Received On : 08.12.2010
Registered On : 13.12.2010
Decided On : 16.01.2016
Duration: 05 Yrs. 01 M. 08 D.

In the Court of Jt. Civil Judge Sr. Dn., Jalgaon.

[Before Kedar S. Kulkarni]

L.A.R. No. 901/2010 **Ex. No.**

Narayan Baburao Mahajan
Age : Major, Occu. Agricultural
R/o. Pimpalgaon Hareshwar,
Tal. Pachora, Dist. Jalgaon. ... **Applicant**

Versus

1. State of Maharashtra Through
   The Collector, Jalgaon.
2. Special Land Acquisition Officer (1)
   M.I.W., Jalgaon.
3. Executive Engineer,
   M.I.W., Jalgaon. ... **Respondent**

WITH **L.A.R. No. 955/2010**

Pralhad Dagadu Choudhari
Age : Major, Occu. Agricultural
R/o. Pimpalgaon Hareshwar,
Tal. Pachora, Dist. Jalgaon. ... **Applicant**

Versus

1. State of Maharashtra Through
   The Collector, Jalgaon.
2. Special Land Acquisition Officer (1)
   M.I.W., Jalgaon.
3. Executive Engineer,
   M.I.W., Jalgaon. ... **Respondent**

REFERENCE U/S 18 OF THE LAND ACQUISITION (AMENDMENT) ACT, 1984 (68 of 1984).

Advocates:- Shri. K. B. Patil for Applicant / Claimant.
Shri. Ketan J. Dhake (DGP) for Respondents no.1 & 2.
Shri D. S. Patil for Respondent no. 3.

JUDGMENT

(Delivered on this 16th January 2016)

1] Present land references are made for the enhancement of the compensation.

2] In village Pimpalgaon/Ghodasgaon Tal. Jamner, Dist. Jalgaon for the purpose of Minor Irrigation project following land properties are acquired.

Sr. No.	LAR No.	Gat No.	Total Area	Trees As per Award	Area Without Tree
1)	901 of 2010	882/1	0 H 58 R	Mosambi 140 Mango 01	0 H 34 R
2)	955 of 2010	843/2	1 H 43 R	Bor 11	01 H 41 R

3] Notice under section 4(1) of the Act was published on 26.01.2006. Declaration under section 12(2) of the Act was made on 14.08.2009. Award is passed on 23.02.2009.

4] Enhancement of compensation is claim stating that, the offer price given by special Land Acquisition Officer (SLAO) is very low, sale instances of relevant years have not been considered. SLAO has granted total compensation Rs. 1,60,000/- per hectare for acquired property. Applicant claim the grant of compensation @ 6,00,000/- per hectare for jirayat land and Rs. 12,00,000/- per hectare for bagayat land. Applicant further stated that grouping of acquired land was made on the basis of revenue assessment fixed in British regime; which is wrong. Acquired land is adjustment to village road. Acquired land is having the facilities of infrastructure. Nature of land is baghayat. Applicant claimed grant of inadequate compensation by the SLAO for the fruit bearing trees standing on the acquired land. Hence, prayed for the enhancement of the compensation.

5] Opponent submitted the written statement and resisted the claims stating that, the compensation awarded by SLAO is correct and adequate. Grounds taken by the applicants are not legal, just and proper. The SLAO has considered the fertility of Land. SLAO has granted handsome compensation for the standing fruit bearing trees. Reference is barred by limitation and reasonable. Acquired land are dry having inferior quality hence prayed for rejection in toto.

6] Issues are reproduced along with my finding and reasons.

Sr.	Issues	Findings
1)	Does the petitioner prove that he accepted amount of compensation under protest ?	Affirmative
2)	Whether reference is barred by limitation or is otherwise invalid ?	Negative
3)	Does the petitioner proved that market value of the land determined by the Land Acquisition Officer is inadequate ?	Affirmative.
4)	What is the market value of the land acquired on the date of notification under section 4 of the Act ?	Rs.3,80,000/- PH for Bagayat land, Rs. 95,000/- PH for PK land & Mosambi Rs. 8100/- Mango Rs. 10080/- Bor Rs. 1848/-
5)	Whether petitioner is entitled for enhancement of compensation as claimed ?	Partly in affirmative.
6)	What order ?	As per final order.

Reasons

7] The sale instance dated 25.04.2005 of village Pimpalgaon bearing gat no. 695 admeasuring 0 H 45 R, executed in between Vishvanath Mahadu Chaudhari and Mahadu Dasharath Chaudhari, 7x12 extract of the acquired land are submitted.

The witness namely AW No.1 Narayan Mahajan, AW No. 2 Dr. Vishnu Patil in LAR No. 901/2010 and AW No. 1 Pralhad Choudhari, AW no. 2 Dr. Vishnu Patil in LAR No. 955/2010 are examined. Applicant and respondents closed their evidence by passing the pursis respectively. Applicant and respondent have filed written notes of argument. I have studied the case law mentioned therein. They are become profitable to me.

<u>As to issue no. 1 to 6</u> :-

8] It has now been settled that the reference under section 18 of the Act before the Court is not an appeal of the award therefore, material relied on by the acquisition officer in his award can not be relied upon by the reference Court unless the same is produce and proved before the Court. The Court is require to determine the value of the acquired land on the date of publication of notification under section 4 of the Act to determine the compensation.

9] Dealing with the first objections of limitation raised by the ld. DGP it is arise that compensation is received under the protest. After receiving the compensation under protest the said reference is forwarded to the Court within the limitation which is prescribed under section 12 of the Act. Thus, I found that the reference is within limitation and accordingly, I have discarded the objection raised by the ld. DGP. It is also profitable to make the reference of the case law Amol Arjun Vs. State of Maharashtra reported in 2000(1) Mh.L.J. 360.

10] No iota of evidence is produced by either the SLAO or the acquisition body to show that the award passed is just and proper. On the perusal of the award it is appeared that to calculate the compensation the SLAO is used the old fashion method of grouping of land as per their revenue assessment. Admittedly the said old fashion method of grouping of land as per there land revenue assessment is not good and proper to fix the just and correct amount of compensation. As the compensation is awarded best upon the said method, I found it is inadequate.

11] To calculate the just and proper compensation, I take the aid of section 23 of the Act. I have also studied case law reported in Chimanlal Hargovindas Vs. SLAO Puna reported in AIR 1988 SC 1652, Koyappathodi M. Ayisha Umma Vs. State of Kerala reported in 1991(4) SCC 8, Special Land Acquisition Officer Vs. Narasaiah, reported in AIR 2001 SC 1117 and State of of Maharashtra Vs. Smt. Hemaba Bhika 2007(6) All MR 225. They are become profitable to me.

12] To calculate the price of the acquired land it is necessary to appraised the evidence of the applicant. The applicant is his evidence categorically submitted the nature of his land. However, in the cross admitted that he has no receipts of income to show the yield taken from the acquired land. He further admitted that his acquired land is not bagayat in nature for the whole year/ tenure. Applicant further state that their exists well in the land. He also filed the electricity bill to substantiate his version. From the perusal of the award it is appeared that in the acquired land some fruit bearing trees are standing. As there exists well and the standing fruit bearing trees, the cumulative effect of this fact inferred that the acquired land are bagayat in nature. Unless the availability of ample water no farmer would accrued the income from the standing fruit bearing trees. Thus it become candid clear that, the nature of the acquired land is bagayat.

13] Reliance is placed upon the sale instance dated 25.04.2005 to ascertain the market value of the acquired land. On the perusal of the sale instance dated 25.04.2005 executed in between Vishvanath Mahadu Chaudhari and Mahadu Dhasharath Chaudhari it is inferred that father has sold the land to his son. As both the parties in the sale instance are near relative, it is inferred that the said transaction is flavored one. Through the said sale instance the land gat no. 695 admeasuring total 45 R inclusive of 8 R bagayat land existing in the said gat no., is sold for the total consideration of Rs. 3,00,000/-. In the said instance it is appeared that the consideration amount is not tendered before the sub registrar however, it is acknowledge before him. From the above sale instance it is not clear that how much consideration is accrued to the portion of the land which is jirayat and how much consideration is accrued to the portion of the land which is bagayat in nature. In the said sale instance the right of way is also sold which price is also part and parcel of the consideration amount. Due to that, I found the above sale instance is not at all apposite to be considered for the comparable sale method.

14] Applicant has filed the Government Resolution dated 15.12.1983 and submitted he is entitled for the compensation double the amount awarded by the SLAO. I have studied the said Government Resolution. It is worth to note here that, the said resolution is passed under the Rehabilitation Act. Furthermore, the resolution is applicable if one is not approach to the competent

Court. As both the facts are distinguished in the present matter, I found the said resolution is not at all applicable. It is necessary to note here that, of the SR no. 51/2004, 63 matters are pending before this Court. Vide the said SR total land 114 H 49 R was acquired. Some of the matters have the fruit bearing trees. The notes of arguments filed in (Specifically in LAR No. 943/2010) that matter is perused. In the said notes of arguments at para no. 12 applicant admitted that, the acquired land are abutting to village Pimpri Dabhurni. Respondent has filed the copy of judgment passed in first appeal no. 2769 of 2009 dated 07.03.2013. In the said judgment of Hon'ble High Court the compensation @ 1,90,000/- per hectare for jirayat land Rs. 3,80,000/- per hectare for bagayat land and Rs. 95,000/- per hectare for pot kharab land are awarded. As applicants are themselves admitted that there acquired land are abutting to the village Pimpri Dabhurni, I found by the rule of parity the same rate is suffix the purpose of section 23.

15] For ascertaining the compensation for the standing fruit bearing trees, I scrutinize the evidence of AW No. 2 Dr. Vishnu Patil. From his evidence it appears that he is expert in the field however, material inconsistency about the number of standing trees is appeared from his evidence. For example in LAR no. 923/2010 AW No. 2 Dr. Vishnu Patil submitted that in the acquired land 550 Mosambi and 600 Dalimb trees are standing. On the other hand in the award it is mentioned that, 489 Mosambi and 112 Dalimb trees are standing. The AW no. 2 Dr. Patil further awarded the rate of compensation per tree which is far from the the rate of compensation of per tree determined by the Agricultural Produce Market Committee (APMC). It is also apposite to note here that, when AW No. 2 Dr. Patil has conducted the valuation of standing fruit bearing trees though he is not the registered valuer and the said fact is admitted by him in his cross-examination. Neither the officer from the SLAO office nor the officer from the acquiring body office is present when he has visited the acquired land. It is also necessary to mentioned here that AW No2 Dr Patil has conducted the spot inspection/panchanama in the month of May 2001, and submitted his report in the month of August 2006. Such delay of 5 years create doubt about its accuracy. In the present matter section 4 date is 26/01/2006. Therefor the data which is collected in the month of may 2001 is not at all relevant to depicted the position existing on 26/01/2006 which is vital for determined the compensation under section 23. Thus, I found that, his report is not at all believable. Thus, I discard the same.

16] I have perused the copy of the award. It is appeared that SLAO is failed to state the exact age of the standing fruit bearing trees in the acquired lands. The reason is best known to him. Though SLAO has awarded the different rate of compensation for the fruit bearing trees of one category. I found that, as he failed to state the exact age of the standing fruit bearing trees, the yield capacity of the standing fruit bearing trees cannot be determined.

17] Studied the notification dated 27/12/1990. As per the notification of Maharashtra Government bearing No. HOR-PK.381/K-4 dated 27/12/1990, the average annual yield of fruit bearing trees is given as under.

	Name of Fruit	**Early Bearing**		**Full Bearing**		**Life period in years**
		Age in Yrs	**Average Yield per tree**	**Age in Years**	**Average Yield per tree**	
1)	Ber	6 to 10	10 to 20 Kgs.	11 onwards	25 to 40 Kgs.	40 to 50
2)	Mosambi	1 to 3	2 to 3 Kgs.	40 onwards	8 to 12 Kgs.	7 to 10
3)	Mango	5 to 8	150 to 250 Fruits (30 to 50 Kgs)	9 onwards	200 to 500 Fruits (40 to 100 Kgs)	30 to 50

18] As in the case annual average yield of a fruit, the annual average yield of a fruit tree cannot be fixed accurately. Therefore, on the basis of the average yield statement by way of notification of Government of Maharashtra and by following some guess work, the average yield of each fruit tree is being fixed within the range in the said notification. With this average annual yield per fruit tree is fixed as under.

Sr.No.	**Fruit trees**	**Average Yield**
1.	Ber (Bor)	22 Kg.
2.	Mosambi	75 Kg.
3.	Mango	60 Kg.

19] The rates of fruits as per the annual market rates published by Jalgaon Agricultural Produce Marketing Committee for the year 2005-2006 in respect of trees under reference are as under.

Sr No.	Name of fruit tree	Minimum rate	Maximum rate	Average Rate
1	Ber (Bor)	200	1300	700
2	Mosambi	400	2000	900
3	Mango	600	2800	1400

20] As already observed by following some guess work, the market rates of the fruits needs to be fixed on the basis of aforesaid information. Instead of taking maximum or minimum rates, I prefer to take average rates determined by the Agricultural Produce Marketing Committee for determining the market rates of fruits in question. I therefore, fix the market rate for the fruits (per 100 kg.) for the year 2006 as follows.

Sr.No	Name of Furit	Market Rate
1.	Ber (Bor)	700
2.	Mosambi	900
3.	Mango	1400

21] On the basis of aforesaid material the net annual income of each tree can be calculated. The market valuation of each tree can be calculated by multiplying the annual net income by appropriate capitalization of 15 years. It is also necessary to deduct some crop protection and transportation expenses. Considering the labour charges, prices of fertilizers and transportation charges, 20% of net income may be reasonable deduction towards the crop protection expenses. Thus, the market value of each tree by aforesaid method is determined as follows.

	Name of trees	Average Yield	Rate of fruit	Average annual income	Valuation of per tree multi-	Net value per

			(per 100 Kg.)	per tree	plying net annual income by 15 yrs	tree by 20% deduction
1)	Bor	22 Kg.	700	154	2310	1848
2)	Mosambi	75 Kg.	900	675	10125	8100
3)	Mango	60 Kg.	1400	840	12600	10080

22] It is also worth to note here that applicant has claimed compensation for the trees for Sag, Moha, Coconut etc. However, failed to file the letter of permission for planting the same trees. Applicant is also failed to examine the valuer of the said trees. Applicant is also claimed the compensation for the other trees like Charoli, Chinch, Jambhool etc.. However, they are less numbers. These trees may came in the field by accident. These trees may planted on the bandh for the demarcate the boundary. Farmer can not plant a single tree of the like category only with intention to gain the yield. Therefore, I confirmed the compensation award by the SLAO to the said category of trees. Applicant is also compensation for the well situated in the field. However, failed to examine the valuer thus, I found that the compensation awarded by the SLAO to the well is need to be confirmed.

23] It is also profitable to note here that as per the pursis filed by applicant approximately 6 trees are comfortably planted in one R land. In the LAR No. 901/2010 there are total 141 trees (excluding the trees to which compensation is not awarded) so the total area covered by the trees are 0 H 24 R. Thus, it clear that, the land which is not covered by the trees is 0 H 34 R. In the LAR No. 955/2010 there are total 11 trees so the total area covered by the trees are 0 H 02 R. Thus, it clear that, the land which is not covered by the trees is 1 H. 41 R.

The area which is not covered by the trees is also have the capacity for planting of the trees. The said acquired land is also have the well, water facility. Therefore, I found the remaining land (land which is not covered by trees) is bagayat in nature and entitled for the compensation @ Rs. 3,80,000/- per hectare. Needless to say that, applicants are entitled all other statutory benefits including the rental compensation vide section 34 (Ref. Case : Major Mehara Vs. Union of India reported in 2015(4) Mh.L.J. 41) of the Act. Thus, I answered the issue accordingly.

24] In given circumstances defendants are also liable to bear proportionate costs of the references. Resultantly, I passed following order.

O R D E R

1. Reference applications are partly allowed.
2. The opponents shall pay rate @ Rs. 3,80,000/- per hectare for bagayat land, Rs. 1,90,000/- per hectare for jirayat land and Rs. 95,000/- per hectare for pot kharab land in LAR No. 901 of 2010 and 955 of 2010.
3. The opponents shall pay rate per tree as follows.

1)	Bor	Rs. 1,848/-
2)	Mosambi	Rs. 8,100/-
3)	Mango	Rs. 10,080/-

4. The claimant is entitled 30% solatium and 12% component with deduction the amount paid by SLAO.

5. Interest at the rate of 9% per annum for the first year from the date of award i.e. from 23/02/2009 and thereafter at the rate of 15% per annum till realization of entire amount.

6. Applicants are entitled for the rental compensation awarded under section 34 of the Act.

7. The claimants do pay requisite Court-fees, if any.

8. Award and bill of costs be prepared accordingly.

9. The original judgment be kept in the former and copy be retain in the latter.

[Kedar S. Kulkarni]

Date : 16/01/2016 Jt. Civil Judge Sr. Dn., Jalgaon