



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

FIRST APPEAL NO. 740 OF 2019
with Civil Appln. No.2434/2024

The Executive Engineer,
Medium Project Division,
Sinchan Bhavan, Old Ausa Road,
Latur.

V/s.

..... **APPELLANT**

1. Shri. Balaprasad Ganeshlal Sarda,
Age 62 year, Occu. Agriculture,
Bhandarwadi, Tal. Renapur, District:- Latur.
2. Shri. Ramprasad Ganeshlal Sarda,
Age 57 year, Occu. Agri., died through LRs
- 2-A. Prabhavati W/o Ramprasad Sarda,
Age 50 year, Occu. Household,
R/o Bandhuprem Housing Society,
Ambajogai, Tal. Ambajogai, Dist. Beed.
- 2-B. Jugalkishor S/o Ramprasad Sarda,
Age 42 years, Occu. Business, R/o As above.
- 2-C. Sampat S/o Ramprasad Sarda,
Age 33 year, Occu. Business, R/o As above.
- 2-D. Minakashi W/o Manojkumar Lakhotiya,
Age 38 year, Occu. Household, R/o 14-11-631,
New Basti, Hyderabad, (Telangana State).
(L.Rs. are brought on record as per the order
dtd.17.02.2021 passed in C.A. No.7426/2020
3. Shri. Kantaprasad Ganeshlal Sarda,
Age- 50 year, Occu. Agril;
Bhandarwadi, Tal. Renapur, District:- Latur.
4. State of Maharashtra,
Through, Collector, Latur.

..... **RESPONDENTS**

.....
Mr. Ram B. Deshpande, *Advocate for the Appellant*
Mr. D.B. Bhange, *AGP for Respondent-State*
Mr. T.G. Gaikwad, *Advocate for Respondent No.1*
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CORAM : Y. G. KHOBRAGADE, J.
DATE : 26.04.2024

JUDGMENT :

1. Heard finally at admission stage with consent of both the sides.
2. The facts giving rise to this appeal in narrow compass are as under :-
 - (a) The Respondent/Original claimants owned and possessed the land bearing Survey No. 48 ad-measuring 4 H 34 R at village Bhandarwadi, Tq. Renapur, Dist. Latur, (hereinafter referred to be as 'acquired land' for brevity) which has been acquired by the Appellant/Original Respondent for public project, which is subject matter of L.A.R. No. 175/2003
 - (b) The Notification under section 4 of the of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act' for brevity) came to be published on 25.06.1996. The possession of the above said acquired land was taken by the State by way of private negotiation.
 - (c) According to the claimants, the land under acquisition was of good quality, irrigated having facility of water from the well. They were getting crops like sugarcane, banana, paddy, wheat, chilly, green vegetable, hybrid Jawar (Millet), Khapali, sunflower, groundnuts & fruits bearing trees etc from acquired land.

(d) The Special Land Acquisition Officer was pleased to pass an award Dated 22.03.1999 in respect of acquired land and awarded compensation @ Rs. 600/- per R (Rs. 60,000/- per Hector) for S. No. 48 considering Jirayat land. The rate was awarded on the basis of revenue assessment and ready Reckoner.

(e) Feeling aggrieved by the rate of compensation given by the Special Land Acquisition Officer, the claimants had preferred references under Section 18 of the Act before the Reference Court and claimed compensation of the acquired land @ Rs. 10,00,000/- per Acre. The claimants further prayed for separate compensation for Well, Bore Well, Trees and Superstructure- Pipeline i.e. total Rs. 1,78,82,121/- with solatium, component and statutory interest.

(f) The Reference Court considered the rival pleadings of the parties, evidence on record and the arguments advanced on behalf of both the sides, and was pleased to enhance the compensation @ Rs. 2,00,000/- per acre. Further amount of compensation was enhanced in respect of trees and superstructure with 12% additional Component and 30% solatium with interest under Sec. 28 of the Land Acquisition Act.

(g) Being dissatisfied with impugned Judgment and Award passed by learned Reference Court in L.A.R. No. 175/2003, the acquiring body has preferred present appeal under Section 54 of Land Acquisition Act, 1894 on various grounds enumerated in the memo of appeal.

3. Heard Mr. Ram B. Deshpande, learned counsel for the Appellant/ Acquiring body and Mr. T.G. Gaikwad, learned counsel for the Claimants.

4. Mr. Ram B. Deshpande, learned counsel for the appellant vehemently submits that the learned Reference Court committed grave error while granting compensation in respect of subject matter of the appeal without considering the documentary evidence 7/12 extract which can prove what crops are being taken by the Respondents/original claimants. Though, the Claimants claimed about getting Sugar Cane Crops, but they failed to prove receipt about supply of sugar cane to the Sugar Factory and receipt of payment. So also, there are variance in pleadings and evidence about crops taken and standing of trees. It is further canvassed that the learned Reference Court granted compensation mainly on the basis of principle of parity without considering comparative sale deeds of same village, area, location quality, fertility of land as well as availability of water facility, type of crops, transportation facility etc. and all these factors are required for consideration while applying principle of parity of compensation in respect of acquired land, however, the learned Reference Court failed to record finding in this regard. Therefore, the impugned Judgment and Award is illegal and bad in law.

5. It is further canvassed that the learned Reference Court granted exorbitant compensation than the market rate on the basis of Judgment and Awards passed in other reference cases i.e. L.A.R. Nos. 515/2000, 1079/2000 and 838/2000 without considering the distance between two lands and in

absence of village map. Therefore, the impugned Judgment and Award is illegal and bad in law.

6. The learned counsel appearing for the acquiring body canvassed that, on 22.03.1999, the S.L.A.O. passed the award, however, the Respondent/Original Claimant filed reference on 14.06.1999 therefore it is barred by limitation, however, the learned Reference Court passed the impugned Judgment and Award without recording the finding that the reference of the Respondent/Original Claimant was barred by limitation. It is further argued on behalf of the Appellant-Acquiring body that the compensation granted by the learned Reference Court in respect of trees and superstructure in absence of any evidence, so also, there is no specific report of the valuer about existence of pipeline, but the learned Reference Court granted compensation under the head of superstructure which is unjust and unreasonable.

7. It is further canvassed that the learned Reference Court relied upon the Judgment and Award passed in other land reference cases which are pertaining to different villages under different notification as well different quality fertility and crops. To buttress these submissions Mr. Deshpande the learned counsel for the Appellant-Acquiring body placed reliance on the case of

Manoj Kumar Etc Vs. State of Haryana and Ors. Etc. reported in **AIR 2018 SC (Supp) 247.**

8. Mr. T.G. Gaikwad, learned counsel for the Respondents/Original claimants supported the findings recorded by the learned Reference Court. He submits 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 the market value of the land involved which is subject matter of sale instances of identical and similar nature situated at adjacent villages, which have been acquired for the same project. He further submits that the Reference Court has rightly relied upon the Judgment delivered in another L.A.R. 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.

9. Mr. T.G. Gaikwad, learned counsel for the Respondents/Original Claimants relied on the cases of **Union of India Vs. Bal Ram and Anr., AIR 2004 SC 3981 and Ali Mohammad Beigh and Ors. Vs. State of Jammu and Kashmir reported in (2017) 4 SCC 717,** wherein is held that 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.

10. He further submits that in the instant 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 relied on the 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/Original Claimant 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. Having regard to the rival submissions canvassed on behalf of both the sides, I have gone through the record. Needless to say that, the Reference under Section 18 of the Act is not an appeal and 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.

12. In case of **Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona, 1988 (3) SCC 751**, the Hon'ble Supreme Court laid down guidelines about deciding the the Reference under Section 18 of the Act. By keeping in mind said guidelines, it is necessary to examine whether the market value determined by the Reference Court in the LR proceeding is proper, correct and reasonable having regard to the facts of the case as well as evidence available on record.

13. On perusal of impugned Judgment and Award it reveals that the claimant proved Exh.38- Award, Exh.39 - E-statement, Exh.40 - copy of sale deed dated 12.05.1997, Exh.42 - copy of sale deed dated 01.08.1995, Exh.44 - valuation report of fruit and other trees, Exh.47 - panchanama dated 15.04.1997, Exh.59 - 7/12 extract, Exh.61 - letter dated 10.09.2009 issued by M.S.E.D.C.L., Exh.62, 63, 67 to 72 - receipts issued by A.M.P.C., Exh.64 - copy of J.M. report, Exh.75 to 110 - PVC pipes / receipts of agricultural loans /

revenue receipts, sale purchase committee electricity department receipts. The claimants also produced copies of Judgment and Awards passed in L.A.R. Nos. 515/2000 dtd.19.12.2015, 1079/2000 dtd. 29.04.2016 and 838/2000 dtd.1.31.07.2013. On basis of oral as well as documentary evidence and considering the Awards passed by the learned Reference Court in other similarly situated matters, the learned Reference Court enhanced the value of acquired land holding that the acquired land is Bagayat (Irrigated) and ascertained compensation @ Rs. Two Lakhs per acre on the date of notification of said village. In addition the learned Reference Court also granted compensation to the tune of Rs.8,45,680/- towards trees and Rs.1,06,538/- towards superstructure with 12% solatium under Section 23 (1A) on the adjudged amount of the market value from the date of notification U/sec. 4 till the date of the said award (25.06.1996 to 22.03.1999). Further the learned Reference Court granted interest @ 15% per annum on the enhanced compensation for subsequent period under Section 28 of the Land Acquisition Act. However, the learned Reference Court has not justified in awarding 15% per annum interest on the enhanced amount of compensation under Section 28 of the Land Acquisition Act.

14. In similar circumstances Coordinate Bench of this Court in its Judgment dated 29.04.2022 passed in First Appeal No.1/2022 and other

connected matters held that the claimants are entitled for interest @ 9 per annum from the date of award till realization of the enhanced amount of compensation in view of the Full Bench decision in the case of **State of Maharashtra Vs. Kailash Shiva Rangari** reported in **2016 (4) ALL MR 513**.

15. Mr. Deshpande, learned counsel for the Appellants/Acquiring body invited my attention to clause no.6 of operative part of the Judgment. 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).

16. In case of **Ali Mohammad Beigh and Ors. Vs. State of Jammu and Kashmir, (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**.

17. No doubt as per the ratio of **Manoj Kumar Etc. Vs. State of Haryana and Ors.**, (cited supra), relied on behalf of the Appellant/Acquiring body the

Judgment and Award passed in earlier land acquisition proceedings though relevant and admissible in evidence, but cannot be said to be binding in respect of determination of price, it has to be depend on evidence adduced in the case and the Court is required to apply judicial mind and not to follow previous award without due consideration of facts, circumstances and evidence adduced.

18. In the case in hand, the learned Reference Court has applied its judicial mind and after taking into consideration the facts, circumstances and evidence on record pleased to determine the market value coupled with the quality of the land and cropping pattern. Therefore, I do not see any error on the part of learned Reference Court while determining the market value by relying upon Judgments and Awards passed in L.A.R. Nos. 515/2000, 1079/2000 & 838/2000. The compensation determined by the learned Reference Court seems to be 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.

19. 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 the interest from the date of possession.

20. In the case in hand, the possession of the acquired land was not taken by the State by invoking the urgency clause as provided under Section 17 of the Land Acquisition Act. The pleading 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 by 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. In view of the above discussion, present Appeal needs to be partly allowed as under :-

::ORDER::

- (I) The appeal stands partly allowed.
- (II) The Judgment and Award passed in L.A.R. No. 175/2003 by the 3rd Joint Civil Judge, Senior Division, Latur on 23.06.2016 stands modified to the extent of award interest under Section 28 of the Land Acquisition Act, 1894 which reads as under:-

“ The appellants/acquiring body shall pay interest @ 9% per annum to the claimants in LAR proceedings referred above from the date of award passed by the S.L.A.O. till realization on enhanced amount of compensation.”

- (III) Rest of the award passed in the L.A.R. proceeding stands confirmed.
- (IV) The amount of compensation, if any, lying with the Registry, be paid along with accrued interest to the Claimants and excess amount in respect of interest, if any, be refunded to the Appellant-Acquiring body.
- (V) Record and Proceedings be sent back to the concerned Reference Court.
- (VI) The appeal is accordingly disposed off.
- (VII) No order as to costs.
- (VIII) The civil application, if any, stands disposed off.

[Y.G. KHOBRADE, J.]