

Received on : 21/01/2010
Registered on : 21/01/2010
Decided on : 14/12/2022
Duration : **Ys. Ms. Ds.**
12 10 23

Exhibit No:

IN THE COURT OF CIVIL JUDGE, SENIOR DIVISION, AT AMBAJOGAI,
DISTRICT BEED

(Presided over by : Chetan P. Bhagwat)

Award- 250 Mega Watt Unit of Thermal Power Station, Wadgaon-
Dadahari, Tq. Parali, District Beed
(LNQ/SR/16/2007)

LAND ACQUISITION REFERENCE

APPLN. No.26 of 2010

CNR-MHBI05- 000585-2016

- 1) **Ashok s/o.Dashrath Shinde,**
Age: 48 years, occup: Agril,
- 2) **Anant s/o. Shankarrao Narwade,**
Age: 22 years, occup: Agril,
- 3) **Sunil s/o. Shankarrao Narwade,**
Age : 20 years, occup: Agril,
- 4) **Keshav s/o. Vithalrao Jadhav,**
Age: 32 years, occup: Agril,
- 5) **Dattatray s/o. Bhaskar Shinde,**
Age: 27 years, occup: Agril,
- 6) **Digambar s/o. Bhaskar Shinde,**
Age: 25 years, occup: Agril,
- 7) **Chaya W/o. Bhausahab Gulbhile,**
Age: 28 years, occup: Agril,

- 8) **Balasaheb s/o. Chandrabhan Shinde,**
Age: 30 years, occup: Agril,
- 9) **Niranjan s/o. Shrikishan Jadhav,**
Age: 20 years, occup: Agril,
- 10) **Sachin s/o. Ashok Shinde,**
Age: 19 years, occup: Agril,
- 11) **Sushil s/o. Bhaskar Shinde,**
Age: 19 years, occup: Agril,
All R/o. Wadgaon Dadahari,
Tq. Parali-V, District Beed.....**Claimants**

Versus

- 1) **The State of Maharashtra,**
Through: The Collector, Beed.
- 2) **The Executive Engineer, Civil**
Civil Construction Project M.S.P.G.C. Ltd.,
Thermal Power Station, Parli (Vaijnath)
Tq. Parli (Vaijnath), Dist. Beed. **Respondents**

CLAIM : **UNDER SECTION 18 OF THE LAND ACQUISITION ACT, 1894.**

Shri. **V. S. Solanke**, advocate for the claimants.

Shri. **A. V. Kulkarni**, A.G.P. for respondent No.1.

Shri. **D. V. Gade**, advocate for respondent No.2.

// J U D G M E N T //

(Delivered on 14th December, 2022)

1) Being aggrieved by the award passed in LNQ/SR/16/2007 dated 31/07/2009 passed by Special Land Acquisition Officer, Beed, claimants filed this reference claim for enhancement of compensation under Section 18 of the Land Acquisition Act, 1894 (for brevity, hereinafter called and referred as “the L.A. Act”).

2) Detail description of acquired property of claimants situated at village Wadgaon-Dadahari, Tq. Parali, Dist. Beed is as follows:

Sr. No	L.A.R. No.	Claimant number	Land Gat/ Survey No.	Area acquired/ structure ----- H. R.
1]	26/2010	1	414	0.44
		2	--"--	0.40
		3	--"--	0.40
		4	--"--	1.00
		5	--"--	1.12
		6	--"--	1.12
		7	--"--	1.00
		8	--"--	0.30
		9	--"--	0.30
		10	410	1.14
		11	--"--	1.14
		All	-----	Charges for shifting of stone crusher
Total:				8.36

3) The case of claimants, in brief, is as follows:

Claimants are owners of acquired lands situated at village Wadgaon-Dadahari, Tq. Parli-V, Dist. Beed. Respondents No.1 acquired

these lands at the request of respondent No.2 by initiating acquisition proceeding vide file No.LNQ/SR/16/2007 for erection of 250 Mega Watt Unit of Thermal Power Station at Wadgaon-Dadahari, Tq. Parli-V, District Beed.

4) For the brevity of the case, I have mentioned instances of acquisition proceeding in tabular form as under;

Publication u/s. 4	21/09/2007
Declaration u/s. 6	16/10/2007
Award U/s. 11	31/07/2009
Note u/s. 12(2) served on	-----
Date of Possession	30/01/2008 (u/s. 17 of the Act)

5) According to claimants, the compensation i.e. Rs.1380/- per Are for 8 H 03 R and Rs. 345/- per Are for remaining 0 H 33 R, awarded by S.L.A.O., is inadequate and Government has not considered that village Wadgaon-Dadahari is at close distance from Taluka Town Parli-V. There is big Bazar, Railway Station, Thermal Power Station, High Schools, Colleges, Hospitals, Post Office, Tahsil Office near the acquired land. The acquired lands are situated adjacent to State Highway. Claimants used to take double crops from acquired lands, therefore, said lands were of high quality and high yield capacity. At the time of acquisition of land, the market price of lands in the vicinity was more than Rs.10,00,000/- per Acre for dry lands and Rs. 20,00,000/- per Acre for irrigated lands. Therefore, claimants have claimed enhancement in compensation at the rate of Rs.17,500/- per Are and shifting charges of stone crusher to the tune of Rs.2,00,000/-.

6) Respondents filed their says independently at **Exh.12** and **17** respectively and thereby resisted the petition. It is their contention that S.L.A.O. has properly considered the market price of acquired lands by perusing contemporary sale deeds of lands in the vicinity of acquired lands and granted adequate compensation. It is their further contention that claimants had opportunity to agitate their claim before S.L.A.O. while passing award, but claimants did not avail said opportunity. Therefore, at this belated stage, claim can not be considered.

7) Considering the rival contentions of both the parties, Hon'ble District Judge-II, Ambajogai framed issues at **Exh. 14**. I reproduce those issues along with my findings thereon for the reasons as under.

Sr. No.	Issues	Findings
01.	Whether the claimants prove that compensation awarded by Special Land Acquisition Officer is inadequate ?	Affirmative.
02.	Whether the claimants are entitled for enhancement of the compensation? If yes, at what rate ?	Affirmative. Rs.4,020/- per Are.
03.	What order ?	As per final order.

// R E A S O N S //

8) Claimant No.1 Ashok Dashrath Shinde examined himself at **Exh.18**. Claimants relied on documentary evidence i.e. copy of Award-cum-E-Statement (**Exh.23**) and copies of sale deeds (**Exh.21 & 22**). Claimants closed their evidence vide pursis **Exh.27**. Respondents did not lead any evidence and closed their evidence vide pursis **Exh.28** and **29**.

9) Heard learned advocate for respective parties at considerable lengths. Learned advocate for claimants Mr. V. S. Solanke argued in line with contents of claim and prayed for allowing the compensation with maximum rate. Learned advocate has specifically pointed out amounts mentioned in the sale instances. Therefore, learned advocate requested to grant enhanced compensation as petitioners have claimed. Learned advocate has also argued that land was acquired for business purpose. It was not acquired for interest of public at large. So this aspect be taken into consideration while awarding compensation. Learned advocate has vehemently argued that claimants are entitled for interest as per section 34 of the L.A.Act. Lastly, he has requested to exclude the amount granted by S.L.A.O. from enhanced compensation. Per contra, learned A.G.P. Mr. A.V.Kulkarni for respondent No.1 and Mr. learned advocate Mr. D. V. Gade for respondent No.2, argued that as per the market price, S.L.A.O. has awarded the compensation which is adequate and reasonable. S.L.A.O. has considered all aspects of the acquired land and granted adequate compensation. Learned advocate has pointed out cross-examination of claimant wherein he has admitted that land mentioned in sale instances is at far distance from acquired land. Learned advocate has pointed out that already interest u/s. 34 of the Act has been paid by Collector. Therefore, claim needs to be rejected.

As to issues No.1 and 2 :

10) To substantiate the contentions made in the references, claimant No.1 Ashok Dashrath Shinde (**C.W.1**) has examined himself at **Exh.18**. Admittedly, ownership of claimants and area of acquired land is not disputed by respondents. Therefore, there is no need to discuss evidence in that respect. The only dispute is in respect that whether compensation awarded by

S.L.A.O. is inadequate and whether claimants are entitled for enhancement in compensation.

11) It has come in evidence of C.W.1 that S.L.A.O. has awarded rate of Rs.1380/- per Are which is inadequate, because Government has not considered that village Wadgaon-Dadahari is at very close distance from Taluka Town Parali. Acquired land is adjacent to State Highway. There is railway station at Parli-V. There is big Bazar, Tahsil office, post office, Thermal power station, schools, colleges and hospitals at near distance from acquired lands. The acquired lands were of high quality and high yield capacity. At the time of acquisition of land, the market price of land in the vicinity was more than Rs. 17,500/- per Are.

12) In support of oral evidence, claimants have filed copies of in all two sale instances. So far as first sale instance is concerned, it is bearing day book No.2127/2007 dated 30/07/2007 wherein 18 Are land out of Survey No.436 of village Wadgaon-Dadahari has been sold for consideration of Rs.4,99,000/- i.e. Rs.27,722/- per Are. However, recitals of said sale instance show that the alienated land is irrigated land. Claimants have not pleaded or shown any evidence that acquired land was irrigated land. The Second sale instance relied upon by claimants is bearing day book No.2659/2007 dated 22/10/2007, wherein 2 Acres and 19 Are land out of Survey No.103/2 of Parali-V has been sold for consideration of Rs.13,36,500/- i.e. Rs.13,500/- per Are. Said sale instance shows that The India Cement Company has purchased said land for business purpose. Moreover, the alienated land is of Parali town.

13) During cross-examination, claimant has admitted that vicinity of Dadahari-Wadgaon area is of 5 to 7 kilometer. One Loni village is situated at 6

to 7 Kilometer towards Northern side of village Dadahari-Wadgaon. He has specifically admitted that survey No. 436 is adjacent to the area of village Loni. Therefore, it has come on record that acquired land is from Survey No. 414 and 410 of village Dadahari-Wadgaon whereas land pertaining to sale instance is adjacent to area of village Loni which is at a distance of 5 to 7 kilometer from acquired land. Therefore, the rate mentioned in sale instance will not be squarely applicable to the acquired land.

14) It has further come in his cross-examination that the purchaser of sale instance and other people had purchased the land in that vicinity knowing that extended thermal unit is going to be started there. There is half kilometer distance between India cement company and acquired land. Witness voluntarily deposed that only high-way has gone between Indian Cement Company and acquired land.

15) Evidence of said witness shows that purchaser of sale instances has knowledge about the proposed acquisition of land for extension of thermal and therefore, said purchaser might have purchased said land at high rate with a view to get high rate from government after acquisition. Therefore, rates mentioned in the sale instances are not squarely applicable to acquired lands.

16) Moreover, the date of notification u/s. 4 is 22/09/2007. First sale instance is dated 30/07/2007 and second sale instance 22/10/2007. It means first sale instance is prior and second sale instance is later to notification u/s.4. C.W. 1 has admitted in cross-examination that acquisition officers had visited the spot prior to notification u/s. 4. It means villagers had knowledge about the intention of S.L.A.O. to acquire lands for Thermal Power Station. Therefore, possibility of execution of both sale deeds at high rate can not be denied. Moreover, there is no evidence whether acquired lands of village Wadgaon-

Dadahari are abutting to lands under sale instances. Claimants have also not filed on record the map of villages to show that acquired lands of village Dadahari(Wadgaon) and lands under sale instances are adjacent to each other. It is also pertinent to mention here that the land alienated vide first sale instance is irrigated land and land alienated vide second sale instance is of Parli town and that too purchased for business purpose. Claimants have not proved by documentary evidence that their acquired lands were irrigated lands. Therefore, rates as mentioned in said sale instances can not be squarely applied to the lands acquired.

17) Considering the sale instances relied upon by claimants, one thing is crystal clear that the prevailing market price of lands within the vicinity of acquired lands was more than rate awarded by S.L.A.O.. It is often observed that to get enhanced rate for acquired lands for government purposes, sale deeds are being executed by showing exaggerated rates. I have perused award passed by S.L.A.O. wherein so many contemporary sale instances were taken into consideration. So far as sale instances relied upon by claimants are concerned, same can be taken into consideration, but rates mentioned in the said sale deeds are not squarely applicable to the acquired land as I already discussed supra in detail.

18) In order to determine the prevailing market price of acquired lands, some guess work along with consideration of rate awarded by S.L.A.O., rate claimed by claimants and sale instances relied upon by them is required. Respondents have not denied that acquired lands are at close distance from Taluka place Parali. They also have not denied that said lands are adjacent to State High way. There is old Thermal Power Station near acquired lands. Lands of claimants are acquired for erection of Mega Watt Thermal Power

Station at very close distance to old Thermal Power Station. Therefore, the rates of lands in the vicinity of acquired lands were high. So also, S.L.A.O. has also mentioned in Award that land holders used take cash crops like cotton, Tur, Udid, Moong, sun-flower, sugar cane etc.. It means quality of acquired land was high and of good fertility. In such circumstances, considering sale instances relied upon claimants, rate claimed by claimants and over all location of old Thermal Powers Station, I am of the firm opinion that as second sale instance is for business purpose and acquired land is agricultural land, it would be proper to consider 40% of the rate as mentioned in second sale instance. Accordingly, it comes Rs.5400/- per Are. Therefore, the prevailing market price of the acquired land at the time of notification under section 4 of the Act was Rs.5,400/- per Are. Hence, claimants have proved that the compensation awarded by S.L.A.O. was inadequate and he should have determined the rate of acquired land of claimants at the rate of Rs.5,400/- per Are while awarding compensation. However, S.L.A.O. has awarded rate of Compensation to the tune of Rs.1380/- per Are instead of Rs.5400/-. Therefore, claimants are entitled for enhanced compensation at the rate of **Rs.4020/-** per Are. Learned advocate Mr. V.S. Solanke for claimants argued that as land was acquired for business purpose and not in the public interest at large, this aspect be taken into consideration. Argument of learned counsel is not acceptable because, though land acquired for thermal power station, but it is government project and it was being installed for production of electricity which was being used as essential commodity to public at large.

In respect of other structures

19) Claimants have claimed that one stone crusher was there in their acquired lands. However, due to acquisition of the lands, claimants were required to remove said stone crusher for which huge amount was expended

by them. However, S.L.A.O. has not awarded any compensation for removal of said stone crusher. However, as discussed above, claimants have failed to prove existence of stone crusher in the acquired land by oral or documentary evidence. Therefore, question of awarding compensation for removal of alleged stone crusher does not arise. Therefore, I am not inclined to grant any compensation for removal of alleged stone crusher.

20) Entitlement under section 23(2) of the Act- In view of Section 23(2), claimants are entitled for sum of 30% on market value as I mentioned above, in consideration of compulsory nature of acquisition.

21) Entitlement under section 23(1-A) of the Act- Claimants have claimed 12% p.a. on said market value in view of section 23 (1-A) of the Act. In case in hand possession has been taken in view of section 17 of the Act. Section 23(1-A) of the Act provides that claimants are entitled for additional component from the date of publication of notification u/s. 4(1) in respect of such land to the date of award of Collector or the date of taking possession of the land, whichever is earlier. Therefore, considering above legal position, claimants are entitled for 12% p.a. additional component on enhanced amount of compensation from the date of notification u/s. 4 till the date of possession, because possession has been taken prior to date of award. Possession has been taken on 30/01/2008 whereas award u/s. 11 of the Act has been passed on 31/07/2009. Hence, claimants are entitled for 12% per annum additional component on enhanced amount from 21/09/2007 till 30/01/2008.

22) Whether claimants are entitled for interest u/s. 34 of the Act :-
Learned advocate Mr. V. S. Solanke for claimants argued that claimants are entitled for interest u/s. 34 from the date of possession till realization of entire

amount. Argument of learned advocate is partly acceptable i.e. claimants are entitled for interest u/s. 34 of the Act from the date of taking possession, but remaining argument i.e. claimants are entitled for said interest till realization of entire amount is not acceptable. In support of his arguments, Learned advocate for claimants has filed copies of various judgments of Hon'ble District Court and Hon'ble High Court. So far as judgments of Hon'ble District Court for giving effect to interest u/s.34 of the Act is concerned, findings of Hon'ble District Court on that aspect are not binding on this court.

23) Learned advocate has also placed his reliance on **Dharmaraj Murlidhar Dhapate Vs. State of Maharashtra** (First Appeal No.3007/2017 decided on 03/08/2017), **The Executive Engineer Vs. Ashabai & others** (First Appeal Nos.222, 239 and 457 of 2020 decided on 06/02/2020 and First Appeal Nos.501 to 503 of 2020 decided on 12/02/2020 by common judgment) and **Harilal Vs. The State of Maharashtra**, (First appeal No. 1304/2004 decided on 26/02/2019). In these judgments, Hon'ble High Court of Bombay, Bench at Aurangabad has awarded interest u/s.34 from the date of Award till realization of decretal amount.

24) Learned advocate Mr. D.V.Gade for respondent No.2 has placed his reliance in **First Appeals No. 499/2016 to 502/2016** decided on 05/03/2018, wherein Hon'ble High Court of Bombay, Bench at Aurangabad has observed that claimants are entitled for interest u/s. 34 of the Act from the date of Award (and not from the date of possession) till realization of amount.

25) Considering these observations, learned advocate Mr.V.S. Solanke for claimants argued that claimants are entitled for interest u/s. 34

from the date of award till realization of entire amount. This argument is not acceptable because though Hon'ble Bombay High Court, Bench at Aurangabad has mentioned that claimants are entitled for interest u/s. 34 of the Act from the date of possession/award till realization of entire amount, but it does not mean that interest under section 34 is applicable to enhanced compensation, because provision of section 28 of the Act has been specifically applicable for interest on enhanced compensation amount.

26) So far as applicability of sections 28 and 34 of the Act is concerned, position has been cleared in the case of **State of Maharashtra Vs. Kailas Shiva Rangari**, (First Appeal No. 251/2003 decided on 18/04/2016). Hon'ble Bombay High Court, Bench at Nagpur has observed in paragraph No.27 as under;

“In our view, the aforesaid direction of Apex Court can not be construed to include the amount of interest payable under section 34 of the said Act. As has been held by the Apex Court in the decision in the case of Dr. Shamlal Narula, the interest payable under section 34 is not the compensation paid to the owner for depriving him of his right to possession of the land, but that is given to him for deprivation of the use of money representing the compensation for the land acquired. It is payable where possession is taken, but the compensation determined under section 11 or in terms of clause (a) of sub-section (3-A) of Section 17 of said Act, has not been paid or deposited on the date when it becomes due and payable. It is not payable on account of enhanced compensation which is covered by section 28 of the said Act.”

27) Learned advocate Mr. V.S. Solanke for claimants has pointed out observations of Hon'ble Supreme Court in the case of **Gayabai Digambar Puri Vs. The Executive Engineer** [Civil Appeal No. of 2022 (Arising from SLP (C) No. of 2022) (Diary No. 17566 of 2022 dated 03/01/2022)]. Said judgment is on the point of starting point for giving effect of interest u/s. 34 of the Act. Hon'ble Supreme Court has observed that it is well settled that normal rule is

that if on account of acquisition of land, a person is deprived of possession of his property, he should be paid compensation immediately and if the same is not paid to him forthwith, he would be entitled to interest on the compensation amount from the date of so taking possession of the land till the date of actual payment thereof as expounded in **R.L.Jain (D) by L.rs. Vs. D.D.A. & others** reported in **(2004) 4 SCC 79** (in particular paragraph No.17.1). Hon'ble Supreme Court has further observed that claimants are entitled for interest u/s. 34 of the Act from the date of possession of land taken. However, while reading entire judgment, it reveals that in that judgment, reference court has given clause No.4 of it's operative order as under;

"4. The respondents No.1 to 3 shall also pay interest to the petitioner on the difference of market value @ Rs.9% per annum from 04/04/1997 (possession taken) to 03/04/1998 for the first year and thereafter @ Rs.15% per annum from 04/04/1998 till the date of payment i.e. 08/09/2004 (as Form 'CC') under section 34 of the Land Acquisition Act." (Emphasis supplied).

28) Said order has been overturned by Hon'ble High Court and thereafter Hon'ble Supreme Court has observed that appellant would be entitled for the interest on or from the date when the possession of land was taken i.e. 04/04/1997 at the rate specified by the reference court. Had claimants in that judgment entitled for interest u/s. 34 from the date of possession till realization of entire amount, Hon'ble Supreme Court would have observed accordingly. In other words, Hon'ble Supreme Court has not observed that claimants are entitled for interest under section 34 till realization of entire amount. Considering this aspect, in case in hand, claimants are entitled for interest u/s. 34 of the Act from the date of possession (30/01/2008) till the date of payment (06/08/2009). It is apart that in case in hand, S.L.A.O. has already paid interest u/s. 34 of the Act accordingly. Said aspect is discussed in detail in next paragraph.

29) After perusing award statement 'E', it reveals that collector has paid interest u/s. 34 @ Rs. 9% per annum from 31/01/2008 till 30/01/2009 and @ Rs.15% per annum from 31/01/2009 to 30/07/2009. It means already interest has been given u/s. 34 of the Act to claimants. Hence, again question of granting interest u/s. 34 of the Act on the amount of compensation given by Collector does not arise.

30) Entitlement for interest u/s. 28 of the Act:- As possession has been taken u/s. 17 of the Act, claimants are entitled for interest on enhanced amount of compensation @ Rs.9% per annum for first year and @ Rs. 15% per annum for subsequent years from the date of possession till realization of entire amount as per section 28 of the Act.

Inclusion / Exclusion/ deduction of previous compensation paid from enhanced compensation:

31) Learned advocate Mr. V.S.Solanke for claimants argued that enhanced compensation shall be given in addition to the compensation given by S.L.A.O.. In other words, while granting enhanced compensation, amount of enhanced compensation shall be excluded by compensation given by S.L.A.O.. He has specifically argued that compensation granted by S.L.A.O. shall not be deducted from the amount of enhanced compensation. Learned counsel has also pointed out few judgments of Hon'ble District Courts wherein compensation awarded by Collector was excluded from enhanced compensation granted by concern court. In other words, court has given enhanced compensation in addition to compensation granted by Collector.

32) Said argument is not acceptable because while deciding the market rate, this court has considered the rate on the day of notification under

section 4 of the Act. In case in hand, rate of acquired land on the date of notification was Rs.5400/- per Are. As per opinion of Collector, on the date of notification, rate of acquired land was Rs.1380/- per Are. Accordingly, Rs.1380/- per Are compensation is already paid to claimants. Under such circumstances, Rs.1380/- has to be deducted from Rs.5400/-. Second reason is that claimants themselves have pleaded that whatever compensation granted by Collector be deducted from the enhanced compensation. While claiming enhanced compensation, they have deducted the compensation granted by Collector. In other words, claimants have not pleaded and prayed as per argument of their advocate. Apart from that as discussed above, rate per Are or rate of land decided by Collector which was already paid has to be deducted from the rate decided by this court on the date of notification. Therefore, claimants are entitled for actual compensation to the tune of $5400 - 1380 = 4020$ /- per Are. Considering all above discussion, I answer issues No.1 and 2 in partly affirmative.

As to issue No.3:-

33) In view of the findings recoded to issues No.1 and 2, claim deserves to be partly allowed. In view of the price determined by this court, claimants are entitled to get enhanced compensation with statutory benefits. In the result, I proceed to pass following order.

ORDER

- (1) Claim is partly allowed with proportionate cost.
- (2) The respondents do pay enhanced compensation @ **Rs.4,020/-** (Rs. Four Thousand and Twenty only) per Are for acquired land.

- (3) Respondents do pay 30% solatium on enhanced amount of compensation as contemplated in section 23(2) of the Act.
- (4) Respondents do pay 12% per annum additional component under section 23(1-A) of Land Acquisition Act on enhanced amount from date of notification (21/09/2007) u/s. 4 till date of possession (30/01/2008).
- (5) The respondents do pay the interest u/s.28 of the Land Acquisition Act on the enhanced compensation amount from the date of possession i.e. 30/01/2008 at the rate of @9% p.a. for the first year i.e. from 30/01/2008 to 29/01/2009 and for the subsequent years i.e. from 30/01/2009 @ 15% per annum till realization of entire amount.
- (6) Remaining prayers of claimants are dismissed.
- (7) Award be drawn up accordingly.

Place: Ambajogai.
Date :14/12/2022

(Chetan P. Bhagwat)
Civil Judge, Senior Division,
Ambajogai, Dist. Beed

CERTIFICATE

I affirm that the contents of this PDF file are word to word as per original judgment/ order.

Dictated on : 14/12/2022.
Transcribed on : 14/12/2022.
Signed on : 16/12/2022.

Date: 16/12/2022.
Place: Ambajogai.

Sd/-
(Kurund B.S.)
Stenographer
Civil Court, S.D., Ambajogai.