

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

FIRST APPEAL NO. 1672 OF 2013

Manohar Shankarappa Rakte .. Appellant

Versus

1. The State of Maharashtra and others .. Respondents

Shri G. N. Chincholkar, Advocate for the Appellant.

Shri S. N. Kendre, A.G.P. for the Respondent Nos. 1 and 2.

Shri Mahesh C. Swami, Advocate for the Respondent No. 3.

CORAM : SHAILESH P. BRAHME, J.

DATE : 23RD OCTOBER 2023.

FINAL ORDER :

. Heard learned counsel for the respective sides for final disposal at the admission stage.

2. The present first appeal is arising out of the judgment and award dated 01.04.2009 passed by the learned Civil Judge Senior Division Kandhar in L.A.R. No. 26 of 2005 (New) i. e. L. A. R. No. 25 of 2005 (Old). The subject matter is the house property of the appellant.

3. The Competent Authority issued notification under Section 4 of the Land Acquisition Act (for short "L. A. Act") on 23.12.1997. An award was passed U/Sec. 11 of the L. A. Act on 26.11.2002. The compensation of Rs. 36,669/- was awarded by

the Special Land Acquisition Officer. Being aggrieved, the appellant preferred reference U/Sec. 18 of the L. A. Act before the Civil Judge Senior Division, Kandhar. The reference is culminated into enhancement of compensation to Rs. 45,758/-. Being aggrieved and dissatisfied by the quantum awarded by the Reference Court, this first appeal is preferred.

4. The learned counsel for the appellant submits that the report of valuer Mr. Shrishant Barbade at Exhibit 16 has not been properly appreciated by the Reference Court. As per the report an amount of Rs. 1,65,448/- ought to have been awarded to the appellant. The report of the valuer has probative value. The valuer has also been examined as P.W. No. 3.

5. The learned counsel for the appellant Mr. G. N. Chincholkar would seek support of the judgment and award dated 06.10.2016 passed by this Court in the matter of **Bandappa Shantappa Jalkote died through L.Rs. Smt. Sushilabai Bandappa Jalkote and others Vs. The State of Maharashtra and others** in First Appeal No. 1250 of 2009 and common judgment and award dated 03.12.2021 passed by this Court in group of First Appeals bearing F. A. No. 719 of 2013 in the matter of **Manohar Shankarappa Rakte Vs. The State of Maharashtra and others** along with other group of first appeals. He would submit that all facts and circumstances are identical. In above referred matters also the subject matter was house property. There is common award passed in all these first appeals. The

compensation in all the matters which are sought to be relied upon has been awarded as per the report of the valuer. On the ground of parity the appellant is entitled to compensation of Rs. 1,65,448/-.

6. The learned counsel Mr. Mahesh C. Swami appearing for the respondent No. 3 supports the impugned judgment and award. According to him the Reference Court has rightly dealt with the issue in respect of quantum of the compensation and the report of the valuer which is at Exhibit 16. He would oppose the claim on the ground that it is impermissible to rely upon the valuer's report. The valuer's report is not a permissible mode or parameter for determining the quantum of compensation. According to him the Reference Court has rightly dealt with the issue. He supports the findings recorded in para Nos. 15 and 16 of the impugned judgment and award. He would urge that just and adequate compensation has been awarded to the appellant and no interference is called for in the impugned judgment. He further submits that the evidence of the appellant and his witnesses is of no assistance to the appellant.

7. There is no dispute that the present reference and appeal are arising out of common award. The facts and circumstances in the present matter are identical with those in the matters referred above by the learned counsel for the appellant. There is consistent view that the report of the valuer has a probative value and can be a basis for determining the quantum of the

compensation. I do not see any different circumstances or the reasons to take contrary view. I prefer to follow the course adopted by this Court on earlier occasion, which are cited by the learned counsel for the appellant.

8. The learned counsel for the respondents have invited my attention to settled legal position which is laid down by the Full Bench of this Court in the matter of **The State of Maharashtra Vs. Kailas Shiva Rangari** reported in **2016(4) All M.R. 513** and in the matter of **State of Maharashtra Vs. Ramesh Tukaram Meshram** reported in **2018(1) All M.R. 645** that the claimant is entitled to the interest from the date of award and not from the date of notification under Section 4 of the L. A. Act. The learned counsel for the parties have no dispute over this settled position of law. The appellant is entitled to claim interest from the date of award instead of the date of notification dated 23.12.1997 and to that extent the operative part of para Nos. (4) and (5) of the impugned order stands modified.

9. In the present matter the report of the valuer indicates compensation of Rs. 1,65,448/-. I am of the considered view that the appellant is entitled to it. I therefore pass following order.

O R D E R

A. The first appeal is partly allowed.

B. The amount of compensation awarded by the Reference

Court is enhanced to Rs. 1,65,448/-.

C. The operative para Nos. (4) and (5) of the judgment and award dated 01.04.2009 are quashed and set aside.

D. The appellant is entitled to get interest at the rate of 9% per annum from the date of award i. e. 26.03.2002 and not from the date of notification U/Sec. 4 of the L. A. Act.

E. The rest of the terms of the impugned award to stand unaltered.

F. Award be drawn up accordingly.

[SHAILESH P. BRAHME, J.]

bsb/Oct. 23