

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

FIRST APPEAL NO.3946 OF 2019

1. The State of Maharashtra
Through The Collector, Osmanabad
 2. The Special land Acquisition Officer
Medium Project No.2, Osmanabad
 3. The Executive Engineer,
Irrigation department, Osmanabad
- .. Appellants
(Orig. Respondents)
- Versus

Nivarutti s/o. Santu Mohite, died through his L.Rs.

1. Nanasaheb s/o. Nivarutti Mohite
Age : adult, Occu : Agril,
R/o. Walwad, Tq. Bhoom, (now Tal. Washi),
Dist. Osmanabad
 2. Ramhari s/o. Nivarutti Mohite,
Age : Adult, Occu : Agril.,
R/o. As above.
- ... Respondents
(Orig. Claimants)

.....
Shri. R. B. Dhaware, AGP for the Appellants / State.
Shri. A. R. Barote, Advocate for Respondent Nos.1 & 2

.....
WITH
CIVIL APPLICATION NO.5812 OF 2015
IN
FIRST APPEAL NO.3946 OF 2019
.....

CORAM : NEERAJ P. DHOTE, J.
Dated : 05.05.2025

JUDGMENT :-

. This is the First Appeal under Section 54 of the Land Acquisition Act, 1894 (in short, 'L.A. Act') by the State against the Judgment and Award dated 16.08.2011 passed by the learned Jt. Civil Judge Senior Division, Osmanabad (hereinafter referred to as the 'Reference Court') in

LAR No.34/2005, granting the rate of Rs.50,000/- (Rs. Fifty Thousand) per Acre for acquisition of agricultural land bearing Gat No.146 admeasuring 2 Hectors, 56 Ares i.e. 6 Acres, 16 Ares, situated at village Walwad (Mohite Nagar), Tal. Bhoom, Dist. Osmanabad for the Percolation Tank which was initiated by the Land Acquisition Officer (for short, 'LAO') in file No.1999/LAQ/A/10.

2. The facts giving rise to the present Appeal are as under :-

2.1. The above referred land of the Respondents came to be acquired for the above referred purpose. Section 4 Notification was published in the Government Gazette on 04.05.2000 and Section 6 Notification was published on 03.05.2001. The Award was passed by the LAO on 29.01.2003 determining the rate of acquired land as Rs.30,000/- (Rs. Thirty Thousand) per Hector and granted Rs.1,18,856/- (Rs. One Lakh Eighteen Thousand Eight Hundred Fifty Six) for the trees. The Claimants being not satisfied with the compensation awarded by the LAO filed the Reference under Section 18 of the L.A. Act claiming the rate of Rs.80,000/- (Rs. Eighty Thousand Only) per Acre. The Claimants led the evidence in support of the Claim Petition which was contested by the LAO by filing Written-statement below Exh.13. On appreciating the evidence available on record, the learned Reference Court passed the impugned Judgment and Award.

3. The learned AGP appearing for the State submitted that, the State Government has taken policy decision by issuing Government Resolution dated 03.11.2016 and Corrigendum dated 23.02.2017 not to challenge the Awards of the Reference Court, wherein the compensation enhanced is up to four (4) times of the compensation awarded by the SLAO / LAO. He submits that in the case on hand, the rate awarded by the LAO is Rs.300/- (Rs. Three Hundred) Per Are, which is enhanced by the learned Reference Court to Rs.1250/- (Rs. One Thousand Two Hundred Fifty) Per Are. He submits that the enhancement is very little over four (4) times than the compensation awarded by the LAO.

4. It is submitted by the learned Advocate for the Respondents – Orig. Claimants that the impugned Judgment and Award is based on concrete evidence led by the Claimants before the learned Reference Court and by considering the same, the enhanced compensation is awarded. He submits that, First Appeal Nos.463 of 2016 and 464 of 2016, which were the Appeals filed by the State against the enhancement of same rate in connected matters, wherein the acquisition was for the Percolation Tank at Bhoom, have been dismissed by Judgment and Order dated 29.06.2017. They submit that the Appeal may be dismissed.

5. The learned AGP appearing for the Appellant – State does not dispute the aforesaid factual aspect and dismissal of the said Appeals preferred by the State.

6. There is no dispute on the aspect to the extent of land acquired by the State for the above referred purpose. There is no dispute that the Respondents are the Sons of the Orig. Claimant, named, Nivarutti Santu Mohite. Both the sides took me though the impugned Judgment and Award. The observations in the impugned Judgment and Award shows that the compensation was restricted to the rate of acquired land. The learned Reference Court considered the evidence led by the Claimants which comprises of 7/12 extract of the acquired land and electricity bill of the acquired land. There is observation in paragraph no.15 of the impugned Judgment that *“it is an admitted fact that there is a well in the acquired land and the LAO has also paid compensation for it.....”*. The electricity bill at Exh.21 shows that the electricity connection for 3 H.P. was standing in the name of Claimants’ father. *‘Even on page no.3 of the Award Exh.15 it has been noted that always there used to be crops of Jowar, Tur, Mug, Cotton etc in the acquired land.’* Considering all these aspects it can be safely be concluded that owners of acquired land were taking crops twice in a year.

7. On perusal of the paragraph no.17 of the impugned Judgment, it is seen that the Respondents relied on Sale Instances at Exhs.17 and 18. It is seen from paragraph no.18 of the impugned Judgment and Award that Sale Instance at Exh.18 was not accepted by the learned Reference Court. In paragraph Nos.21, 22 and 23, the following observations were made :

“21. It is thus seen that in both the above cases the acquired lands were seen in the area having building potentiality and surrounding area was developed. But that doesn't mean that no increase in rate per year at all is permissible. If 10% increase is granted per year for the land covered by sale deed Exh.17 then in the year 2000 the price would be Rs.1,40,000/- approx. But as observed earlier, land under Exh.17 is adjacent to gaothan area and road and hence purchaser must have paid more price. Therefore, on the basis of guessing it can be said that the price of land under Exh.17 in the year 200 might have been in between Rs.1,10,000/- to 1,20,000/- had it not been adjacent to gaothan and road. It means rate for one acre comes to Rs.48,000/- approximately Rs.1,10,000/- for one hectare). It has come in the evidence of claimant No.1 that the land under Exh.17 is at a distance of ½ km from the acquired land in village Walwad.

22. Moreover, we have some sale instances as quoted in the award Exh.15. It is seen that there are as many as 5 sale transactions in which the rate of one hectare was in between Rs. 1 lac to Rs.1.25 lacs. It means the rate of one acre was in between Rs.40,000/- to Rs.50,000/-. Those five transactions were entered into during the period from 16.04.1999 to 07.12.1999. In the instant case, we have to see market value of acquired land on the date of publication of notification under section 4 of the LA Act on 04.05.2000. Admittedly in the acquired land there was a well for which compensation to the extent of Rs.46,576/- was paid to the claimants. Thus, it was an irrigated land. Land covered by different trees in that land was hardly admeasuring 13 gunthas. The version of claimant No.1 that at Walwad there were facilities like schools, hospital, roads electricity, market etc. is not seriously disputed.

23. In view of above discussion I am of the opinion that the market value of the acquired land should have been estimated @ Rs.50,000/- per acre instead of Rs.12,000/- per acre as was done by the LAO. The claimants have established that LAO has awarded inadequate compensation. In the quoted decision of Apex Court in Mahesh Thirthkar vs. State of Maharashtra: (2009 All SCR 1335) it was held in para 29 that if the claimant is able to show by evidence that compensation awarded is inadequate the onus shifts on the State to prove by adequate evidence that compensation awarded was just and proper. In the case in hands, the respondents have contended with mere stand that the LAO has taken into consideration all relevant actors and awarded just and reasonable compensation. But they have not adduced any sort of evidence.”

8. There is nothing to show that the observations and conclusion drawn by the learned Reference Court were perverse. The learned AGP does not dispute that, the enhanced compensation by the learned Reference Court was based on the evidence available on record. However, from the observations made in paragraph-9 of the impugned Judgment and Award, shows that the possession of the acquired land was taken on 12.04.1998 i.e. prior to Notification under Section 4, and the learned Reference Court granted the statutory benefits i.e. interest etc from the date of possession of the acquired land. This aspect needs to be corrected in the light of the Judgment of this Court in **State of Maharashtra v. Kailash Shiva Rangari, 2016 SCC OnLine Bom 2236.**

9. In view of the above observations, the Appeal is liable to be partly allowed by modifying the grant of interest in accordance with the above referred Judgment in **Kailash Shiva Rangari (supra)** . Hence the order.

ORDER

- (i) The Appeal is partly allowed.
- (ii) The interest and statutory benefits granted by the learned Reference Court be determined as per **State of Maharashtra vs. Kailash Shiva Rangari, 2016 SCC OnLine Bom 2236.**
- (iii) Record and Proceedings be sent back to the learned Reference Court.
- (iv) Pending Civil Application, if any, stands disposed off.

(NEERAJ P. DHOTE, J.)

GGP