

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

FIRST APPEAL NO.1557 OF 2008

Ganeshrao S/o Babarao Deshmukh
Aged about 65 years, Occupation:
Agriculturist, R/o Dongargaon, Tq.
Mahagaon, District : Yevatmal.

... APPELLANT

---VERSUS---

1. State of Maharashtra,
Through its Collector,
Yevatmal.
2. The Special Land Acquisition Officer
Lower Pus Project, Pusad, District :
Yevatmal.
3. The Executive Engineer Minor Irrigation
Division, Pusad, District Yevatmal
4. Smt. Parvatabai Shankarrao Deshmukh
Aged about 60 years
5. Smt. Mankarnabai Taterao Deshmukh
Aged about 35 years,
Both R/o Dongargaon now R/o Jamb
Bazar, Tq. Pusad, District Yevatmal.

...RESPONDENTS

Shri S.G. Loney , Advocate for appellant.
Ms Shamsi Haider, AGP for respondent nos.1 and 2.
Shri M.A. Kadu, Advocate for respondent no.3.
Shri Shubhamkar Phadnis, h/f Shri S.Y. Deopujari, Advocate for respondent nos.4 & 5.

CORAM : URMILA JOSHI-PHALKE, J .

RESERVED ON : JANUARY 17, 2023.

PRONOUNCED ON : JANUARY 20, 2023.

JUDGMENT :

. By preferring this appeal, the appellant has challenged the common judgment passed in Land Acquisition Case No.144 of 2002 along with Land Acquisition Case No.141 of 2002, by which the land reference filed by the present appellant bearing Land Acquisition Case No.141 of 2002 came to be dismissed by judgment and order dated 24.07.2008 by the learned Civil Judge, Senior Division, Pusad, District Yavatmal on the ground that the appellant has not proved his ownership or his right to claim compensation.

2. As per the contentions of the appellant, Survey No.34/1B admeasuring 1.83 H.R. situated at village Dongargaon, Taluka Mahagaon, District Yavatmal is originally owned by Smt. Parvatabai Shankarrao Deshmukh and Smt. Mankarnabai Taterao Deshmukh. They both entered into an agreement with the present appellant and agreed to sell the said survey number to the present appellant. Since the date of the agreement the present appellant-Ganeshrao Deshmukh is in possession of the said land. Before execution of the sale-deed, the land was acquired by the Government vide Land Acquisition Case No.34/47/96-97 for Jam Nala Project. Accordingly, award was declared on 19.06.2000. The Land Acquisition Officer has published notification under Section 4 on

22.05.1997 and notification under Section 6 on 11.06.1998. It is the contention of the appellant that the Land Acquisition Officer has awarded compensation of ₹37,000/- per hectare. Being aggrieved and dissatisfied with the inadequate compensation awarded by the Land Acquisition Officer, he along with other land owners preferred Land Reference before the Collector, Yevatmal. The said Land Reference was referred to the learned Joint Civil Judge Senior Division for disposal. As per the contention of the appellant, he is in possession of the said land since date of the agreement. He had also received the notice under Section 12 for receiving compensation. Thus, he is the 'person interested' to claim the compensation. The notice under Section 9 is replied by him by raising an objection. The amount of compensation awarded by the Land Acquisition Officer is received by him. But, his Land Reference is dismissed by the Reference Court by holding that he failed to prove his ownership or 'person interested' to claim the compensation. Being aggrieved with the same, present appeal is preferred by the appellant on the ground that the learned Reference Court has not considered that original owners namely; Smt. Parvatabai Shankarrao Deshmukh and Smt. Mankarnabai Taterao Deshmukh have not raised any objection. The notifications issued under Sections 4 and 6; and notices under

Sections 9 and 12 bears his name. He has raised objection to the notice, which was under Section 9 and thereafter filed this reference. He further contended that his name is appearing in 7/12 extract as a cultivator. Thus, the land is in possession since the date of agreement. He is person interested but his land reference is wrongly and erroneously dismissed by the Reference Court.

3. Heard Shri S.G. Loney, learned advocate for the appellant. He submitted that the observation of the learned trial Court is wrong and erroneous in the light that all the notices bears his name, which is sufficient to show that he is the person, who was in the possession of the acquired land and original owners have not raised any objection till today. In support of his contention, he placed reliance on *Vithabai W/o Deoraoji Wahane Vs. State of Maharashtra and others (Writ Petition No.1591/2006 decided on 21.12.2006)*, wherein by referring the judgment of the Hon'ble Apex Court in the case of *Sunderlal Vs. Paramsukhdas* reported in *AIR 1968 SC 366*, wherein it is held that the definition of 'interested person' in Section 3(b) of the Act has been given liberal or wide interpretation by the Larger Bench of the Hon'ble Apex Court wayback since 1968 and that has been followed by the

Hon'ble Apex Court in the latter judgments mentioned above. It is further held that in the judgment by the Hon'ble Apex Court that the definition 'person interested' in section 3(b) is an inclusive definition. It is not necessary that in order to fall within the definition a person should claim an interest in land, which has been acquired. A person becomes a person interested if he claims an interest in compensation to be awarded.

4. In view of these observations, learned advocate for appellant submitted that admittedly the present appellant was in possession of the acquired land and therefore the notices were issued to him. He received compensation awarded by the Land Acquisition Officer and he has raised the objection before the Land Acquisition Officer to the notice under Section 9 and accepted the amount under protest. However, learned trial Court has not considered the said fact and wrongly dismissed his claim. He further submitted that in First Appeal No.1016 of 2010, this Court has considered the claim of enhancement of the compensation of other land owners, whose lands were acquired for the same project and by the same notification. He placed reliance on the earlier judgment passed in First Appeal No.1016 of 2010 and prayed enhancement of

compensation on the similar rate, which was granted to the other land owners.

5. On the other hand, Shri M.A. Kadu, learned advocate appearing for the Acquiring Body and Ms Shamsi Haider, learned A.G.P. submitted that the observations of the learned trial Court regarding rate granted is correct one and no interference is called for.

6. Having heard learned advocates for rival parties, following points arise for my determination :

- i. Whether the appellant is interested person within the definition of Section 3(b) of the Land Acquisition Act?
- ii. Whether the Special Land Acquisition Officer and the Reference Court had committed an error in awarding the compensation at the rate of ₹ 1,48,000/- per hectare?
- iii. Whether the judgment of the Reference Court calls for any interference?

7. I have gone through the impugned judgment and award passed by the Reference Court as well as Special Land Acquisition Officer. Land Reference No.141 of 2002 is dismissed by the Reference Court by observing that Survey No.34/1B is shown in the name of Smt. Parvatabai Shankarrao Deshmukh and

Smt. Mankarnabai Taterao Deshmukh and name of the present appellant is appearing as a cultivator of the said land. He has not proved ownership or his interest in the land by adducing evidence.

8. Shri S.G. Loney, learned advocate vehemently submitted that the present appellant entered into an agreement with original owners however before execution of sale-deed the land was acquired. Since the date of the agreement of sale, the appellant is in possession. His possession is apparent from 7/12 extract. He further submitted that it is apparent from Section 4 notification that notices are issued to the original owners as well as the present appellant. The compensation amount is received by the present appellant in land acquisition office. The notices under Sections 9 and 12 of the Land Acquisition Act are also issued to the present appellant. Regarding the inadequate compensation granted by the Acquiring Body i.e. Special Land Acquisition Officer, present appellant has raised objection by filing application before the Special Land Acquisition Officer. Admittedly, the documents, which are produced before the Court i.e. award issued by the Land Acquisition Officer as well as notices under Sections 9 and 12 shows the name of the present appellant as a cultivator.

9. Shri M.A. Kadu, learned advocate also submitted that there is no dispute that the appellant is the person interested.

10. The Hon'ble Apex Court in *Sunderlal's case (supra)* has dealt with the definition of person interested and held that the definition of person interested is an inclusive definition. It is not necessary that in order to fall within definition a person should claim an interest in land which has been acquired. A person becomes a person interested if he claims an interest in compensation awarded.

11. The expression 'person interested' includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act and a person shall be deemed to be interested in land, being he is interested in easement affecting the right observed by the Hon'ble Apex Court. It is further observed by the Hon'ble Apex Court it is not necessary that in order to fall within definition a person should claim an interest in land, which has been acquired. A person becomes a person interested if he claims an interest in compensation to be awarded

12. Here the award as well as various notices are issued to the appellant shows that he was in possession of the land, when land

was acquired. Several notices issued by the Land Acquisition Officer show his name as a cultivator. It is sufficient to show that the appellant is a person interested within definition of Section 3(b) of the Act. Hence, point no.(i) is answered in the affirmative.

13. I have gone through the impugned judgment and award passed by the Special Land Acquisition Officer as well as Reference Court so also the evidence adduced before the Court. After going through the documents, it appears that common evidence is adduced in all the land acquisition cases and appellant as well as other land owners placed reliance on sale-deed dated 14.11.1995 in respect of Survey No.61/2, wherein 1.26 H.R. was purchased by Sk. Ismail S/o Sk. Yasin for consideration of ₹1,87,000/- per hectare. Admittedly, notification under Section 4 of the Land Acquisition Act was issued on 13.06.1997. The lands are situated in the same village and of same quality and of same fertility. Thus, from the perusal of the said sale-deed, it is clear that rate by which Survey No.61/2 was purchased by Sk. Ismail S/o Sk. Yasin was required to be considered while awarding the compensation. The Land Acquisition Officer had not considered the same and not awarded the said rate. The Reference Court had not considered the rate and awarded ₹50,000/- per hectare. The Land Acquisition Officer as

well as the Reference Court had considered the value mentioned on the document of sale-deed as ₹36,000/- which was the value fixed by ready reckoner of the Government. They failed to consider the total consideration of ₹1,87,500/- for which said field was purchased by Sk. Ismail S/o Sk. Yasin. It is well settled that just compensation is to be awarded to the lands which were compulsorily acquired. Considering the evidence on record and fact that Sk. Ismail S/o Sk. Yasin, who had purchased the said land was also an appellant in First Appeal no.694 of 2008 and he had purchased Survey No.61/2 for the consideration of ₹1,87,500/- in the year 1995 i.e. on 14.11.1995. The notification under Section 4 of Land Acquisition Act was issued on 13.06.1997. Even the Land Acquisition Officer has relied upon the sale instance of Survey No.61/2 while awarding compensation. While allowing the appeal bearing First Appeal No.1016 of 2010 alongwith other connected matters, this Court had re-appreciated the evidence and held that the land owners, whose land were acquired by the same notification are entitled to compensation at the rate of ₹1,48,000/- per hectare for the land acquired by them. The rise of 10% has been awarded by the Special Land Acquisition Officer, which is sufficient to shows that rise of 10% was required to be given to all these claimants. It is

held by this Court in earlier judgments that the rise claimed at the rate 10% cannot be given two years as Section 4 notification was issued on 13.06.1997 and therefore the rise to the case 15% was awarded. The land of the present appellant is also from the same village, of same quality, of same fertility and acquired by the same notification, therefore, the present appellant is also entitled to receive the compensation at the similar rate. Therefore, the above points are answered in affirmative.

14. In view of above, the impugned judgment and award deserves to be set aside and quashed. Hence, I proceed to pass the following order:

ORDER

- (i)** First Appeal No.1557 of 2008 is allowed.
- (ii)** The impugned judgment and award passed by the Reference Court in Land Acquisition Case No.141 of 2002 dated 14.07.2008 is set aside and quashed.
- (iii)** The appellant is granted compensation at the rate of ₹1,48,000/- per hectare. The appellant is also entitled for 15% rise on the said rate and therefore the appellant is entitled to receive compensation at the rate of ₹1,70,200/- per hectare.

(iv) The appellant is entitled for the interest at the rate of 12% per annum from the date of publication of Section 4 notification till the date of award or till the date of actual possession, whichever falls first on the aforesaid amount of compensation calculated at the rate of ₹1,70,200/- per hectare.

(v) The appellant is also entitled to receive solatium at the rate of 30% in accordance with the provisions of Section 23(2) of Land Acquisition Act on the compensation amount calculated at the rate of ₹1,70,200/- per hectare.

(vi) The appellant is entitled to receive interest at 9% per annum for the first year and at the rate of 15% per annum thereafter in accordance with the provisions of Section 28 of the Land Acquisition Act from the date of taking possession of the land on the compensation calculated at the rate of ₹1,70,200/- per hectare.

(vii) The parties to bear their own costs.

(viii) Award be drawn up accordingly.

JUDGE