



3 order is corrected pursuant to speaking to minutes order dated 10.07.2024)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1536 OF 2014

Bharati Satyanarayan Mundada

VERSUS

The State Of Maharashtra Thorough Collector Osmanabad
And Others

...

Mr. V. V. Ingale, Advocate for Appellant
Mrs. P. R. Bharaswadkar, AGP for Respondent Nos. 1 & 3
Mr. S. G. Bhalerao, Advocate for Respondent No. 2

...

WITH

FIRST APPEAL NO. 778 OF 2014

Vijaykumar Satyanarayan Mundada And Another

VERSUS

The State Of Maharashtra And Others

...

Mr. V. V. Ingale, Advocate for Appellant
Mrs. P. R. Bharaswadkar, AGP for Respondent Nos. 1 & 3
Mr. S. C. Arora, Advocate for Respondent No. 2

WITH

FIRST APPEAL NO. 1535 OF 2014

Dipakkumar Satyanarayan Mundada

VERSUS

The State Of Maharashtra Thorough Collector Osmanabad
And Others

...

Mr. V. V. Ingale, Advocate for Appellant
Mrs. P. R. Bharaswadkar, AGP for Respondent Nos. 1 & 3
Mr. S. C. Arora, Advocate for Respondent Nos. 2

...

CORAM : R.M. JOSHI, J

DATE : JUNE 26, 2024

PER COURT :

1. These Appeals under Section 54 of the Land Acquisition Act (For short 'Act'), 1894 take exception to the common judgment passed by the Reference Court under Section 18 of the Act being LAR Nos. 534/2001, 141/2001 and 535/2001.

2. In the present Appeals, Block No. 401 admeasuring 3H 12 Ares in LAR No. 534/2001, Block No. 401 admeasuring 1H 9 Ares in LAR No. 141/2001 and Block No. 420 admeasuring 2H 2 Ares in LAR No. 535/2001 situated at village Shiradhon, Tq. Kallam, Dist. Osmanabad are involved, which lands are averred by Claimants. A notice under Section 4(1) of the Act was published in village Shiradhon on 29.06.1995. Section 6 notice was published in Government Gazette on 07.03.1996. Special Land Acquisition Officer (SLAO) divided the lands into four groups i.e., group no. I to V as per quality of lands and assessment of the land revenue and determined the market value of the land after considering acceptable sale instances. He also awarded separate compensation to the fruit bearing trees and structures on the land to the claimants.

3. Sine claimants were not satisfied with the award and the compensation granted by SLAO, references made under Section 18 of the Act before the Reference Court. It is claimed by the claimants that land acquired were fertile and heavy expenses were incurred to improve its quality. It is also claimed by them that they used to take two crops in a year and the net annual income derived from the said land was Rs. 1,50,000/- per acre. Respondents filed written statement and conducted that the compensation awarded was inadequate. It is also claimed that after duly considering the potentiality of the land and the relevant sale instances, the award impugned came to be passed.

4. The learned Reference Court framed common issues and called upon claimants to prove that the compensation awarded by the Land Acquisition Officer is inadequate and that they are entitled for the enhanced compensation. Satynarayan Mundada, one of the claimants, Vyankatrao Manikrao Ghogre, Horticultural Valuer and Ramchandra Baraskar, an Structural Valuer were examined on behalf of the claimants. They also

relied upon the documentary evidence such as reports of the respective valuer and the sale instances Exhs. 16, 17, 23 & 24. The learned Reference Court after taking into consideration the evidence led before it enhanced the compensation by passing following order:

O R D E R

1 References are partly allowed with proportionate costs.

2 The respondents do pay to the claimants the additional market value of the acquired lands as under -

Sr. No.	L.A.R. No.	Block No.	Area	Additional Market Value			Total
				Land	Trees	Structure	
1	534/2001	404	3 H 12 Area out of 4H 22 Ares	4,43,615 (3 H 7 Ares)	45,000 (5 Ares)	1000	4,89,615
2	141/2001	401	1 H 9 Ares Out of 4 H 22 Ares	1,57,505 (1 H 96 Ares)	--	1000	1,58,505
3	535/2001	420	2 H 2 Ares	2,98,900 (1 H 96 Ares)	38,000 (6 Ares)	3000	3,39,900

3 The respondents do pay to the claimants solatium @ 30% on the above additional market value; interest under Section 28 of the Act on the said additional market value and on the above solatium @ 9% per annum for the first year from the date of Notification under Section 4(1) of the L.A. Act and @ 15% per annum for subsequent years till the date of realization of the entire amount.

4 The respondents do pay to the claimants

12% per annum on the additional market value from the date of publication of notice under Section 4(1) of the Act of 1894 till the date of the award i.e. till 16.06.1999.

5 The above compensation is in addition to compensation awarded by SLAO. Hence the compensation awarded by SLAO and paid to the claimants shall not be deducted from the amounts which will be calculated as per above order.

5. At the outset, Mr. Ingale, learned Counsel for the Claimants/Appellants, submit that in respect of acquisition of land under the same notification and from the same village, this Court has ordered enhancement of the compensation in First Appeals Nos. 654 of 2014 to 657 of 2014 by judgment dated 02.04.2019 directing the payment of compensation at the rate of Rs. 2890 per Are for the acquired lands. According to him, said judgment has not been challenged before the Hon'ble the Supreme Court and as such, it has attained finality and hence, present Appeals be disposed of in the same terms. In support of his submissions, he placed reliance on judgment in case of Bayaji Tatya Kalunge vs. State of Maharashtra, 2007 (Supp.) Bom. C.R. 771.

6. Mr. Arora, learned Counsel for the Acquiring Body in First Appeal Nos. 1535 of 2014 and 778 of 2014, submitted that no evidence was led by all the claimants before the Reference Court and mandate of law that the claimants are required to prove their case independently has not been followed. This Court, however, does not find substance in the said contention as all three references were decided by common judgment. It is recorded in paragraph 9 of the judgment that by consent of the parties evidence is recorded into LAR no. 534/2001. It is thus clear that as per the consensuses between the parties, evidence was recorded in 1 reference and was read in evidence in other proceedings. Thus, Respondents are now estopped from raising objection with regard to the non examination of claimants in respective proceedings. This argument, therefore, stands rejected.

7. He further argued that merely because same award is passed in respect of the lands covered by the same notification, the said order cannot apply *ipso facto* to the present case. To support his submissions, he placed reliance on the judgment of the Hon'ble

Supreme Court in case of Chandrashekhar and ors. vs. Addl. Special Land Acquisition Officer, AIR 2009 SC 3012 wherein test has been laid down for admissibility of the previous judgment of the same Court. He also submits that the order sought to be relied upon passed by this Court in Appeals mentioned herein above is contrary to the judgment of the Full Bench of this Court in case of State of Maharashtra vs. Kailash Shiva Rangari, 2016 (3) Mh.L.J, 457, and therefore, in any event the interest, if any needs to be granted, the same can be granted from the date of award and not from the date of acquisition of the land. He further argued that once the claimants are relying upon the judgment of this Court for the determination of amount of compensation payable towards the land, they are not entitled for any separate/additional compensation for the trees and structures etc.

8. Mr. Bhalerao, learned Counsel for the acquiring body in First Appeal No. 1536/2014, submits that even on the facts of the case, the order passed by this Court cannot apply in the present case. It is his submission that it was held therein that the land in

questions were irrigated lands and such evidence is absent herein this case. He also sought to draw attention of the Court to the fact that the particular sale instance was accepted on the basis of fact that the land in question therein was at a distance of about 1/5th km from the said land and for want of any such evidence on record, it cannot be held that the said judgment would apply to the claimants herein.

In response to these submissions, learned Counsel for the claimants pointed out the award passed by the SLAO wherein the awards were passed on the basis of quality of the land and the lands bearing Block Nos. 410, 402 form part of the same group, it is submitted that as far as Block No. 420 is concerned, the judgment passed by this Court pertains to the part of the land from the Block No. 420 itself. Thus, it is his contention that there is no substance in the objection raised by the other side. He further submits that the claimants have placed evidence on record before the Reference Court indicating that the said lands had well therein which was in working condition. Thus, according to him, the lands in question are also irrigated lands

and, therefore, there is no reason or justification not to apply order as passed in FA nos. 654/2014 and other matters, to present case.

9. Perusal of the record indicates that the lands in the present Appeals are acquired in the same notification as the lands involved in FA Nos. 654/2014 and other matters. As far as the Appeal No. 1535/2014 is concerned, the land involved therein is Block No. 420 situated at village Shiradhon. The judgments in First Appeal sought to be relied upon are also passed in respect of the land bearing Block No. 420 of the same village. Considering the fact that while passing award the SLAO categorized lands for the purpose of determination of compensation on the basis of its quality and area of revenue assessment, therefore, there would be no reason or justification not to enhance the compensation for portion of law from Block No. 420 in the tune with the said judgment.

10. As far as the Block no. 401 is concerned, it comes in the group wherein the Block No. 402 is included i.e., Group No. IV in the award passed by the SLAO. This also shows that the quality of the land is

same and there would be no justification to take any different view. The evidence on record indicates that both these lands are having wells which are in working condition, as such, the lands are seasonally irrigated.

11. Having regard to the above discussion, this Court finds no reason not to apply the judgment passed in First Appeals No. 654/2014 with connected matters to land bearing Block No. 402 the present case. It is, therefore, held that in all three appeals claimants are entitled to get compensation at Rs. 2890 per Are for the acquired lands in question.

12. This Court however finds substance in the contention of the Counsel for the Acquiring Body that no separate compensation can be granted for the fruit bearing trees as well as structures standing on the lands in question since this Court has granted lump sum compensation to similarly placed land owners. When the claimants are seeking to place reliance on the judgment passed in above First Appeals, the same judgment will have to be accepted in *toto* and not in piecemeal.

13. In case of Kailash Shiva Rangari (supra) it is

held that except in cases where the possession is taken in accordance with Section 17 of the Act, the land owner would be entitled for the interest as per Section 34 of the Act necessarily from the date of passing of the award under Section 11 of the Act. In view of the position of law settled by Full Bench of this Court, claimants would be entitled to get interest on amount of compensation from the date of passing of award. The Appeals, therefore, are allowed in following terms:

ORDER

- a) Claimants are entitled to receive enhanced compensation at Rs. 2890 per Are for the acquired lands i.e., Block No. 401 admeasuring 3H 12 Ares, Block No. 401 admeasuring 1H 9 Ares and Block No. 420 admeasuring 2H 2 Ares situated at village Shiradhon.
- b) Claimants would be entitled for interest at 12% p.a. on the amount of compensation from the date of passing of award.
- c) Claimants are entitled for solatium of 30% under Section 23(2) of the Act.
- d) Claimants are entitled for enhanced compensation and would be entitled to claim interest under Section 34 of the Land Acquisition Act @ 9% per annum from the date of Collector's Award. Similarly claimants would be entitled to get interest

@ 9% per annum for first year under Section 28 of the Act and thereafter 15% per annum from the date of award till realization of the amount.

(R. M. JOSHI, J.)

Malani