



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 979 OF 2009

The Executive Engineer, Latur
Minor Irrigation Dv. Latur through
Godawari Marathwada Irrigation
Development Corporation ...Appellant

VERSUS

1. The State Of Maharashtra
2. The Special Land Acquisition Officer,
P.T and I.T. Land Acquisition Officer,
Latur.
3. Vishwanath Mahada Kumbhar (Died)
- 3A. Dhondabai Vishwanath Kumbhar
Age: 65 years, Occ. Household.
- 3B. Sudagar Vishwanath Kumbhar
Age-42 years, Occ. Agri
4. Balaji S/o Vishwanath Kumbhar,
Age: 30 years, Occ. Agriculture,
5. Shivaji s/o Vishwanath Kumbhar
Age: 27 years, occ. Agriculture,
Respondent nos. 3 to 5 R/o.
Village Hangarga (s),
Taluka Nilanga, Dist. Latur ...Respondents

WITH
FIRST APPEAL NO. 980 OF 2009

The Executive Engineer, Latur
Minor Irrigation Dv. Latur through
Godawari Marathwada Irrigation
Development Corporation ...Appellant

VERSUS

1. The State Of Maharashtra
2. The Special Land Acquisition Officer,
P.T and I.T. Land Acquisition Officer,
Latur.
3. Kashinath Mahada Kumbhar,
Age: 65 years, Occ: agriculture,
4. Sheshrao s/o Kashinath Kumbhar,
age – 37 years, Occ. Agriculture,
5. Keshav s/o Kashinath Kumbhar,
age – 30 years, occ. Agriculture,
Respondent Nos. 3 to 5 r/o.
Village Hangarga (s),
Taluka Nilanga, Dist. Latur ...Respondents

...

Ms. Sunita D. Shelke h/f Ms. K. K. Teware & Mr. D. R. Shelke, Advocate for Appellant

Mr. V. M. Chate, AGP for Respondent Nos. 1 and 2

Mr. M. D. Shinde, Advocate for Respondent Nos. 3 to 5

CORAM : R. M. JOSHI, J

DATE : OCTOBER 14, 2025

JUDGMENT :

1. By consent of both sides, heard finally and decided by this common judgment as these Appeals involve similar questions of facts and law.

2. These Appeals are filed by acquiring body against the judgment and award dated 17.07.2008 passed by Reference Court in LAR No. 133/2003 and LAR No. 346/2002 by common judgment.

3. It is the case of the Appellant that notification under Section 4 of the Land Acquisition Act, 1894 (for short '**the Act**') came to be published in the local news paper about proposed acquisition of the lands for the purpose of percolation tank. A government gazette was published to that effect on 11.05.2000 disclosing the proposed acquisitions. Notices were served under Section 12(2) of the Act. An area of 4Acre and 37R came to be acquired from Gut No. 46 (LAR No. 133/2003). From Gut No. 45 (LAR No. 346/2002) land admeasuring 4 Acre 16R was acquired. It is the case of the Appellant that the said lands were seasonal irrigated land and SLAO after taking into consideration the sale transactions for three years from the nearby vicinity, determined compensation @ Rs. 36,000/- per hector. Appellant/Acquiring Body has made grievance with regard to the enhancement of the said compensation to the extent of Rs. 1,35,000/- per acre. It is the case of the Appellant that the Reference Court has failed to take into consideration the evidence led on record in its proper perspective.

4. Amongst other grounds, the awards came to be

challenged for the reason that the claimants failed to adduce any evidence before SLAO when they filed objection under Section 5A of the Act. It is also claimed that after acceptance of the amount of compensation, the award passed by the SLAO ought not to have been challenged in the Reference for enhancement of the compensation. Challenge is also raised on the ground that the enhancement granted in the compensation is exorbitant. Apart from amount of compensation determined by the Reference Court, exception is also taken to the interest awarded from the date of notification and the rental compensation granted to the claimants.

5. Learned Counsel for the Appellant sought to draw attention of the Court to the evidence on record in the form of sale deeds placed before the Reference Court. It is argued that the Reference Court has failed to take into consideration the comparable sale instances and has ignored the sale instances sought to be relied upon by Acquiring Body. It is argued by referring to paragraph 18 of the judgment that the observations made with regard to inadequate

compensation sans reasons. On the point of grant of rental compensation, it is argued that the rental compensation could not have been granted unless it was held by the Reference Court that the possession of the acquired land was taken before notification under Section 4 of the Act. In this regard, by referring to G.R. dated 02.04.1979 and amended G.R. of year 1988, it is submitted that only in case the possession is taken before notification under Section 4 of the Act, rental compensation apply. She drew attention of the Court to the record to argue that there is no material evidence to indicate that the possession of the land was taken before notification. Thus, according to her, the award does not sustain to that effect. So far as the grant of interest is concerned, reference is made to the judgment of Full Bench of this Court in case of *State of Maharashtra vs. Kailash Shiva Rangari, 2016(3) Mh.L.J. 457* and it is submitted that the interest granted by Reference Court from the date of notification cannot sustain and hence, deserves interference.

6. Learned Counsel for claimants supported the

impugned judgment and award by contending that the Reference Court has taken into consideration the sale instances in respect of the adjoining land as reflected from paragraph 14 of the judgment. It is his submission after accepting the fact that the land under the sale instances was superior quality and fertility than the land under acquisition, the compensation amount is determined @ Rs. 1,35,000/- in place of consideration in the said sale instance of Rs. 1,60,000/-. It is his submission that the award passed by the Reference Court cannot be construed as unreasoned one. It is argued with regard to grant of rental compensation and interest that the said compensation and interest has been granted by recording cogent reasons and therefore, this is not a case to cause interference in impugned award.

7. There is no dispute made by the parties with regard to the fact of issuance of notification, notices under Section 12(2) of the Act, passing of the award by SLAO and Reference being made by claimants to Reference Court seeking enhancement of the compensation. This is a compulsory acquisition of the land of the claimants

and as such, they are entitled for reasonable compensation.

8. For the purpose of deciding the compensation, Reference Court was required to take into consideration the comparable sale instances. Sale instance (Exh. 55) is in respect of the land adjacent to the lands in question. The said transaction has taken place for total consideration of Rs. 1,60,000/- per acre. No dispute is made by Acquiring Body with regard to these facts. On the contrary, it is claimed that the land under the sale instance is of superior quality in terms of fertility as compared to the lands under acquisition. Thus, there is sufficient evidence to indicate that sale instance Exh. 55 was comparable. Since the land under acquisition was of inferior quality as compared to the land under sale instance, Reference Court was justified in granting the compensation @ Rs. 1,35,000/- in place of consideration under sale instance of Rs. 1,60,000/-. Obviously, there would involve some guess work in determining the compensation amount and in the facts of the case, the amount determined by the Reference Court cannot be termed as irrational. Having regard to the facts of the

case, this Court finds no reason to cause interference in the award granting compensation to the claimants.

9. In so far as grant of rental compensation is concerned, it would be relevant to take note of G.R. dated 02.04.1979 and amended G.R. of year 1988. It is not in dispute that the rental compensation would be applicable in case the possession of the land in question is taken before issuance of notification and not otherwise. Thus, in order to grant rental compensation, Reference Court ought to have recorded the findings that the lands of the claimants were taken possession before issuance of notification. Perusal of the record does not indicate that the possession was taken before issuance of the notification and as such, this Court finds substance in the contention of the learned Counsel for the Appellant that the rental compensation granted by the Reference Court to the claimants cannot sustain.

10. In so far as the interest is concerned, now the position of law is settled in view of judgment in case of Kailash Shiva Rangari (supra).

11. In view of this, Appeals deserves to be allowed partly. Hence, the order:

O R D E R

- (a) Appeals are partly allowed.
- (b) Order of granting compensation stands confirmed.
- (c) Clause no. 3 of judgment and award granting rental compensation stands set aside.
- (d) Claimants would be entitled for interest @ 12% p.a. from the date of award.

(R. M. JOSHI, J.)