



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1779 OF 2022

ALKA SHANKARRAO KAWATHEKAR AND ANR

VERSUS

THE STATE OF MAHARASHTRA AND ORS

WITH

CIVIL APPLICATION NO. 12678 OF 2024

IN FA/1779/2022

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Advocate for Appellants : Mr. Chavan Sudhir K.
AGP for Respondents-State : Mr. S. N. Morampalle.
Advocate for Respondent No.3 : Mr. Ingole R. K.

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CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 02.02.2026

PRONOUNCED ON : 24.02.2026

FINAL ORDER :

1. Heard both sides finally.
2. Appellants are questioning judgment and award dated 15.09.2014 passed in LAR. No.353 of 2010.
3. Learned counsel Mr. Sudhir Chavan appearing for the appellants submits that area of 24.60 sq.mtrs. was acquired which was located in the heart of the city and meager compensation @ Rs.4030/- per sq.mtr. was awarded which is

grossly inadequate. He would submit that sale instances at Exh.19 or 21 should have been considered for awarding rate of Rs.42,777/- or Rs.54,315/- per sq.mtr. respectively. He would further submit that the rate awarded in LAR. No.422 of 2010 is also akin to the market value of the land acquired. But the Reference Court discarded the same for very perverse reasons. It is submitted that no appeal was preferred against the judgment dated 27.02.2012 passed in LAR. No.422 of 2010. It is submitted that appellants are entitled to receive rate of Rs.43,000/- per sq.mtr.

4. Per contra, learned counsels for the respondents would support the impugned judgment. They would submit that Reference Court considered the sale instances and rightly arrived at conclusion to grant 30% of the enhancement. It is submitted that the instructions have been received to prefer appeal against the judgment dated 27.02.2012 passed in LAR. No.422 of 2010. It is further submitted that the rate fixed in LAR. No.422 of 2010 is not compatible because that is very exorbitant and arbitrary.

5. I have considered rival submissions of the parties.

Appellants' property admeasuring 24.60 sq.mtrs. situated at Sarafa Bazar, Nanded bearing CTS.No.141/2 was acquired by notification issued on 13.11.2006. SLAO passed award on 13.10.2008 by offering rate of Rs.3100/- per sq.mtr. Appellants' claimed rate of Rs.45,000/- per sq.mtr. and the matter was referred to the Reference Court. The Reference Court without specifically relying upon any sale instances preferred to enhance the rate by 30%. Thus, rate of Rs.4030/- per sq.mtr. is fixed by the Reference Court.

6. It needs to be clarified that appellants did not adduce any evidence about the nature of the property. The valuation report has not been placed on record. No oral evidence is adduced to disclose area of open space or the area of the construction. Therefore, the Reference Court fixed the rate without making any bifurcation of the land and the constructed portion. This Court has also not been pointed out the nature and portion of constructed area.

7. The acquisition of the properties is for widening of the road from Barki Chowk to Bhojlal Gawali Chowk for Guru-Ta-Gaddi function of 2008. It is located at Sarafa Bazar which is

densely populated location. It's a commercial place. It is evident that the rates for the area of Sarafa Bazar are very high. During the course of argument, learned counsel Mr. Chavan relied upon Exh.19, 21 and judgment dated 27.02.2012 in LAR. No.422 of 2010.

8. The sale deed at Exh.19 is of 21.08.1999 which is preceding 07 years of the notification dated 13.11.2006. The rate for 15.30 sq.mtr was Rs.22,875.81 per sq.mtr. There is a considerable time gap between the sale deed and the notification. This sale instance will not enure to the benefit of the appellants. Another sale instance at Exh.21 shows sale deed of 20.03.2009. It is for open space of 13.44 sq. mtrs. and the rate is Rs.74,404.76 per sq. mtr. This sale instance is post notification and it is of only open space. I am not inclined to accept the sale deed.

9. I have gone through judgment dated 27.02.2012 passed by the Reference Court in LAR. No.422 of 2010. In that case, land of 15 sq. mtrs. and constructed 30 sq. mtrs. was acquired. The Reference Court considered various sale instances. The private valuer was examined and his report was taken into

account. By reasoned order, rate of Rs.43,000/- per sq. mtr. for the land and Rs.5,500/- sq. mtr. for the constructed area is arrived at.

10. This judgment was sited before the Reference Court, but it was discarded on the ground that it was informed that appeal was preferred against the judgment. It revealed that no such appeal was ever preferred by the acquiring body. Learned counsel for respondent No.3 submits that now instructions have been received to prefer appeal. I am of the considered view that Reference Court is misrepresented by the acquiring body. The judgment in that case was delivered on 27.02.2012 before 14 years. I am not inclined to entertain a plea that acquiring body is likely to prefer appeal and therefore, the judgment is to be discarded.

11. It reveals from the judgment dated 27.02.2012 passed in LAR. No.422 of 2010 that the property in that case was also acquired for road widening due to Guru-Ta-Gaddi function. Considering the oral evidence in the present matter it can be said that the property under the acquisition and property i.e. CTS.No.16960 in that reference are closely located and in the

same lane. I do not find that there can be any difference of rates in between those properties. Pertinently, notification in LAR. No.422 of 2010 was issued on 19.06.2007. In the present matter, the correction to the notification was published on 27.09.2007. Hence, the rate fixed in LAR. No.422 of 2010 appears to be compatible and closure to the market value. I am inclined to accept the rate of Rs.43,000/- per sq. mtr. It is desirable to allow the first appeal.

12. Simultaneously, I find that award of interest by the Reference Court is not in accordance with law laid down in *State of Maharashtra Vs. Kailash Shiva Rangari [2016 AIR (Bom.)141]*. I, therefore, pass following order :

ORDER

- (i) First appeal is allowed partly.
- (ii) The appellants shall be entitled to receive rate of Rs.43,000/- per sq. mtr. for the entire acquired area.
- (iii) The appellants shall not be entitled to interest and statutory benefits for the delayed period.

- (iv) The appellants shall be entitled to interest under Section 28 and 34 of the Land Acquisition Act, 1894 as per law laid down in the judgment of Full Bench in case of *State of Maharashtra Vs. Kailash Shiva Rangari [2016 AIR (Bom.) 141]*.
- (v) Save and except above modification. Impugned judgment and award shall stand unaltered.
- (vi) The appellants shall pay deficit court fees, if any.
- (vii) Record and proceeding be sent back to the concerned Court, if any.
- (viii) Award be drawn accordingly.
- (ix) In view of disposal of first appeal, pending civil application does not survive. Civil application as such is disposed of.

(SHAILESH P. BRAHME, J.)

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