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IN THE COURT OF JT. CIVIL JUDGE SENIOR DIVISION, UDGIR.
AT : UDGIR.

(Presided over by P. S. Shinde)

L.A.R. NO.236/2015

Exh.28/A

CNR No. MHLA080004262015

Gangaram Jalba Hingane,
Age :- 57 Yrs., Occupation :- Agriculture,
R/o. Konali (Do.),
Tal. Jalkot, Dist. Latur.

.. **Claimant.**

Versus

01. State of Maharashtra,
Through Collector, Latur,
02. Spl. Land Acquisition Officer,
Purna Project, Latur,
03. Executive Engineer,
Latur Medium Project Dept., Latur,
Tal. & Dist. Latur.

.. **Opponents.**

-:- APPEARANCE -:-

For the claimant	:- Adv. Mr. A.P. Munde,
For opponent Nos.1 and 2	:- Adv. AGP S.I. Birajdar,
For opponent No.3	:- Adv. Mr. R.N. Pawar.

-: J U D G M E N T :-

(Delivered on this 27th day of September 2022)

This is the reference filed in accordance with S.18 of the Land Acquisition Act (in short, 'The Act').

The reference, in brief, is as under :-

02. Area of 22 R from B.No.222 situated at Dongar Konali, Tq. Jalkot, Dist. Latur is subject matter of this reference. This land is here-in-after referred as 'the acquired land'. The claimant is the owner of the acquired land. Said land was acquired by the opponent for construction of storage tank, Dam Lane and Khandan under S.4 of the Act vide notification of Dtd.02.04.2009.

03. According to the claimant, there was land of B.No.17 at distance of 800 mtrs. from the acquired land, in which, there was a well. Hence, the acquired land was fully irrigated with water of well from B.No.17. The claimant was taking cash crops from the acquired land like sugarcane, wheat etc. At time of acquisition of the land, population of village Dongar Konali was 3000. The land situate in operational belt of Priyadarshani Sugar Factory, Konali. There is a road of Jalkot-Udgir and village Dongar Konali situate at same distance from Motegaon as well as Taluka places of Jalkot and Udgir. There was primary and higher secondary school at village Dongar Konali. Further, there was supply of electricity and water with existing grampanchayat and co-operative society at that village.

04. But, opponent No.1 wrongly classified the land. Opponent No.1 has not made inquiry regarding yearly yield and income of the acquired land. He grossly undervalued the lands. Therefore, award passed by opponent No. 1 is illegal. There were 23 Jijuberri and 15 custard apple trees in the acquired land. Hence, the claimants prayed for enhancement of compensation with all statutory benefit and at rate of Rs.10,00,000/- per Acre.

05. Opponent Nos.1 and 2 filed written statement at Exh.17, while, opponent No.3 filed written statement at Exh.12. They denied all adverse contentions made by the claimant. The land was acquired by the Government for storage tank, Dam Lane and Khadan. Accordingly, after taking into consideration of nature of the acquired land and sale instances from locality, opponent No.1 fixed market price of the acquired land. The acquired land was not irrigated land. But, it was medium quality land. Hence, compensation granted by opponent No.1 is just and proper. The rate claimed is exorbitant and without any base. The reference is time-barred. Hence, the opponents claimed for dismissal of the reference.

06. I framed issues at Exh.13. I have reproduced them along with findings and reasons thereon, which are as under :-

<u>Sr. No.</u>	<u>ISSUES</u>	<u>FINDINGS</u>
(01)	Whether the claimant proves that amount of compensation	

	awarded by the opponent is inadequate, as alleged ?	.. Yes.
(02)	Whether the reference is within limitation ?	.. Yes.
(03)	Whether the claimant is entitled for enhanced compensation, as prayed ? If yes, at What quantum ?	.. Yes, at the rate of Rs.11,600/- per R.
(04)	What order and award ?	.. The reference is partly allowed.

-:- REASONS -:-

AS TO ISSUE NO.2 :-

07. As this issue goes to root of the reference, I find it proper to decide it first.

08. As per proviso (b) of sub-section 2 of S.18 of the Act, the claimant ought to have file the reference within six weeks from receipt of notice under S.12(2) of the Act or within six months from date of Award, whichever is earlier. Here, it is contended by the claimant that he has got knowledge of Award at the time of receipt of notice under S.12(2) of the Act on Dtd.30/01/2012. Nothing has been elicited from cross-examination of the claimant to disbelieve his testimony about getting knowledge of the Award on Dtd.30/01/2012. Considering this, period of six weeks from receipt of notice is ended on Dtd.12/03/2012. In this regard, reference petition under Exh.2 shows that it has been filed with opponent No.2 on Dtd.02/03/2012.

Resultantly, the reference is filed within limitation and accordingly, issue No.2 is answered in the affirmative.

AS TO ISSUE NOS.1, 3 AND 4 :-

09. The claimants have come with very specific case that the acquired land was valued more than the valuation made by opponent No.1 and therefore, compensation granted by opponent No.1 is very less.

10. As per the provisions of Section 23 of the Act of 1894 for determining the amount of compensation, the Court has to consider the market value of the land on date of the publication of notification under Section 4 of the Act. In the present case, admittedly, notification under Section 4 of the Act was published in the village on dtd.02/04/2009. Hence, the crucial date for deciding the market value of the land is dtd. 02/04/2009.

11. As the claimant has challenged award on ground of inadequacy of compensation, the burden is heavily lie on him to prove as at grounds of inadequacy of compensation and What would be proper amount of compensation. In **Ramanlal Deochand Shah Vs. The State of Maharashtra (2013 (5) ALL M R 482 MANU/ SC/0672/2013)**, the Hon'ble Supreme Court of India held that,

“It is trite that in a reference under Section 18 of the

Land Acquisition Act, 1894 on the question of adequacy of compensation determined by the Collector, the burden to prove that the Collector's award does not correctly determine the amount of compensation payable to the landowner is upon the owner concerned. It is for the claimant to prove that the amount awarded by the Collector needs enhancement, and if so, to what extent. The claimant can do so by adducing evidence, whether oral or documentary which the reference court would evaluate having regard to the provisions of Sections 23 and 24 of the Land Acquisition Act while determining the compensation payable to the owners. In the absence of any evidence to prove that the amount of award by the Collector does not represent the true market value of the property as on the date of the preliminary notification, the reference court will be helpless and will not be justified in granting any enhancement. The Court cannot go by surmises and conjectures while answering the reference nor can it assume the role of an appellate court and enhance the amount awarded by reappraising the material that was collected and considered by the Collector”.

12. In backdrop of this ratio, it is oral evidence of the claimant that there is a well in B.No.17 situated at distance of 800 mtrs. and the claimant was taking water from said well. Hence, the acquired land was irrigated land and he was taking wheat, sugarcane crop etc. in it. But, opponent No.1 improperly classified the acquired land.

13. The claimant denied suggestion at hands of the opponents that the acquired lands were jirayat lands. However, 7/12 extract of the acquired land (Exh.20) shows that it was a jirayat land. At the same time, there is entry in other right column of extarct (Exh.20) about common well of the claimant and one

Sambhaji Jalba Hingane, who may be his brother. But, the claimant himself stated in course of cross-examination that, he was using water of Tiru river for watering the acquired land. Moreover, possession column of 7/12 extract nowhere shows that the claimant was taking cash crop from the acquired land for a whole year. Hence, B.No.222 will have to be considered as seasonally irrigated land for want of permanent source of water.

14. Considering potentiality of the acquired lands, the sum and substance of evidence of the claimant is that, at time of acquisition of the land, population of village Dongar Konali was 3000. The land situate in operational belt of Priyadarshani Sugar Factory, Konali. There is a road of Jalkot-Udgir and village Dongar Konali situate at same distance from Motegaon as well as Taluka places of Jalkot and Udgir. There was primary and higher secondary school at village Dongar Konali. Further, there was supply of electricity and water with existing grampanchayat and co-operative society at that village.

15. However, evidence is not sufficient to show that location of the land has a potential growth in near future. Moreover, there is no evidence about any kind of semi-urban development in village Dongar Konali or nearest villages at the time of notification. In circumstances, it can be well inferred that there is no high potentiality to the acquired land in near future.

16. Hence, in order to determine market value of the acquired land, sale instances from same village or lands from adjacent village made shortly before or after award under Section 4 of the Act can be considered. In the case of **O.N.G.C. Ltd. V/s. Sendhabhai Vastram Patel and others, 2005 LAC 515 (SC)**, the Hon'ble Supreme Court held that the best method for ascertaining the market value is the amount which a willing purchaser would pay to the owner of the land.

17. The claimant relied on sale-deed (Exh.19) took place between Mathurabai Kendre and Dhondubai Musale etc. Sale-deed (Exh.19) shows that B.No.07 ad-measuring of 31 R from village Sonwala sold for total consideration of Rs.1,50,000/-.

18. But, in this light, it cannot be overlooked that the claimant himself relied on Judgment from LAR No.140/2013 (Exh.24). Perusal of Judgment makes it clear that it relates with acquisition of land from same village for same purpose and under same notification. Ld. Predecessor of this Court also considered abovesaid sale instance (Exh.19) in that Judgment also for determination of market price. In circumstances, it would be best piece of evidence to determine market rate of the acquired land as on date of notification. Judgment (Exh.24) shows that Ld. Predecessor of this Court determined rate of Rs.11,600/- per R for seasonally irrigated land.

19. Though, the claimant contended that there are Jijuberri and Custard Apple trees in the acquired land, no evidence is brought to show existence of any such trees in the acquired land. Moreover, 7/12 (Exh.20) also nowhere shows about existence of such trees in the acquired land. In addition, no expert has been examined by the claimant either in proof of existence of trees or its valuation. Hence, no question arose to determine amount of compensation about so called trees from the acquired land.

20. In the result, the claimant is entitled for compensation at rate of Rs.11,600/- per R for seasonally irrigated land, as on date of notification. Accordingly, he is entitled for statutory benefits under S.23(1A), 23(2) and 28 of the Act on enhanced compensation.

21. For the reasons, the references will have to be allowed partly with regard to compensation. Hence, issue Nos.1 and 3 are answered partly in the affirmative and in answer to issue No.4, I pass the following order :-

-:- O R D E R -:-

(01)		The reference is partly allowed with proportionate costs.
(02)		The opponents do pay the enhanced compensation at the rate of Rs.11,600/- per R to the claimant.

(03)	Amount already paid to the claimant towards compensation be deducted from the enhanced compensation.
(04)	The opponent do pay solatium to the claimant at rate of 30% on the enhanced compensation as per provisions of Section 23 (2) of the Land Acquisition Act, 1894, after deducting the solatium already paid.
(05)	The opponent do pay interest to the claimant at rate of 12% per annum on the enhanced compensation from the date of notification i.e. 02/04/2009 to the date of the award i.e. 29/09/2011 as per Section 23(1A) of Land Acquisition Act.
(06)	The opponent do pay interest to the claimant on the above said net payable amount at rate of 9% p.a. for the first year from date of possession of the land and thereafter, at rate of 15% p.a. till realization of the amount, vide S.28 of the Land Acquisition Act.
(07)	The claimant shall pay deficit court fees stamp, if any.
(08)	Award be prepared accordingly.

Date :- 27/09/2022.

Place :- Udgir.

(P. S. Shinde)

Jt. Civil Judge Senior Division,
Udgir.