

Presented on : 06.08.2011
Registered on : 16.08.2011
Decided on : 26.09.2014
Duration : 03 01 11
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**IN THE COURT OF THE 2nd JT. CIVIL JUDGE SENIOR DIVISION
AURANGABAD.**

(Presided over by C.M. Bagal)

L. A. R. No.165/2011

Exh. 50

1. Laxman Shenfadu Dhepale
Age : Major, Occ : Agriculture
2. Bhanudas Sonaji Dhepale
Age : Major, Occ : Agriculture
Both R/o. Pal, Tq. Phulambri,
Dist. Aurangabad.

... **APPLICANTS**

VERSUS

1. The State of Maharashtra through
Special Land Acquisition Officer,
Aurangabad.
2. The Executive Engineer,
Minor Irrigation Division No. 1,
Aurangabad.

... **RESPONDENTS**

C. K. Sonawane, Ld. Advocate for the applicant.
B. K. Pawar, Ld. AGP for respondent No. 1.
R. M. Gaikwad, Ld. Advocate for respondent No. 2

REFERENCE FOR : ENHANCEMENT OF COMPENSATION.

JUDGMENT
(Delivered on 26.09.2014)

Being aggrieved and dissatisfied with the award bearing No. 2004/विभूसंअ/जा.प्र/अ.आर./3/96/2 dated 29.03.2004 passed by the Special Land Acquisition Officer in respect of the land of the applicants and trees standing thereon acquired for water commanding area of Wakod Medium Project at village Pal, Tal. Phulambri, Dist. Aurangabad, the applicants by filing written application under Sec. 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") requested the Special Land Acquisition Officer to forward the reference for determination of the compensation to the Civil Court. Apropos to the application of the applicants, the Special Land Acquisition Officer has forwarded this reference for determination of compensation.

2. The facts which gave rise to the applicants to seek reference are, in brief, that respondent No. 2, Executive Engineer, Minor Irrigation Division No. 1, Aurangabad in view of his proposal to acquire the land of the applicants for aforesaid public purpose by entering into private negotiations took over the possession of the land. Acting on the proposal of the Executive Engineer, the State of Maharashtra on 10.08.1997 issued a preliminary notification under Section 4 (1) of the Act notifying that the land of the applicants was needed for aforesaid public purpose. After the declaration under Section 6 of the Act, the Special Land Acquisition Officer carried out

inquiry and by his award dated 29.03.2004 determined the amount of compensation payable to the applicants. The Special Land Acquisition Officer by issuing notice under Section 12 (2) of the Act offered the amount of compensation which the applicants accepted under protest on the premise that it was not commensurate with the just and fair market value of the acquired land. After receiving the payment of compensation the applicants within the prescribed period of limitation filed application before the Special Land Acquisition Officer seeking reference to the Civil Court.

3. The applicants challenge the award made by the Special Land Acquisition Officer on the premise that the Special Land Acquisition Officer by issuing notice under Section 9 of the Act did not offer opportunity to show the price of the acquired land; that the Special Land Acquisition Officer grouped their land on the basis of land revenue payable to the Government; that the acquired land of the applicants was irrigated (Bagayat), but the Special Land Acquisition Officer relying upon classification of the land wrongly determined the compensation.

4. The applicants contend that their acquired land was fertile and black soil wherein they were raising crops like sugarcane, cotton etc. and were getting annual income upto the Rs.70,000/- per Acre. In the acquired land there were fruit bearing trees. The Special Land Acquisition Officer did not determine the compensation payable to the trees after taking into consideration reports of the expert. The

Special Land Acquisition Officer has not granted interest under Section 34 of the Act. Accordingly, the applicants have prayed for enhancement of the compensation and grant of statutory benefits.

5. The details of acquired land, trees standing thereon, amount of compensation paid by the Special Land Acquisition Officer and the amount of compensation sought by the applicants are as follows.

<i>Description</i>	<i>Gat No.</i>	<i>Area acquired & quantity of items</i>	<i>Rate given by SLAO for land and amount awarded for different items</i>	<i>Compensation sought by the applicant</i>
Land	430	62 R	535/- Per Are	3,000/- P. A
Mango		36	68,481/-	13,52,367/-
Mango		1	18,536/-	48,510/-
Mango		40	NIL	16,39,920/-
Ber		4	NIL	23,496/-
Sitafal		3	NIL	10,062/-

6. Respondent No. 1 by presenting its written statement of defence at Exh. 14 and respondent No. 2, the acquiring body by presenting its written statement at Exh. 09 have in unequivocal terms admitted the fact that as contended by the applicants, their land came to be acquired for public purpose. According to the respondents, the Special Land Acquisition Officer while determining

the compensation has taken into consideration the potentiality, productivity, location of the land and comparable sale instances. As the Special Land Acquisition Officer has determined the appropriate compensation to the acquired land, the applicants are not entitled for enhancement of compensation. Similarly, the Special Land Acquisition Officer has considered the opinion of the expert and has awarded appropriate compensation to the trees. As the Special Land Acquisition Officer has awarded appropriate compensation to the trees, the applicants are not entitled for enhancement of compensation. According to respondent No. 2, as the applicants did not accept the amount of compensation under protest the application is not maintainable. According to the respondents, reference of the applicants is not well within the prescribed period of limitation. Accordingly, the respondents have prayed for dismissal of the reference.

7. The issues are framed at Exh. 10 in Marathi Language. The English translations of the issues along with their findings and reasons are as follows.

<u>ISSUES</u>	<u>FINDINGS</u>
1 Whether the applicant proves that the market valuation made by the S.L.A.O. is improper and inadequate and not as per market value?	... Partly yes
2 Whether the application is within limitation?	... Yes

ISSUES**FINDINGS**

- | | |
|---|---|
| 3 Whether the applicant proves that he accepted the amount of compensation under protest? If not, what is its effect? | ... Yes (First Part),
Redundant (Second Part). |
| 4 Whether the applicant is entitled for additional amount of compensation as claimed? | ... Partly yes |
| 5 What order? | ... As per <u>final order</u> . |

REASONS**AS TO ISSUE Nos. 1 AND 4 :-**

8. Issue No. 1 pertains to the grant of inadequate compensation by the Special Land Acquisition Officer, whereas, issue No. 4 pertains to the entitlement of the applicants to get enhanced amount of compensation. Both these issues being interlinked, they are being dealt with together. The applicants have sought enhancement of compensation in respect of acquired land as well as trees standing thereon. The respondents have in unequivocal terms admitted the fact that the land of the applicants bearing Gat No. 430 admeasuring 62 Are situated at Pal, Tq. Phulambri came to be acquired for public purpose. It is the contention of the respondents that the Special Land Acquisition Officer has determined the appropriate compensation payable to the land and trees. In view of this controversial position, the burden of proving that the Special Land Acquisition Officer awarded inadequate compensation and that

the applicants are entitled for enhanced compensation lies upon the applicants.

9. The applicants in order to discharge the said burden have examined one of them namely Bhanudas (A. W. 1)(Exh. 22). He states in his affidavit that their land was having the source of water from the well. He further states that the applicants had planted fruit bearing trees. To show the value of the trees the applicants have examined Dr. Vishnu Patil (A. W. 3)(Exh. 24) and Chandrakant Jadhav (A. W. 2)(Exh. 23) one of the panch witnesses of the spot inspection prepared by the valuer. Through the evidence of the expert the applicants have tendered into evidence report of the expert and statement of valuation of the trees. The applicants have not produced 7/12 extract of the acquired land. The award of the Special Land Acquisition Officer (Exh. 42) reinforces the stand of the applicants about existence of trees.

10. The report of the valuer and statement of valuation clearly demonstrate that while drawing the value of the trees he adopted capitalization method. If the number of trees are taken into consideration having regard to acreage of the acquired land then it shows that in the acquired land there was orchard. The applicants to show the market value of the acquired land have produced at Exh. 43 decision rendered by this court in LAR No. 180/06, at Exh. 43 copy of the sale instance of the land bearing Gat No. 206 and at Exh.44 copy of the award passed by the Lok-Adalat in LAR No. 135/2006. It was

submitted by the learned advocate for the applicants that applicants are entitled for separate valuation for the land as well as for the trees. To meet his submission, I would like to rely upon decision in the matter of **Ambya Kalya Mhatre Vs. State of Maharashtra (2009 AIR SCW 5749)** wherein the Hon'ble Apex Court has explained when the land and trees are to be assessed separately and when not in the following terms at para No. 22 that,

“if the land value had been determined with reference to the sale statistics or compensation awarded for a nearby vacant land, then necessarily, the trees will have to be valued separately. But if the value of the land has been determined on the basis of the sale statistics or compensation awarded for an orchard, that is land with fruit-bearing trees, then there is no question of again adding the value of the trees. Further, if the market value has been determined by capitalizing the income with reference to yield, then also the question of making any addition either for the land or for the trees separately does not arise.

11. It is evident from the aforesaid proposition of law that market value of the acquired land is to be determined taking into consideration the nature of the acquired land i. e. whether it was having trees (orchard) or not. If the price of the acquired land is determined by using capitalization method then question of making

addition either for the land or for the trees separately does not arise. The expert by using capitalization method has determined the value of the orchard. In view of this, a question arise whether value of the land is required to be determined separately on the basis of sale instances. If the evidence of the expert is not found reliable, cogent and satisfactory then only in that eventuality question of determining the price of the acquired land by using sale instance would arise. With this prologue, I proceed to scan and scrutinize the evidence of the expert coupled with the evidence of the applicants and the panch witness.

12. The expert, Dr. Vishnu Patil after giving his educational qualification, professional acumen and experience states that as per the application of the applicants (Exh. 28) he visited the land of the applicants in presence of panchas and other villagers on 10.11.1996 and personally examined plantation, vegetative growth, specific variety of fruit crop, yielding capacity as per the package of practices followed by the owner, height, stem girth, diameter of periphery kind and variety of trees etc. and prepared spot inspection report (Exh.29), report of valuation (Exh. 31) and statement of valuation (Exh.32).

13. The respondents have subjected the witnesses to the cross examination. While cross examining the expert suggestions were given that on the date on which he visited the land there were no

trees; that the applicants never applied to value the trees; and without considering rates fixed by the market committee he has valued the trees. All these suggestions have been denied by the expert. None of the respondents has adduced oral as well as documentary evidence. In the absence of the evidence of the respondents, mere suggestions will not be sufficient, when there is documentary evidence, to nullify the effects of the suggestions. Further, while cross examining the expert it has been brought on record that the private valuer adopted same method which is being adopted by the Government valuer.

14. It was tried to be emphasized by Mr. Pawar, the learned AGP that if both the authorities uses the same method then the value drawn by both the authorities ought to have same. I have thoroughly gone through the contents of the award in order to ascertain how the Special Land Acquisition Officer determined the value of the trees, but could not find out manner in which he determined the value of the trees. In view of this, no substance could be found in the submission of Mr. Pawar that valuation drawn by the valuer is not conscionable. The evidence of the applicants coupled with evidence of panch witness corroborates the evidence of the expert as regards his visits and number of trees etc. As noted hereinabove, there is no difference in the number of trees jotted down by the Special Land Acquisition Officer, asked by the applicants and valued by the valuer. As such there is no material to discard the evidence of the expert. As

noted hereinabove, the valuer valued the trees by using capitalization method, as the evidence of the expert is found reliable, in view of proposition in Ambya Kalya Mhatre's case cited supra question of separately awarding the compensation for acquired land does not arise. In view of this, I am not going to consider the value of the land basing on the award, sale instance and judgment adverted to hereinabove.

15. The report of the valuer (Exh. 31) and statement of valuer (Exh.32) demonstrate that the valuer taking into consideration the rates of fruits determined by the market committee, Government resolutions and Miram Table has drawn the value.

16. The Special Land Acquisition Officer has not drawn any compensation for 36 mango trees, 04 Ber trees and 03 Sitafal trees. The Agriculture Officer in his statement (Exh. 47) has shown only 40 mango trees in the acquired land. Further it appears that after complaint filed by the applicants before the Special Land Acquisition Officer, the Agriculture Officer again made valuation (Exh. 49) of the trees and showed 40 and 36 mango trees in the acquired land of the applicants. The Special Land Acquisition Officer has not assigned any reason as to why he did not award any compensation in respect of 36 mango trees, 04 Ber trees and 03 Sitafal trees. It appears from the entry (Exh. 48) which was taken by the Talathi of village Pal that the applicants had planted 40 and 36 mango trees. The valuer has

shown in the statement of valuation which trees were at early fruit bearing stage and which trees were at full fruit bearing stage. It is well established that the early fruit bearing trees give less income than the full fruit bearing trees. It appears that the Special Land Acquisition Officer has not taken into consideration the second valuation (Exh. 49) in respect of 36 mango trees made by the Agriculture Officer while awarding compensation.

17. The statement of the valuer shows that except 03 Sitafal trees all remaining trees were at full bearing stage. The valuer being the witness of the applicants his opinion is bound to lean in favour of the applicants. The valuer appears to have increased the ages, girth etc. The valuer has not satisfactorily shown the required expenditure to maintain the trees. It appears from the award of the Special Land Acquisition Officer that 40 mango trees were at full fruit bearing stage therefore, the Special Land Acquisition Officer has paid compensation of Rs.68,481/- and 36 mango trees were seedlings therefore, the Special Land Acquisition Officer did not pay any compensation amount for these mango trees. If, of the valuation made by the valuer 40% deduction is made in respect of 40 and 01 mango trees and 4 Ber trees and 70% deduction is made in respect of 36 mango trees and 03 Sitafal trees that would be just and proper. If it is done so it will not prejudice any of the parties to this application. Thus, the applicants after deducting the amount paid by the Special Land Acquisition Officer would be entitled to receive amount as

follows;

<i>Description of trees</i>	<i>No. of trees</i>	<i>Rates determined by the valuer</i>	<i>30% or 60% amount on the rates determined by the valuer</i>
Mango	36	14,20,848/-	4,26,254/- (30%)
Mango	1	48,510/-	29,106/- (60%)
Mango	40	16,39,890/-	9,83,934/- (60%)
Ber	4	23,472/-	14,083/- (60%)
Sitafal	3	10,061/-	3,018/- (30%)
Already paid by SLAO			1,34,989/-
		Total =	13,21,406/-

18. It is thus pellucid that the Special Land Acquisition Officer did not determine the amount of compensation taking into consideration the nature of the land i. e. orchard. As the Special Land Acquisition Officer did not determine the compensation appropriately the applicants are entitled for enhanced compensation as above. Accordingly, issue No. 1 is answered in the affirmative and issue No. 4 partly in the affirmative.

AS TO ISSUE No. 2 :-

19. According to the respondents, the reference is not within

the prescribed period of limitation. The applicants to show that reference is within the prescribed period of the limitation have relied upon notice under Section 12 (2) of the Act (Exh.46) issued by the Special Land Acquisition Officer for giving amount of compensation. It is evident from the copy of notice that the applicants received notice and amount of compensation on 14.06.2005. The applicants filed application for making reference on 15.07.2005. As per Section 18 (2) of the Act application is to be preferred within six weeks from the date of receipt of notice. Thus, it is pellucid that the reference is well within the prescribed period of the limitation. Accordingly, issue No. 2 is answered in the affirmative.

AS TO ISSUE No. 3 :-

20. According to the respondents, as the applicants did not accept amount of compensation under protest, application is not maintainable. Second proviso to Section 31 states that "no person who has received the amount otherwise than under protest shall be entitled to make any application under Section 18".

21. In **Ajit Singh V/s. State of Punjab (1994 SCC (4) 67)** the District Court as well as High Court had declined to award enhanced compensation on the premise that the applicants had not accepted the amount under protest. While deciding the appeal the Hon'ble Apex Court at para No. 5 of the report held that;

where the claimants received compensation awarded by

the Collector without protest, he will not become disentitled to claim enhanced compensation. It has been further held that very fact that the appellants have filed an application for reference under Section 18 of Land Acquisition Act, that will manifest their intention and therefore, the protest against the award of the Collector is implied notwithstanding the acceptance of the compensation.

22. In view of the aforesaid proposition of law even though there is no evidence adduced by the applicants showing that their predecessor in interest accepted the amount under protest, their application which is filed within the well prescribed period of the limitation is maintainable as the application itself amount to implied protest. Accordingly, first limb of issue No. 3 is answered in the affirmative and second limb of issue No. 3 as redundant.

AS TO ISSUE No. 5 :-

23. It is one of the grievance of the applicants that the Special Land Acquisition Officer did not award interest under Section 34 of the Act. It is evident from the 'E' statement that the Special Land Acquisition Officer did not pay interest under Section 34 of the Act on the amount paid as per the award of the Special Land Acquisition Officer. As the award came to be passed on 29.03.2004 and amount

came to be paid on 14.06.2005 the applicants are entitled for interest under Sec. 34 of the Act.

24. Admittedly, the possession of the land had been taken over by private negotiations prior to issuance of notification under Section 4 (1) of the Act. In view of proposition of law laid down in **Dinkar Sandipan Gholve V/s. State of Maharashtra (2009 (Supp) Bom C. R. 891)** the applicants will be entitled for rental compensation from the date of taking over possession till the date of passing of award of the Special Land Acquisition Officer from the Special Land Acquisition Officer.

25. In view of proposition of law laid down in **Lila Ghosh V/s. State of West Bengal (AIR 2004 SC 288)** the applicants will be entitled to the benefit of Section 28 and 34 from the date of passing of award till the date of payment. In so far as other statutory benefits are concerned, those are arising out of statutory provisions and need no discussion and those will be reflected in the operative order. As the Special Land Acquisition Officer did not determine the compensation appropriately the applicants were compelled to file the reference. Resultantly, the reference is required to be allowed with costs. Accordingly, in answer to issue No. 5 following order is passed.

ORDER

1. The reference is partly allowed with costs.

2. The respondents do pay amount of Rs.13,21,406/- as enhanced compensation to the applicants for their acquired land and trees.
3. The respondents do pay to the applicants amount calculated @ 12% per annum on the market value (enhanced amount of compensation) from the date of publication of notification under Section 4 (1) of the Act (10.08.1997) till the date of the award passed by the Special Land Acquisition Officer i. e. 29.03.2004 vide Section 23 (1-A) of the Act.
4. The respondents do pay to the applicants a sum of 30% on the market value (on enhanced amount of compensation) in consideration of the compulsory nature of the acquisition vide Section 23 (2) of the Act.
5. The respondents do pay to the applicants interest as provided under Section 28 of the Act on the amount of enhanced compensation including amount of solatium from the date of award passed by Special Land Acquisition Officer.
6. The respondents do pay to the applicants interest as provided under Section 34 of the Act, on amount paid under the award of the Special Land Acquisition Officer under Section 11 of the Act.

Date : 26.09.2014

Sd/-
(C. M. BAGAL)
2nd Jt. Civil Judge, Sr. Dn.,
Aurangabad.