

Received on : 10.08.2012  
Registered on : 10.08.2012  
Decided on : 05.11.2016  
Duration : 04 Y.02 M. 25 D.

**IN THE COURT OF 2<sup>nd</sup> JOINT CIVIL JUDGE (S.D.), JALNA**  
*(Presided over by Jayshri R.Pulate)*

**L.A.R.No.438/2012**  
**{File No.LAQ/B&C/CR-122/2005}**

**Exh.20**

Achut Bhagaji Bobde  
Age 50 yrs. Occ. : Agriculturist,  
R/o Tirthpuri, Tq.Ghansawangi,  
Dist. Jalna.

**...PETITIONER.**

**- V E R S U S -**

1- The State of Maharashtra,  
Through: Collector, Jalna.

2- The Special Land Acquisition Officer,  
(B&C), Jalna.

3- The Executive Engineer,  
Minor Irrigation Division,  
(Local Sector), Jalna.

**...RESPONDENTS**

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**Claim :**      **Reference u/s 18 of The Land Acquisition Act, 1894.**  
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Learned Counsel for the petitioner      :      Shri R.J.Bankar  
A.G.P. for respondents No. 1 to 3      :      Smt.J.B.Solunke  
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**JUDGMENT**

(Delivered on 05<sup>th</sup> November, 2016)

1- This is a land acquisition reference filed u/s 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) arising out of the award passed by Special Land Acquisition Officer (in short SLAO), Jalna in file No.LAQ/B&C/CR-122/2005 regarding gat no.61 situated at village Tirthpuri Tq. Ghansawangi, Dist. Jalna. The award was passed on 25.01.2007. The land of the petitioner was acquired for construction of 'Tirthpuri Percolation Tank no.2' at village Tirthpuri, Tq. Ghansawangi, Dist. Jalna.

2- In short, the case of the petitioner is as follows :

The land of the petitioner in gat no.61 situated at village Tirthpuri Tq. Ghansawangi, to the extent of 1H 17 R was acquired for the public purpose as described above for which the SLAO granted compensation @ Rs.1250/- per R. The notification u/s 4 (1) of the Act was published in gazette dated 05.05.2005 and award was passed on 25-01-2007.

3- Being dissatisfied with the award passed by SLAO, the petitioner has filed the reference on various grounds. The petitioner

contends that, the SLAO Jalna has failed to consider the proper panch valuation method in determining the amount of compensation and valuation of the land. Wrong method of classification of land based on land revenue was adopted for the purpose of awarding compensation. No proper inquiry was made and no sound observations have been made to search out the real price of the land. The sale transactions considered by the SLAO for assessing the value of the land are not true and genuine. For these reasons the petitioner has claimed enhanced compensation.

4- Respondent nos. 1 to 3 have resisted the claim of the petitioner by filing their written statement at Exh.8 and 9. According to them, the SLAO considered the situation of land and other factors while assessing the market price prevailing on the date of award. The SLAO classified the land on the basis of its quality as well as assessment and other factors. The petitioner accepted final payment of the compensation without any protest and lost the right to claim enhanced compensation. They have prayed for dismissal of the reference.

5- After perusing the pleadings of the parties and documents

adduced on record, I framed following issues at Exh.10. I have recorded findings against each of them with reasons to follow :

| <u>ISSUES</u>                                                                                     | <u>FINDINGS</u>                                            |
|---------------------------------------------------------------------------------------------------|------------------------------------------------------------|
| 1 Does the petitioner prove that compensation awarded to him is grossly inadequate and improper ? | : Yes.                                                     |
| 2 Whether petitioner is entitled for enhancement in compensation ? If yes, at what rate ?         | : Yes, @ Rs.2,190/-<br>Per R.                              |
| 3 What order and decree ?                                                                         | : ...Reference is partly<br>allowed as per final<br>order. |

: REASONS :

As to issue nos. 1 to 3 :

6- As issue nos. 1 to 3 are interconnected, it is convenient to discuss them together to avoid repetition of facts and evidence. It is undisputed fact that land of the petitioner was acquired for public purpose and he is the person interested in the acquired land within the meaning of the Act.

The petitioner has filed affidavit of chief examination at Exh.11. He has relied on the copy of 7/12 extract Exh.15, copy of

sale instance at Exh.16, certified copy of award along with “E” statement Exh.17. He has closed evidence vide purshis Exh.18. Respondent Nos. 1 to 3 have closed the evidence vide purshis Exh.19.

7- As far as the issue of limitation is concerned, the petitioner claims that he came to know about the award when he received notice u/s 12(2) of the Act on 31-01-2008. As per the endorsement of SLAO office, the reference was presented on 22-02-2008. Therefore, considering the date of receipt of notice, the reference is filed within six weeks from the date of knowledge. The petitioner has not been subjected to cross-examination on this point. The respondents have not led evidence to show that the petitioner had knowledge of the award earlier than he claims. Hence, the reference is filed within limitation. Thus, there is no substance in the objection that the petitioners did not raise any written protest at the relevant time.

8- Heard submission of both sides. Learned Counsel for petitioner has vehemently argued that the compensation awarded is grossly inadequate and well favored enhancement is necessary. The land of the petitioner is seasonally irrigated. It is also prayed that, the

petitioner be awarded rental compensation as well as interest as per sec. 28 and 34 of the Act. On the other hand, Learned A.G.P. has submitted that the SLAO has determined proper market price and provided proper compensation.

9- The petitioner has examined himself to discharge his burden apart from relying on one sale instance. Petitioner has deposed on oath about the quality, potentiality of soil and facilities available to the land like water, nearby main markets etc. He has deposed about various harvested crops like wheat, chilly, jawar, tur and udid. His evidence further reveals that, an income of Rs. 70,000/- to 80,000/- per year per acre was obtained by him from the said crops. In short, he has reproduced on oath the contentions in the reference. In cross examination, he has denied that he received proper compensation. He has denied that the land in the sale instance was more fertile and of higher potentiality than his acquired land.

10- The petitioner claims his land as perennially irrigated. He has produced 7/12 extract at Exh.15. There is no entry of independent well in other rights column in the name of petitioner. The cropping pattern for the year 2002-03 to 2014-2015 shows crops

like cotton and tur etc. Thus, it seems that, the petitioner had sufficient water to cultivate crops around the year.

11- In award Exh-17 the SLAO has classified 1H 17 R area of the land of petitioner as non-irrigated. The award does not reflect whether an amount was awarded for the engine or pipeline but reflects that crops of cotton and tur etc. were taken by the petitioner. In view of the above evidence on record, I hold that the classification of land of petitioners as non-irrigated by the SLAO is proper.

12- To prove the market value of the acquired land at the relevant time, the petitioner has relied on one sale instance.

| Sr.No. | Exh.No | Village                             | Gat No | Area | Price Rs. | Date       | Rate Per R |
|--------|--------|-------------------------------------|--------|------|-----------|------------|------------|
| 1      | 16     | Tirthpuri,<br>Taluka<br>Ghansawangi | 568    | 32 R | 56,000/-  | 29-11-2002 | 1,750/-    |

In the sale instance Exh.16, 32 R. land was sold for Rs. 56,000/- on 29-11-2002. The land is situated at village Tirthpuri, Tq.Ghansawangi. The sale instance is from the same village.

13- In **Gafar v/s Moradabad dev. Autho. (2007)LAC Page No. 291(Supreme Court)** it has been held that “*Claimants are under initial burden to establish that amounts awarded to them are*

*inadequate. If this initial burden is discharged, then burden shifts to State to justify award.”*

The Hon'ble Bombay High Court in case of **Digvijay v/s State 2012 (4) Mh.L.J. Page No. 201,** held that “*Claimant is in position of plaintiff and he has to show that, offer price is inadequate on the basis of material and evidence.*”

The Hon'ble Bombay High Court in case of – **Chinubhai Kalidas Patel Vs. State of Maharashtra, 2007 (5) ALL MR Page No.376,** observed “*While determining the market value, the court has to apply certain guesswork within its reasonable limits*”. Thus, the court has to carry out certain guesswork and necessary adjustment from the produced evidence to arrive at proper conclusion of the market price.

14- Learned Counsel for the petitioners submitted that this court has decided similar type of reference in respect of acquisition of lands in village Tirthpuri bearing LAR No.435/2012 Subhash & Oth. -Vs- State in C.R.No.122/2005 and rate given in said matter can very well be considered while determining rate in present matter.

In view of decision of Hon'ble Bombay High court in

***Hanmabai Irannna Patil v/s state of Maharashtra 2009 (4) Mh.L.J.***

**805**, as lands of the claimants are acquired for the same project under common notification, the claimants would be entitled to compensation at similar rate. In the case of Subhash this court has determined the rate of non-irrigated land @ Rs.2,190/- per R. Therefore, rate decided in LAR No.435/2012 Subhash & Oth. -Vs- State can very well be considered for determination of rate of the acquired land. Therefore, I hold that the market price of the acquired non- irrigated land on the date of notification was Rs. 2,190/- per R.

15- As regards the statutory benefits u/s 23 (1-A) 23 (2) of the Act including solatium and component amount @ 12% as well as interest applicable on these statutory benefits, reliance can be placed on- 1) ***Sunder Vs. Union of India, AIR 2001, SC 3516 (1)*** & 2) ***Nagpur Improvement of Trust Vs. Vasantrao & ors. All India Land Acquisition and Compensation Cases 2002, Page 508.*** It is held that the petitioner is entitled to an interest on enhanced component and solatium amount.

16- The amount of compensation is calculated as follows :

1H 17 R [land acquired by Government]  
x2,190 /- [rate determined by this court per R]= Rs. 2,56,230/-

Compensation paid by SLAO [excluding  
improvement] deducted = Rs. 1,46,250/-

Net additional compensation determined = Rs. **1,09,980/-**  
by this court.

In such circumstances, the reference is partly allowed to the extent of additional compensation for the market price of the land of **Rs.1,09,980/-** along with statutory benefits and interest as per section 28 and 34 of the Act. Hence, I answer issue nos. 1 and 2 in the affirmative and for the answer of issue no.3, I proceed to pass the following order.

### **ORDER**

- 1 The reference is partly allowed with proportionate cost.
- 2 The respondents shall pay the enhanced amount of compensation of **Rs.1,09,980/-** (Rupees One Lac Nine Thousand Nine Hundred Eighty only) to the petitioner along with amount of component @ 12% per annum from the date of publication of notification u/s 4 of the Land Acquisition Act i.e. 05.05.2005 till the date of award i.e.25-01-2007 vide Section 23 (1-A). The respondents shall also pay 30% amount on the enhanced compensation

as solatium vide Section 23 (2) of the Act.

- 3 The respondents shall pay interest to the petitioner on aggregate amount mentioned in para 2 above @ 9% per annum from 25-01-2007 to 24-01-2008 and thereafter @15% per annum till the date of realization of the entire amount vide Section 28 of the Act.
- 4 The compensation be disbursed to the petitioner on payment of deficit court fees, if any.
- 5 Award be drawn up accordingly.

Date:- 05-11-2016

Sd/-  
(Jayshri R.Pulate)  
2<sup>nd</sup> Jt. Civil Judge (S.D.)  
Jalna.

**CERTIFICATE**

I affirm that the contents of this PDF file are correct as per original Judgment.

|               |   |                                               |
|---------------|---|-----------------------------------------------|
| Name of Steno | : | Bobde S.V.                                    |
| Name of court | : | 2 <sup>nd</sup> Jt. Civil Judge (S.D.), Jalna |
| Date of PDF   | : | 11-11-2016                                    |

Sd/-  
Stenographer (L.G.)