



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

FIRST APPEAL NO.5148 OF 2017

- 1) Godavari Marathwada Irrigation
Development Corporation,
through its Executive Engineer,
Latur Minor Irrigation Division, Latur
 - 2) Executive Engineer, Minor Irrigation
Division, Latur
- ... APPELLANTS**

VERSUS

- 1) Nanasaheb s/o Apparao More,
Died through L.Rs.
- 1/1. Chandrakalabai w/o Nanasaheb More,
Age 45 years, Occ. Household
- 1/2. Lalasaheb s/o Nanasaheb More,
Age 24 years, Occ. Agri.
- 1/3. Baburao s/o Nanasaheb More,
Age 24 years, Occ. Agri.
- 2) Bhausahab s/o Apparao More,
Age 43 years, Occ. Agri.
- 3) Balasaheb s/o Apparao More,
Age 46 years, Occ. Agri.
- 4) Vilas s/o Apparao More,
Age 40 years, Occ. Agri.

All R/o Khopegaon/ Kava,
Tq. & Dist. Latur

- 5) The State of Maharashtra
through Collector, Latur
(Copy to be served on G.P.,
High Court, Bench at Aurangabad)... **RESPONDENTS**

.....
Mr. S.G. Sangle, Advocate for appellants
Mr. P.P. More, Advocate holding for
Mr. S.C. Swami, Advocate for R.No.1/1 to 1/3, 2 to 4
Mrs. K.B. Patil Bharaswadkar, A.G.P. for respondent No.5
.....

WITH

**CROSS-OBJECTION NO.48 OF 2022 IN
FIRST APPEAL NO.5148 OF 2017**

- 1) Nanasaheb s/o Apparao More,
Died, through L.Rs.
- 1/1. Chandrakalabai w/o Nanasaheb More,
Age major, Occ. Agri.
- 1/2. Lalasaheb s/o Nanasaheb More,
Age major, Occu. Agri.
- 1/3. Baburao s/o Nanasaheb More,
Age major, Occ. Agri.
- 2) Bhausahab s/o Apparao More,
Age major, Occ. Agri.
- 3) Balasaheb s/o Apparao More
Age major, Occ. Agri.
- 4) Vilas s/o Apparao More,
Age major, Occ. Agri.

All R/o Khopegaon & Kava,
Taluka and District Latur ... **CROSS-OBJECTORS**

VERSUS

- 1) The State of Maharashtra
through Collector, Latur
- 2) The Executive Engineer,
Minor Irrigation Division, Latur
- 3) The Special Land Acquisition Officer,
(M.I.W.) Latur,
Taluka and District Latur ... **RESPONDENTS**

.....
Mr. P.P. More, Advocate holding for
Mr. S.C. Swami, Advocate for Cross-Objectors
Mr. A.V. Deshmukh, A.G.P. for State
Mr. S.G. Sangle, Advocate for respondent No.2
.....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

**Date of reserving judgment : 20th December, 2024.
Date of pronouncing judgment : 18th February, 2025.**

J U D G M E N T (PER : R.G. AVACHAT, J.) :

This is an appeal under Section 54 of the Land Acquisition Act, 1894 (for short the Act). The appellants are the acquiring body. The agricultural land, bearing Gut No.68, admeasuring 2 Hectors 2 R (Gunthas), belonged to the

respondents (Cross-Objectors). The land was situated at village Kava, Taluka and District Latur. The said land was acquired for construction of "Katapur Minor Irrigation Tank". The acquisition proceedings were initiated in April 1993 and concluded in August 1997. The possession of the land was taken over before publication of notification under Section 4 of the Act.

2. The Land Acquisition Officer (LAO) offered compensation at the rate of Rs.430/- per R (Guntha). The respondents, therefore, preferred Land Acquisition Reference (LAR), No.28/2001. Learned Adhoc District Judge-III, Latur (Reference Court) decided the LAR, enhancing the compensation to Rs.1000/- per R (Guntha), besides statutory benefits. It directed to pay interest under Section 34 of the Act from the date of the Section 4 notification for the first year at the rate of 9% p.a. and for further years at the rate of 15% p.a.

3. The acquiring body, being aggrieved by the judgment and award enhancing the compensation, has preferred this Appeal.

4. Heard. Learned Advocate for the appellants would submit that, the Reference Court granted exorbitant compensation. The interest under Section 34 of the Act ought to have been awarded from the date of award and not from the date of publication of notification under Section 4 of the Act since the possession of the land had been taken over before Section 4 notification was published. According to him, the land Gut Nos.165 and 166 were situated within the Municipal limits of Latur Municipal Corporation and were also converted to non-agricultural use. The land of the respondents would in no way be comparable with the said lands. The Reference Court held the sale instances relied on by the respondents-claimants were pertaining to the lands situated within the Municipal Corporation limits i.e. urban area. The distance between Latur and Kava was not less than 15 Kms. Location of the acquired lands carried much importance. He would further submit that, the respondents proposed to rely on award passed in LAR Nos.711, 716, 719 and 327 of 1998, vide judgment dated 28/8/2015. Those awards have been under challenge in First Appeal, No.408/2018 along with companion

First Appeals. As such, the quantum of compensation decided therein did not attain finality. Moreover, the lands covered by those Land References were situated within the Municipal limits. The Reference Court considered non-agricultural potentiality of the land and, therefore, granted compensation at the rate of Rs.28/- per sq.ft. The land of the respondents did not have any proximity to the developed area. The burden of proof was on the respondents. They did not discharge the same. Merely relying on award passed in respect of some other land situated within the limits of other village would be of no assistance to the respondents. The learned Advocate for the appellants relied on the following judgments :-

- (1) Umesh Gupta Vs. State of Haryana
2017 DGLS (SC) 1472
- (2) Spl. Land Acquisition Officer Vs. Lakhamsi Ghelabhai
AIR 1960 Bom 78
- (3) Manoj Kumar Vs. State of Haryana & ors.

5. According to learned Advocate for the appellants, the award passed in some other matters to which the respondents are not parties, may only be a piece of evidence

but not conclusive proof. The learned Advocate, therefore, urged for allowing the Appeal and rejection of the Cross-Objection.

6. Learned Advocate for the respondents/ Cross-Objectionists, on the other hand, placed on record a map of the villages with land numbers covered by Katapur irrigation Tank and some other lands which have been acquired for resettlement of project affected persons from the nearby villages. He has also relied on the judgment of learned Single Judge of this Court in First Appeal No.3724/2017 and judgment and award rendered in First Appeal No.1241/2013 with two companion appeals, decided on September 29, 2021. Moreover, the judgment and award passed by Reference Court in LAR Nos.711/ 716, 719, 727 of 1998, dated 28/7/2015 has also been relied on. The learned Advocate would submit that, one of us (R.G. Avachat, J.) has decided First Appeal No.1241/2013 with two companion appeals granting compensation at the rate of Rs.28/- per sq.ft. Lands therein were situated at village Khopegaon, Taluka and District Latur. According to learned Advocate, the land of the respondents

was nearby the land bearing Gut No.165. The distance between Latur and the land of the respondents was not more than 7 Kms. It has non-agricultural potential as well. He, therefore, urged for grant of equal compensation i.e. at the rate of Rs.28/- per sq.ft. with necessary statutory benefits.

7. Considered the submissions advanced. Perused the impugned judgment and award. Some dates, material to decide the present proceedings are as follows :

1)	Publication of the notification under Section 4 of the Act	19/12/1993
2)	Possession of the land was taken over	Before publication of notice under Section 4
3)	Date of award	16/6/1997

8. The Reference Court, for enhancing compensation from Rs.430/- per R (Guntha) to Rs.1000/-, observed as under:

“13. The data of sale instances referred in the Award will show that sale instances so collected by LAO have range of market price between 33,127/- to 81,300/- per H. Minute details of the same will further show that 21 sale instances had collected by LAO in respect of plots and lands right from 10/03/1992 to 04/12/1992. here I find one more

mistake on the part of LAO that he has wrongly mentioned date of notification as 22/04/1993 in fact it should have been 19/12/1993. This date carries much importance to the point that which sale instance may be called as pre notification one and which may be called as post notification one. Not only this date is also material for calculation of statutory benefits. At the end, LAO with the help of exercise made by him pleased to award compensation at the rate of Rs.430/- per R. On taking turn to evidence led by the claimants I with a great surprise came to know that they have relied upon sale instances of that plots and lands which are part and parcel of Latur town. According to me, those can not be considered from enhancement point of view since one is required to draw a line of difference urban and Rural area. The distance between Latur and village Kawha is not less than 15 Kms. The location of the acquired land carry much importance in order to assess the market price, but I am unable to draw any inference to that effect since no map showing location of Gat number or survey number of village Kawha is filed on record. Claimants have filed judgment in earlier LARs Exhs.19 & 20 but I am declined to consider its relevancy since they are from different awards and in respect of lands from other villages. According to me, I am of the firm opinion that there is no scope for enhancement with the help of sale instances and judgments in earlier Awards. On taking turn to observations of the cited case I came to know that the ratio therein is useful and I must accept the same when I am going to assess market price of the dry and irrigated land. Unfortunately, no case is made out by claimant to this effect that acquired land is irrigated one, all lands are dry as of practice. The claimants have sought enhancement as per sq.ft. but I declined to accept the same for the reasons stated supra. At the same time, I came to know that, there is a scope for enhancement with the help of sale instance of highest price so

collected by the LAO. Para No.7 of the Award Exh.15 will show that land at Sr.No.9 from the list of sale instances at village Kawha is sold at the rate of Rs.813/- per R. I find no hesitation to consider this sale instance from enhancement point of view with 15% escalation because that sale instance is of the year 1992 and notification u/Sec. 4 of the Act is of the year 1993. In the result, I am of the opinion to fix the land value @ Rs.1,000/- (Rs. One thousand) per R only.. . . .”

9. Close reading of the aforesaid reasons lead us to conclude that the Reference Court has taken into consideration the sale instance pertaining to the land situated in the very village (Kavha) whereat the land of the respondents was located. The sale instance was also closer to the date of notification under Section 4 of the Act. The Reference Court rounded up the figure of Rs.813/- per R to Rs.1000/- by granting escalation of 15% since the sale instance was somewhat prior to the date of notification. We, therefore, do not find any reason to reduce the rate of compensation granted by the Reference Court.

10. It has, however, committed a mistake in granting interest under Section 34 of the Act from the date of notification

under Section 4 i.e. from 19/12/1993. In view of the judgment of this Court in **State of Maharashtra Vs. Kailash Shiva Rangari [(2016) 4 ALLMR 513]**, the interest ought to have been awarded from the date of award i.e. 16/6/1997 since the possession of the land was taken over before publication of notification under Section 4. To this extent, we are inclined to modify the order impugned herein. The respondents would be entitled to interest component at the rate of 9% p.a. for the first year and at the rate of 15% p.a. for the onward period until the amount of enhanced compensation is paid i.e. from the date 16/6/1997 to 15/6/1998 at the rate of 9% p.a. and for further period till the amount is paid, at the rate of 15% p.a.

11. Turning to the cross-objection preferred by the respondents/ land owner for enhancement of compensation are concerned, it is to be stated that, the impugned award has been passed on 19/9/2008 while the cross-objections have been preferred in August 2017 i.e. about 9 years after the award was passed. The same suggests that the respondents/ land owners/ claimants were content with the amount of compensation awarded by the Reference Court. Be that as it

may. We have to decide the same on its own merits. Close reading of the impugned judgment and award would indicate that the claimant had not relied on any of the sale exemplar before the Reference Court. The Reference Court referred to one of the sale deeds in the group of sale deeds considered by the Land Acquisition Officer. The sale deed was from the very village whereat the land acquired was situated. It was a sale instance, wherein rate per R was Rs.813/-. The Reference Court added 15% thereto towards escalation in price since the sale deed was of a year before the date of notification. By rounding up the figure, the Reference Court awarded Rs.1000/- per R.

12. Before us, a map of the relevant villages was produced as an additional evidence. The learned Advocate relied on copies of judgments passed by learned Single Judges of this Court, in First Appeal Nos.3724/2017, 1241/2013, 715/2019 and First Appeal Stamp No.33295/2014 and related matters. In First Appeal No.3724/2017, decided on 18/9/2017, the rate per R was granted at Rs.28/-. The said judgment and award was passed relying on the judgment and

order dated 6/2/2015, passed in First Appeal Stamp No.33295/2014. The lands comprised therein were from the village Kanheri. Close reading of the judgment would indicate that the Land Acquisition Officer had taken into consideration non-agricultural potential value of the land and awarded compensation at the rate of Rs.51/- per sq.mtr. The learned Advocate then relied on the judgment delivered by one of us (R.G. Avachat, J.) in First Appeal No.1241/2013 and two connected First Appeals. It was a case pertaining to the land situated at village Khopegaon, Taluka and District Latur. The lands were acquired for resettlement of the village. Rate of Rs.28/- per sq.ft. was granted therein for the following reasons:-

“3. Admittedly, the lands belonging to one Dagadu Saheb s/o. Limbaji Dhengale and Balbhim Dhengale were acquired for the very purpose, for which the lands of the appellants herein have been acquired. The lands of said Dagdu and Balbhim are from very village-Khopegaon. In the very land acquisition proceedings, the lands of the appellants have been acquired. Both Dagadu and Balbhim preferred L.A.R. Nos.215 of 1998 and 216 of 1998, respectively. The reference court, vide its judgment and order dated 03.09.2015, enhanced the amount of compensation granting it at the rate of Rs.28/- per sq. ft. Said judgment and award

was challenged by the State/acquiring body in First Appeal Nos.3724 of 2017 and 3725 of 2017. This Court, vide its order dated 18.09.2017, dismissed both the appeals. As such, the amount of compensation at the rate of Rs.28/- per sq. ft. has been confirmed. It has been observed by this Court in the order dated 18.09.2017 that the reference Court has also deducted 60% towards development charges and it appears that the reference court awarded modest compensation. As such, the appellants herein, being similarly placed, are entitled to have compensation at the rate of Rs.28/- per sq. ft.”

13. The land owners would, therefore, not be benefited by relying on the judgment in first Appeal No.1241/2013 and connected appeals. The Reference Court has also observed that the claimants have failed to prove the lands acquired to have been irrigated one. The distance between Latur town and village Kava, whereat the acquired land is situated, was then stated to be 15 Kms. True, with the development of area or inclusion of fringe villages within the limit of Municipal Corporation, Latur, the distance might have been reduced. We have, however, to see the position as on the date of notification under Section 4 of the Act. So far as reliance on the judgment in LAR No.638/1998 and connected matters are concerned, the lands therein (Gut No.165) were situated within

the limits of Latur city. Those were surrounded by official and commercial buildings. The lands had non-agricultural potential for residential purpose. So is not the case herein. On the contrary, the map shows that the land of the claimants/respondents is beyond the brooklet.

14. For all these reason, we are not inclined to grant compensation either at the rate of R.20/- or Rs.28/- per sq.ft. We are, however, inclined to grant some more compensation. Admittedly, the State Government has a policy not to prefer appeal in a case where the enhancement is not more than four times of the amount awarded by the Special Land Acquisition Officer. In the case in hand, the Special Land Acquisition Officer granted compensation at the rate of Rs.430/- per R. Four times thereof comes to Rs.1720/- per R. While the Reference Court granted the same at the rate of Rs.1000/- per R. In the facts and circumstances of the case and as an exception, we are inclined to enhance the same to Rs.1720/- per R, besides grant of necessary statutory benefits as have already been granted by the Reference Court, subject to the

dates stated hereinabove for deciding the acquiring body's appeal.

15. The claimants would not be entitled for the component of interest for the delay of about 10 years and 10 months in preferring the Cross-Objection i.e. from the date of award passed by the Reference Court i.e. 19/9/2008 till the date of filing of the Cross-Objection

16) In the result, the Appeal and Cross-objection are disposed of in terms of the following order :-

ORDER

(i) The First Appeal and Cross-Objection are partly allowed. The compensation granted by the Reference Court at the rate of Rs.1000/- per R is enhanced to Rs.1720/- per R, besides 30% solatium and 12% additional component.

(ii) The interest under Section 34 be paid at the rate of 9% p.a. for the first year from the date of award and for further years until the amount is paid, at the rate of 15% p.a. except for the period of about 10 years and 10 months i.e. from the

date of award (19/9/2008) to 11/7/2019 (the date of order of registration of the Cross-Objection is allowed). (The registration of the Cross-Objection was refused for want of steps/ attending to the proceedings).

(iii) The appellants/ acquiring body shall pay the amount of compensation/ deposit with this Court, in terms of this modified award within four months (since it is informed that no amount has yet been paid to the respondents/ land owners).

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-