acquired in these two References are for the same project i.e. Renapur Medium Project. The lands from both the places/villages have been acquired for the same project. The Reference Court has considered the date of notification issued in the subject matter of L.A.R. No. 235/2001 and the notification issued in these two References and observed that the lands involved in both matters are practically identical and similar. The Reference Court has accepted and relied upon the market price determined by the Reference Court in L.A.R. No. 235/2001. On that basis, the Reference Court has determined the market value of the acquired land at Rs.1,00,000/- per acre by classifying it under the dry land. The Reference Court has also recorded reasons in para No. 23 regarding cropping pattern of the acquired lands by examining 7/12 extract of both the claimants. The State has not produced any evidence by way of rebuttal. In case of ***Ali Mohammad Beigh and Ors. Vs. State of Jammu and Kashmir*** reported in ***(2017) 4 SCC 717***, it is

held by the Hon'ble Supreme Court that while determining valuation of the acquired land under Section 23 and 28 of the Act, the lands identical and similar acquired though from adjacent villages can be considered for determining the market value of the acquired lands. The same view has been taken by the Hon'ble Supreme Court in case of ***Union of India Vs. Bal Ram and another*** reported in ***AIR 2004 SC 3981***.

16. Mr Arora, learned counsel for the appellants has placed reliance in case of ***Manoj Kumar Etc. Vs. State of Haryana and Ors. Etc.*** reported in ***AIR 2018 SC (Supp) 247*** and argued that the Judgment and award passed in earlier land acquisition proceedings though relevant and admissible in evidence but cannot be said to be binding with respect to determination of price, that has to depend on evidence adduced in case. The Court has to apply judicial mind and is supposed not to follow previous award without due consideration of facts and circumstances and evidence adduced in case in question.

17. On going through the impugned Judgment para Nos. 22 and 23, it is very much clear that the learned Reference Court has relied upon the Judgment delivered by the Reference Court in another land acquisition proceedings vide L.A.R. No. 235/2001 (Exh.28). The Reference Court has applied its judicial mind and after taking into consideration the facts and circumstances and evidence on record pleased to determine the market value coupled with the quality of the land and cropping pattern. I do not see any error on the part of the Reference Court while determining the

market value by relying upon Judgment delivered by the Reference Court in L.A.R. No.235/2001. The compensation determined by the Reference Court is found reasonable and adequate having regard to the facts of the case, quality and fertility of the acquired land and other attending circumstances in view of the decision of the Hon'ble Supreme Court in cases of ***Ali Mohammad Beigh and Ors. Vs. State of Jammu and Kashmir*** and ***Union of India Vs. Bal Ram and another*** (*supra*). As such, the finding recorded by the Reference Court regarding market price of the acquired land needs no interference.

18. Mr Arora, learned counsel for the appellants/acquiring body invited my attention to the operative part of the Judgment clause No.5. He pointed out that the Reference Court has awarded interest under section 28 of the Act from the date of notification under Section 4 which is improper and incorrect in view of the Full Bench decision of this Court in case ***State of Maharashtra Vs. Kailash Shiva Rangari*** (*supra*).

19. On the other hand, Mr Gunale, learned counsel for the claimants has placed reliance in case of ***Gayabai Digambar Puri (Died) thr.L.R. Vs. The Executive Engineer and Ors.*** (*supra*).

20. I have studied the citation relied upon by both the sides. In case of ***Gayabai Digambar Puri (Died) thr.L.R. Vs. The Executive Engineer and Ors.*** (*supra*), the crucial fact was taking over possession by invoking urgency clause. As such, the Hon'ble Supreme Court was pleased to modify the order of the High Court and directed to the acquiring

body to pay interest from the date of possession. The facts of the case in hand are different. In case in hand, the possession of the acquired lands was not taken by the State by invoking the urgency clause as provided under Section 17 of the Land Acquisition Act. The pleadings of the claimants itself speaks that the possession of the acquired land was taken by way of private negotiation. No urgency clause was invoked while obtaining possession of the acquired land. As such, the decision of ***Gayabai Digambar Puri (Died) thr.L.R. Vs. The Executive Engineer and Ors. (supra)*** relied upon by Mr V.D. Gunale, learned counsel for the original claimants does not extend any help in view of the ratio laid down by the Full Bench decision of this Case in case of ***State of Maharashtra Vs. Kailash Shiva Rangari (supra)*** and in view of the decision of the Hon'ble Supreme Court in case of ***R.L. Jain (D) by Lrs Vs. D.D.A. & Ors.*** reported in ***(2004) 4 SCC 79***. The claimants are entitled to get interest from the date of award. To that extent, the award needs to be modified.

21. Having regard to the above reasons and discussion, the Appeal needs to be allowed partly as under :-

ORDER

- (I) Both the appeals stand partly allowed.
- (II) The award passed in LAR Nos. 683/2000 and 684/2000 by the 4th Joint Civil Judge, Senior Division, Latur stand modified to the extent of awarding interest under Section 28 of the Land Acquisition Act, 1894 which reads as under :-

5. The appellants/acquiring body shall pay interest to the claimants in both LAR proceedings referred above @ 9% per annum from the date of award till realization of enhanced amount of compensation.

- (III) To that extent, award passed by the Reference Court in above said LAR proceedings stand modified.
- (IV) Rest of the award passed in both the LAR proceedings stand confirmed.
- (V) The amount of compensation. if any, lying with the Registry, it be paid along with interest to claimants.
- (VI) No order as to costs.
- (VII) Record and Proceedings be sent back to the concerned Reference Court.
- (VIII) Both the appeals are accordingly disposed of.
- (IX) The civil application, if any, stands disposed of.

[SHRIKANT D. KULKARNI, J.]

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