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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. 936/2010

Ex. No.

Dilip Ranjitsing Deshmukh
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. 937/2010

Shakuntalabai Khandu Chormale
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.	Area
1)	936/2010	897/B-1	3 H 20 R
2)	937/2010	898/1	0 H 26 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

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British regime; which is wrong. Acquired land is adjustment to village road. Acquired land is having the facilities of infrastructure. Nature of land is jirayat/baghayat 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. 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.1,90,000/- PH for Jirayat land & Rs. 95,000/- PH for PK land.
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 Dilip Deshmukh in LAR No. 936/2010 and AW No. 1 Shankuntalabai Chormale in LAR No. 937/2010 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.

As to issue no. 1 to 6 :-

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

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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. However, he fail to submit the electricity bill of motor pump through which he has fetch the water from the well. Thus it become candid clear that, the nature of the acquired land is jirayat.

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. 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.

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

ORDER

1. Reference applications are partly allowed.
2. The opponents shall pay rate @ Rs. 1,90,000/- per hectare for jirayat land and Rs. 95,000/- per hectare for pot kharab land in LAR No. 936 of 2010 and 937 of 2010.
3. The claimant is entitled 30% solatium and 12% component with deduction the amount paid by SLAO.
4. 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.
5. Applicants are entitled for the rental compensation awarded under section 34 of the Act.
6. The claimants do pay requisite Court-fees, if any.
7. Award and bill of costs be prepared accordingly.
8. 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