

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2193 OF 2008

The State of Maharashtra
Through Special Land Acquisition Officer No.2,
Jalgaon.

... Appellant

... Versus ...

Ramjan Kalu Tadvi,
Age 40 yrs., Occ. Agri.,
R/o Jinasi, Tq. Raver, Dist. Jalgaon.

... Respondent

...

Mr. A.M. Phule, AGP for appellant
Respondent – served.

...

WITH

FIRST APPEAL NO.2194 OF 2008

The State of Maharashtra
Through Special Land Acquisition Officer No.2,
Jalgaon.

... Appellant

... Versus ...

Rashid Sherkha Tadvi
Since deceased through legal representatives -

1 Rashid Rasul Tadvi,
Age 35 yrs.,

2 Habib Rasul Tadvī
Since deceased through legal representatives -

- A) Aslam Habib Tadvī,
 Age 10 yrs.,
- B) Salim Habib Tadvī,
 Age 8 yrs.,
- C) Kaleem Habib Tadvī,
 Age 4 yrs.,
- D) Jahida d/o Habib Tadvī,
 Age 6 yrs.,
- E) Sakina w/o Habib Tadvī,
 Age 27 yrs.,

Nos. A to D are minor and under
Guardianship of their natural mother (E).

3 Sakina w/o Ismail Tadvī,
 Age 33 yrs.,

4 Madina w/o Ramjan Tadvī,
 Age 29 yrs.,

All are r/o Ambhora, Tq. Raver, Dist. Jalgaon.

... **Respondents**

...

Mr. A.M. Phule, AGP for appellant

Respondent – served.

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 31st JULY, 2020

COMMON JUDGMENT :

1 Both these appeals are arising out of same project, wherein the reference Court had decided the references on the same day and by common Judgment. The respondents herein had filed Land Acquisition Reference No.460/1991 and 461/1991 before Civil Judge Senior Division, Jalgaon. They came to be decided on 18.02.2000.

2 The original claimants have agricultural land in village Jinasi, Tq. Raver, Dist. Jalgaon. In L.A.R. No.460/1991 land admeasuring 01 H 10 R and 0.20 *potkharab* land from Gat No.32 was acquired and in L.A.R. No.461/1991 land admeasuring 00 H 55 R with 0.05 R *potkharab* land was acquired from Gat No.76/2 for submergence of Ambhore Medium Project. Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred as “the said Act”) came to be issued on 06.02.1986 and the Special Land Acquisition Officer (for short, “Special LAO”) had declared the Award under Section 11 of the said Act on 14.06.1989. The possession of the land has been taken by the private negotiations. The rate awarded by Special LAO was Rs.10,000/- per hectare i.e. Rs.100/- per R for jirayat land. Thus, the amount, which was granted in L.A.R. No.460/1991 by Special LAO, was to the tune of Rs.11,012/-, whereas for the land in L.A.R. No.461/1991 the

compensation declared by the Special LAO was Rs.5,505/-. By the said reference both the claimants contended that the amount of compensation granted by Special LAO was too meagre and not as per the market rate. They claimed Rs.30,000/- per acre i.e. Rs.750/- per R.

3 The Government protested the claim by filing written statement. It was contended that the determination of the compensation by Special LAO was as per market value and Special LAO has considered all the relevant factors, which are required to be considered while granting compensation. It was also stated, that the claimants have received the amount of compensation without any protest, and therefore, the claim is barred. It was also stated, that the compensation that has been awarded by Special LAO is proper, adequate and legal.

4 Taking into consideration the rival contentions, issues were framed, parties have led the evidence, especially the claimants have led oral as well as documentary evidence. They have produced a sale instance at Exh.23, which is a sale deed dated 11.01.1979 between one Bhavan Bhika Mahajan and Namdeo Nathu Vishwe. It was in respect of land Gat No.201 admeasuring 20 R from village Kochur. The said land was sold for Rs.12,000/- i.e. Rs.600/- per R.

5 After considering the evidence and hearing both sides the learned reference Court has enhanced the compensation to Rs.50,000/- per hectare i.e. Rs.500/- per R for jirayat land and Rs.250/- per R for *potkharab* land. Thus, the claimant in L.A.R. No.460/1991 has been awarded compensation of Rs.60,000/-, whereas the claimant in L.A.R. No.461/1991 got Rs.28,750/- as compensation. These two Awards by the reference Court are under challenge by the Government in both these appeals.

6 Heard learned Advocate Mr. A.M. Phule for the appellant-State in both matters. Both the respondents in both the appeals were duly served, however, they remained absent. They have not engaged any Advocate. Perused the record and proceedings.

7 It has been vehemently submitted on behalf of the State, that the enhancement by the reference Court is more than the parameters. Notification under Section 4 of the said Act was published on 06.02.1986 but then the sale instance was of the year 1979. The sale instance which could have been in the recent past ought to have been considered. Further, the reference Court failed to consider, that the distance between village Jinasi and Kochur is about 3-4 k.ms.. No sale instance from village Jinasi was produced. Further, the interest has been awarded from the date of possession, which is against the Full Bench decision of this Court in **State of**

Maharashtra vs. Kailas Shiva Rangari, 2016 (4) ALL M.R. 513 (FB), it should be from the date of the Award. He, therefore, prayed for modification of the Award.

8 At the outset, it is to be noted that there is no counter documentary evidence adduced by the State, when the claimants had produced documentary evidence as well as they examined one witness by name Shankar Hema Lomate, who was the attesting witness to the sale deed Exh.23. It has come on record that the distance between village Jinasi and Kochur is about 3-4 k.ms. and the boundaries of both the villages are adjacent to each other. The said sale instance is also in respect of jirayat land and in the year 1979 the rate was Rs.600/- per R. It is hard to imagine, that thereafter for any reason there would have been much decrease in the value of the agricultural land to the extent of Rs.100/- per R. Definitely, the rate, that has been, awarded by Special LAO was too meagre. Therefore, taking into consideration the distance between two villages the purpose for acquisition and the fact that there was no counter evidence, the rate that has been awarded as per the decision of this Court in **State of Maharashtra vs. Pralhad Bajrang Nagare, 1996(1) BCJ 247**, the appeal filed by the State in challenging the rate should therefore fail. However, as regards the interest is concerned though the rate of interest is proper, yet the starting point is not as

per the Full Bench decision of this Court. The interest has been awarded from the date of possession, when in fact, it should be from the date of the Award. It should be for the first year from the date of Award and thereafter it should be @ 15% per annum till realization of the entire amount, in view of Section 28 of the said Act. To that extent only the modification is required.

9 As regards the rate awarded by the reference Court is concerned, one more fact is required to be considered, that same parameters have been laid down in Government Resolution dated 03.11.2016 along with subsequent corrigendum dated 25.02.2017 and 13.08.2018. The Government has taken a decision, that if the amount awarded by the reference Court is within four times than awarded by Special LAO, then the State will not file appeal. Here, the rate, that has been, awarded by the reference Court is just slightly more than the four times and a well reasoned order as to why that enhancement is made, taking into consideration the sale instance of 1979, that much rise is appreciable.

10 For the above said reasons, following order is passed.

ORDER

1 Appeals are hereby partly allowed.

2 The prayer to set aside the Judgment and Award passed in L.A.R.

No.460/1991 and 461/1991 is hereby partly allowed.

3 The prayer to modify the rate of amount of compensation granted by reference Court is hereby rejected. However, in para No.5 of the operative part of the Award, word “from the date of possession” stands deleted and replaced by the word “from the date of Award”.

4 It is clarified that rest of the Award remains as it is.

5 Award be prepared accordingly.

(Smt. Vibha Kankanwadi, J.)

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