MHDH020006472021

Received on	:	06/01/2021.
Registered on	:	12/03/2021.
Decided on	:	19/01/2024.
Duration	:	**Ys. Ms. Ds.**
		03 00 13

IN THE COURT OF 4th JT. CIVIL JUDGE SR. DN., DHULE.

(Presided Over by S. M. Gourgond)

(S.R. No.37/01) **L. A. R No.74/2021**

Exh. No. **CNRNO.MHDH020006472021.**

Pandharinath Mahadu Gujar (Patil),]
Age: 75 yrs., Occu. - Agriculture,]
R/o. Ghodasgaon, Tq. Shirpur,]
Dist. Dhule.] ...**Claimant.**

V/s.

1] **The Collector, Dhule**]
Dist. Dhule.]
2] **The Deputy Collector,(Land Acquisition-1)**]
Dhule.]
3] **Tapi Irrigation Development Corporation,**]
Jalgaon, through,]
Executive Engineer,]
Minor Tapi Project Division, Amalner.] **Opponents.**

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

Shri. S. D. Patil – Ld. Advocate for Claimant.

Shri. V. S. Purohit – Ld. A.G.P. for Opponent no.1 & 2.

Shri. M. R. More – Ld. Advocate for Opponent no.3.

JUDGMENT

[Delivered on 19th January, 2024]

01] This is reference under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred as '**the Act**') for enhancement of compensation awarded by the Special Land Acquisition Officer (hereinafter referred as 'SLAO').

Details of acquired lands:-

02] The description of acquired land situated at village Ghodasgaon, Tq. Shirpur, Dist. Dhule is as under;

Gat No.	Acquired area	Compensation awarded by SLAO
13/2	1 H. 21 R	Rs.4,51,209/-

Details of land reference: -

Name of project	Lower Tapi Project Padalse
L.A.Q./S.R. no.	37/2001
Date of preliminary notification under section 4(1) of the Act.	18/12/2010
Date of publication of notice under section 6 of the Act.	14/07/2011 to 20/07/2011
Date of Award passed as per section 11 of the Act.	29/11/2013
Date of receipt of notice under section 12(2) of the Act.	20/06/2017

03] The claimant contended that he not accepted the award and he accepted the compensation under protest.

The SLAO passed the award without considering the market value of acquired property and provisions of the Act. The quality and nature of the acquired land was not considered by the SLAO. The acquired land was irrigated one. However, the SLAO determined the market value of acquired land as non-irrigated (जिरायत) land. The soil quality and fertility of acquired land is ignored by the SLAO.

04] The claimant further contended that, relevant sale instances and the provisions of Section 23 of the Land Acquisition Act were not considered by the SLAO while determining the market value of acquired land. The long standing unchanged assessment of revenue of acquired land is wrongly considered by SLAO. The SLAO not made local inquiry and panchanama about the market value of acquired land. The SLAO not considered the fruit bearing trees available in the acquired land. Therefore, the compensation awarded by the SLAO is inadequate and meager. The market value of acquired land was of Rs.40,00,000/- per hectare. Accordingly, the claimant is entitled for enhanced compensation of Rs.48,40,000/- for acquired land and of Rs.2,50,000/- for well. Therefore, he moved written application to opponents for reference to Court for determination of the market value vide section 18 of the Act. Lastly, the claimant prayed for enhancement of compensation with statutory benefits for solatium, component and interest. Thereafter, opponent no.1 referred said reference to the Court.

Defence of opponents is as under :

05] Opponent no.1 and 2 filed their written statement at Exh.20 and opponent no.3 adopted the written statement of opponent no.1 and 2 by *pursis* Exh.22. The sum and substance of written statements is that the claimant claiming exorbitant compensation. The location of the land under acquisition as well as other factors were considered by the SLAO while determining the market value of acquired land on the date of notification under section 4 of the Act. The SLAO has qualified the land on the basis of its soil, assessment and other factors. The SLAO has considered the genuine sale instances in respect of the land which was comparable under acquisition. The SLAO has passed award after giving sound and cogent reason. Thus, the compensation awarded by the SLAO is adequate. So, there is no need of enhancement of compensation. The reference application is not filed within limitation. Lastly, opponents prayed for rejection of the application.

06] Issues have been framed at Exh.23. I have reproduced the same and recorded my findings thereon with reasons stated as under:

Sr. No	ISSUES	FINDINGS
1)	Whether the reference is within limitation?	Yes.

Sr. No	ISSUES	FINDINGS
2)	Whether the claimant prove that compensation awarded by SLAO is inadequate?	Yes.
3)	What is the market price of acquired land on the date of notification published under section 4(1) of the Land Acquisition Act, 1894?	As per final order.
4)	Whether the claimant is entitled for enhanced compensation? If yes, to what amount?	Yes, as per final order.
5)	What order ?	As per final order.

R E A S O N S

07] In order to prove the claim, the claimant has adduced evidence of himself at Exh.15. The claimant filed the 7/12 extract of acquired land at Exh.18, 7/12 extract of Gat no.11/3 at Exh.36 and certified copies of sale deeds at Exh.29. The claimant has closed his evidence by *pursis* Exh.25. Opponent no.1 and 2 have closed their evidence *vide pursis* Exh.30 and opponent no.3 has closed evidence *vide pursis* Exh.33.

08] Heard the argument of learned Adv. Shri. S. D. Patil for claimant, learned A.G.P. Shri. V. S. Purohit for opponent no.1 & 2 and learned Adv. Shri. M. R. More for opponent no.3. Perused the written argument and evidence available on record.

<u>AS TO ISSUE NO. 1</u>:- (Limitation)

09] Opponents raised objection as to the limitation of reference application. Therefore, it is necessary to see that whether the reference is within limitation or not. It is pertinent to note here that, proviso to sub-section 2 of the section 18 of the Act provides that *every such application shall be made, -*

> *(a) if the person making it was present or represented before the Collector at the time when he made his award, within 6 weeks from the date of the Collector's award;*
> *(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub section (2), or within six months from the date of the Collector's award, whichever period shall first expire.*

10] In view of above provision, it is clear that, the period of limitation will run from the date of knowledge of the award and knowledge of the award does not mean a mere knowledge of the fact that an award has been passed. The knowledge must relate to essential contents of the awards. The contents may be known either actually or constructively. The claimant deposed that he came to know about the award on the date when he received the notice under section 12(2) of the Act on 20/06/2017. This fact is not refuted in the cross-examination of claimant. It is pertinent to note that the notice under section 12(2) of the

Act is received by the claimant on 20/06/2017. The present reference is filed on 31/07/2017. Therefore, it is clear that the claimant/applicant made application within six weeks from the date of notice under section 12(2) of the Act. Therefore, it is clear that the claimant/applicant applied for enhancement of compensation within limitation. Hence, I answer as to issue no.1 in the affirmative.

AS TO ISSUE NO.2 TO 4:-

11] On considering the nature of proceeding, it is necessary to mention here that the land owner looses land permanently in compulsory acquisition. So, keeping in view the purpose of the Act, it would be just to decide such a market value which is fair to the loosing owner of the land. While fixing the market value of the acquired land, the nature of the land plays an important role. Likewise, market conditions prevailing as on the date of notification is relevant factor. The potential of the acquired land is also relevant consideration.

NATURE OF ACQUIRED LAND:-

12] The claimant has deposed that the acquired land was having high fertility. The acquired land was irrigated (बागायत) land. However, the SLAO has awarded compensation by considering the acquired land as non-irrigated (जिरायत) land. The topography of acquired land is ignored by the SLAO.

13] The claimant claimed compensation by treating their acquired land to be irrigated. Same is reiterated in the examination-in-chief of claimant. However, the claimant in his cross-examination deposed that he has not analyzed soil of his acquired land. He has not filed electricity bill. There is no tar road to enter in the acquired land.

14] On perusal of cross-examination of the claimant reveals that he has not filed electricity bill. The claimant has filed 7/12 extract of acquired land at Exh.18. The 7/12 extract Exh.18 reveals that the claimant has right to take water from the borewell of Gat no.11/3 by pipeline to the acquired land. The claimant has filed 7/12 extract of Gat no.11/3 at Exh.36. On perusal of said 7/12 extract Exh.36 reveals that the land bearing Gat no.11/3 is owned by the claimant and there is entry of borewell in the other right column of said 7/12 extract. The said documents Exh.18 and 36 shows that there was source of water for acquired land. Opponents have not given any satisfactory explanation about why the acquired land was considered as non-irrigated land at the time of determining the market value of acquired land and passing award inspite of having entry of source of water to the acquired land.

15] On perusal of award reveals that the SLAO has not assigned any reason why the acquired land was considered as non-irrigated land inspite of entry of source of water in the 7/12 extract of acquired land. No doubt, the

7/12 extract reveals that the acquired land was non-irrigated (जिरायत). However, the nature of crops of acquired land is required to be considered while deciding the nature of acquired land. On perusal of 7/12 extract Exh.18 reveals that there was crop of banana in the acquired land for the year 2010-11. The entry of source of water in the other rights column of 7/12 extract Exh.18 and entry of crop in the 7/12 extract Exh.18 reveals that there was source of water in the acquired land and the claimant had taken *bagayati* cash crops in the acquired land for relevant date. Moreover, opponents have failed to adduce any reliable evidence to show that there was no source of water in the acquired land and the claimant had not taken *bagayati* cash crops in the acquired land for the year 2010-11. Therefore, in view of aforesaid discussion and evidence available on record, I am of the opinion that the claimant has established that there was source of water for acquired land and he was taken *bagayati* cash crops in the acquired land at the time of relevant date. Thus, the claimant has established that the acquired land was irrigated (बागायत) in nature and he had taken *bagayati* cash crops in the acquired land.

ASSESSMENT OF MARKET VALUE OF THE ACQUIRED LAND:-

16] The next question relates to the assessment of the market value of the acquired lands on the date of the publication of the notification. It is pertinent to note that provisions of section 23 and 24 of the Act are required to be considered in determining the compensation. These provisions provides for the matters to be considered and matters to be neglected while determining the compensation. The market value of the acquired land has to be determined on the facts of each case, existing statutory guidelines stated in sections 23 and 24 of the Act and in the backdrop of judicial pronouncements controlling exercise of jurisdiction under section 18 of the Act.

17] On perusal of award, it reveals that the date for the determination of market value of acquired land is considered as 18/12/2010. The claimant has claiming the determination of market value of acquired land on 18/12/2010. Therefore, it is clear that the relevant date for determination of market value of acquired land is 18/12/2010.

18] The learned advocate of the claimant argued that the claimant has adduced reliable and cogent evidence regarding enhanced compensation. The claimant has filed certified copy of sale-deed at Exh.29. The land mentioned in the sale-deed Exh.29 is nearby the acquired land. So also, the reference Court already determined the market value of acquired land of the same award in LAR no.93/2021, 94/2021, 97/2021. Therefore, the claimant is entitled for enhanced compensation. Opponents have not adduced any evidence regarding sale instances referred in the award. Lastly, the learned advocate of the claimant prayed for enhanced compensation.

19] The learned advocate of the claimant relied on the following judgments -

1] Amol Rambhau Arjun Vs. State of Maharashtra and Ors., 2000(4) Mh.L.J. 302
2] Chimanlal Hargovinddas V/s. Special Land Acquisition Officer, Poona and another A.I.R. 1988 S.C.1652,
3] Special Land Acquisition Officer V/s Narasaiah, A.I.R. 2001 S.C. 1117,
4] Mahesh Dattatray Tirathkar Vs. State of Maharashtra, AIR 2009 SC 2238.
5] The General Manager, ONGC Ltd. Vs. Rameshbhai Patel, AIR 2008 SCW 5947.
6] Anjani Molu Dessai Vs. State of Goa, 2010(13) SCC 710.
7] State of Maharashtra Vs. Bhimabai Gondal and Ors., 2007(6) All M.R. 215.
8] Sambha Sinai Budkule Vs. Additional Deputy Collector and Land Acquisition Officer, Mapusa, 2013(1) All M.R. 310.
9] Chindha Fakira Patil Vs. The Special Land Acquisition Officer, Jalgaon, AIR 2012 SC 481.
10] Krishi Utpadan Mandi Samiti Vs. Bipin Kumar and Anr., 2000(3) AWC 1981.
11] Sunder Vs. Union of India, 2001(7) SCC 2011.
12] State of Maharashtra and Anr. Vs. Baliram Girdhar Patil, 2006(6) Mh.L.J. 82.
13] K. S. Shivadevamma and Ors. Vs. Assistant Commissioner and Land Acquisition Officer and

Anr., 1995, Supp.(6) SCR 364.

14] Koyappathodi M. Ayisha Umma Vs. State of Kerala, 1991 SCR (3)(548).

15] Special Land Acquisition Officer MHADA Vs. Zarine Ashrafali Jariabhai Mansingh Trustee, 2002(2) All M.R. 730.

16] State of Goa Vs. Jose Minguel Francisco Braganza, 1997(2) All M.R. 699.

17] Bayaji Tatya Kalunge Vs. State of Maharashtra, 2007(2) All M.R. 316.

18] Vitthal Lakdaji Gawande and Ors. Vs. State of Maharashtra and Ors., 2010(4) Mh.L.J. 578.

20] On the contrary, the learned AGP for opponent no.1 and 2 and the learned advocate of opponent no.3 argued that the evidence adduced by the claimant is not reliable and trustworthy. The alleged certified copy of sale-deed is in respect of land situated in the Jalgaon district. The acquired land of the claimant is situated in the Dhule district. Therefore, the said sale instance is not helpful to enhance the compensation of the acquired land as prayed by the claimant. Lastly, opponents prayed for rejection of application.

21] The learned advocate of opponent no.3 relied on the following judgments of the Hon'ble Bombay High Court -

1] Virbhadra Ramappa Sundale Vs. The State of Maharashtra, First Appeal no.715/2019, Date of judgment 02/08/2019.

2] State of Maharashtra Vs. Kailas Rangari, 2016(3) Mh.L.J. 457.

22] On considering the aforesaid case laws and arguments of both parties, it is pertinent to note here that, the claimant has relied on the method of comparable sale instance and previous judgments for enhanced compensation of acquired land. Accordingly, the evidence and ratio laid down in aforesaid judgments is required to be considered. It is important to note here that, section 51-A of the Act provides that certified copy of a document registered under the provisions of the Registration Act, 1908 including a copy given under section 57 of that Act, can be accepted as evidence of the transaction recorded in such document. The Hon'ble Supreme Court in the case of ***Special Land Acquisition Officer V/s Narasaiah, A.I.R. 2001 S.C. 1117,*** observed that *certified copy of sale deed may be admitted in evidence without examining the vendor or vendee.*

23] The claimant has relied on the sale instance Exh.29. On perusal of copy of sale deed Exh.29 reveals that said sale deed is in respect of agricultural landed property situated in village Anjatisim, Tq.-Chopada, Dist.-Jalgaon. The acquired land of the present reference is situated within the jurisdiction of Dhule District. No doubt, the landed property mentioned in the sale-deed Exh.29 is not of Dhule district. But, the distance between acquired land and the landed property mentioned in the sale-deed Exh.29 is required to be considered while determining the market value of the acquired land. The claimant in his cross-examination deposed that the distance between acquired land and land mentioned in the sale instance is about ½ Km. Therefore, it is clear that the acquired land was not far away from the landed property of sale-deed Exh.29. Therefore, mere jurisdiction of different district regarding acquired land and property mentioned in the sale instance is no ground to hold that sale instance Exh.29 is not helpful to determine the market value of acquired land.

24] On perusal of the award reveals that the SLAO has divided acquired lands in six class as per the assessment of revenue. Moreover, the SLAO has referred 16 sale instances in a sale-purchase chart. However, the SLAO has not determined the market value of acquired land on the basis of sale instances referred in the award. Moreover, in view of ratio laid down in the case of **Chimanlal (Supra)**, sale instances referred in the award cannot be considered while appreciating the evidence as those are neither produced nor proved by either side. On the contrary, the claimant has relied upon sale instance Exh.29 of land situated nearby the acquired land.

25] On considering the date of aforesaid sale instance and award, it reveals that the notification under section 4 of the Act is published on 18/12/2010. The sale-deed Exh.29 is executed on 30/06/2010. Therefore, the sale-deed Exh.29 is executed prior to the six months of the notification under section 4 of the Act regarding acquired land. The sale instances relied by the claimant fulfills the factor of proximity from place and date angle with the date of the publication of the notification under section 4(1) of the Act. Therefore, said sale instance is helpful to determine the market value of acquired land on the date of notification published under Section 4(1) of the Act.

26] No doubt, the claimant has not adduced any evidence to show that the quality of soil and fertility of acquired land is same with the quality of land mentioned in sale-deed Exh.29. Moreover, there is another dissimilarity regarding area of acquired land and land mentioned in sale-deed Exh.29. Therefore, it is clear there are some dissimilarity in the acquired land and land mentioned in the sale-deed Exh.29. However, there is no any evidence on the part of opponents to disbelieve the market value of land mentioned in the sale-deed Exh.29. Moreover, the distance between acquired land and land mentioned in the sale-deed is only about ½ kilometer.

27] On perusal of award reveals that, the SLAO has simply relied upon the market value shown in ready reckoner. It is important to note here that opponents have not filed single sale instances referred in the award. The reason behind non-filing of said sale instances is best known to opponents. Therefore, it is clear that there is nothing on record to disbelieve the oral evidence of the claimant and sale-deed Exh.29.

28] Moreover, the SLAO has determined the market value of acquired property by dividing acquired lands in six categories on the basis of assessment of revenue. So also, the SLAO has determined the market value of acquired land by considering the non-irrigated land. Therefore, the said calculation made by the SLAO in the said manner is certainly not good and justifiable. The compensation awarded on the basis of said method is certainly incorrect. As mandated by the law laid down by the Hon'ble Apex Court, every case must be dealt with on its own fact pattern bearing in mind all the factors as a prudent purchaser of land in which position the Court must place itself. The general guidelines are to be applied with common sense.

29] Therefore, in view of aforesaid discussion and evidence available on record, it is clear that sale-deed Exh.29 is in respect of land admeasuring 0 H. 32 R of block no.140/B situated at village Anjatisim, Tq. Chopada, Dist. Jalgaon and the consideration of said sale-deed is Rs.3,00,000/-. Therefore, the value of the said land comes to be Rs.9,37,500/- per hectare. In view of aforesaid discussion, it is clear that there are some dissimilarity as regards to location and size of the land covered by sale-deed and acquired land. Therefore, while determining market value of the acquired land on the basis of guess work within the parameters of guidelines of the Hon'ble Supreme Court and High Courts. The value needs to be reduced proportionally for this minor factor and disadvantages. It is settled that 15% deductions for one minor factor is permissible and justifiable.

30] The claimant also relied on the previous judgments of the Reference Court delivered in the same award L.A.Q./S.R. 37/2001. The claimant filed certified copies of judgments of LAR no.93/2021, 94/2021 and 97/2021 on record. On perusal of said judgments reveals that the concerned reference Court has considered the aforesaid certified copy of sale-deed and determined the market value of the irrigated land and non-irrigated land. Opponents have not filed any documents to show that they challenged or filed appeal against the award passed in LAR no.93/2021, 94/2021 and 97/2021. Therefore, the market value of acquired land of same L.A.Q./S.R. 37/2001 is already determined by the reference Court on considering the same sale-deed Exh.29 in LAR no.93/2021, 94/2021 and 97/2021 and said awards are not set aside by the Hon'ble Superior Court.

31] In view of ratio laid down by the Hon'ble High Court in the aforesaid case of *Bayaji Kalunge and Vitthal Gawande (Supra)*, it is clear that if market value of acquired land of same project, of same village and under same notification is determined by the reference Court, then the claimant is entitled to compensation at the same rate on the ground of parity. Moreover, opponents have not brought any material to show that the acquired land of present reference is different from the acquired land of LAR no.93/2021, 94/2021 and 97/2021. Therefore, the claimant is entitled for enhanced compensation as per the market value determined in the previous judgments of LAR no.93/2021, 94/2021 and 97/2021 for irrigated, non-irrigated and *pot-kharab* land on the ground of parity.

32] Therefore, on considering aforesaid discussion, plus-minus factors of acquired land, evidence available on record and previous judgments of same project i.e. LAR no.93/2021, 94/2021 and 97/2021, I am of the opinion that, it is just and proper to fix market price of acquired land as per the market rate of acquired land determined in L.A.R. No.93/2021, 94/2021 and 97/2021 for irrigated land and non-irrigated land. On perusal of previous judgment of same project, it is clear that the market value of acquired land is determined of Rs.7,96,875/- per hectare for non-irrigated land and of Rs.15,93,750/- per hectare for irrigated land.

33] In view of aforesaid discussion and evidence available on record, it is clear that the amount of compensation awarded by the SLAO at the rate of Rs.2,26,000/- per hectare is certainly inadequate and same requires to be enhanced at the rate of Rs.15,93,750/- (Rupees Fifteen Lakh Ninety Three Thousand Seven Hundred Fifty Only) per hectare for irrigated (बागायत) land.

34] The claimant has claimed additional compensation of Rs.2,50,000/- for acquired well. On perusal of 7/12 extract Exh.18 of acquired land reveals that there is no entry of well in the other right column. Therefore, the Exh.18 is sufficient to show that there is no well in the acquired land. The claimant has not adduced any evidence about existence of well in the acquired land. Moreover, the acquired land is considered as irrigated land on the basis of availability of source of water to the acquired land from the land bearing Gat no.11/3 of claimant. Therefore, the claimant is not entitled for compensation for well. Therefore, the market value of acquired irrigated land of present reference is hereby determined of Rs.15,93,750/- (Rupees Fifteen Lakh Ninety Three Thousand Seven Hundred Fifty Only) per hectare on the date of the publication of the notification under section 4(1) of the Act i.e. 18/12/2010.

35] In view of ratio laid down by the Hon'ble High Court in afore-cited judgments relied by opponents, it is clear that the interest under section 28 and 34 of the Act cannot be allowed on the date of possession and it must be awarded from the date of award. Therefore, the claimant is entitled for interest under section 28 of the Act from the date of award. Therefore, the claimant is entitled to enhanced compensation at the market price of Rs.15,93,750/- (Rupees Fifteen Lakh Ninety Three Thousand Seven Hundred Fifty Only) per hectare for the acquired irrigated (बागायत) land with statutory benefits. Accordingly, I answer as to issue no. 1, 2 and 4 in the affirmative.

AS TO ISSUE NO.5:-

36] In view of aforesaid discussion and findings as to issue no.1 to 4, it is clear that, the claimant is entitled for enhanced compensation in respect of the acquired land as per the rates fixed above. The present reference is liable to be partly allowed. Hence, I proceed to pass the following order:

O R D E R

1] The present reference is hereby partly allowed as under-

2] The market value of acquired agricultural land ad-measuring 1 H. 21 R of Gat No.13/2 situated at village Ghodasgaon, Tq. Shirpur, Dist. Dhule is hereby determined at the rate of Rs.15,93,750/- (Rupees Fifteen Lakh Ninety Three Thousand Seven Hundred Fifty Only) per hectare for irrigated (बागायत) land on the date of publication of notification u/s.4(1) of the Act.

3] The opponents jointly or severally do pay the enhanced compensation to the claimant by deducting the amount already paid.

4] The opponents jointly or severally do pay an additional component at the rate of 12% per annum on enhanced compensation to the claimant as per section 23(1A) of the Land Acquisition Act, 1894 from the date of notification u/s. 4 of the Land Acquisition Act, 1894 till the date of award.

5] The opponents jointly or severally do pay solatium at the rate of 30% on the enhanced compensation to the claimant as per section 23(2) of the Land Acquisition Act, 1894.

6] The opponents jointly or severally do pay interest to the claimant at the rate of 9% per annum on enhanced compensation from the date of award for the period of one year and thereafter, 15% per annum for the subsequent years till the date of payment of such excess compensation as per section 28 of the Land Acquisition Act, 1894.

7] The opponents jointly or severally do pay proportionate costs of reference to the claimant under section 27(2) of the Land Acquisition Act, 1894.

8] The claimant shall pay deficit Court fee on enhanced compensation, if any.

9] Award be drawn up accordingly.

Sd/-

Dhule. (S. M. Gourgond)
Dt.19/01/2024. 4th Jt. Civil Judge Senior Division, Dhule.

- CERTIFICATE -

I certify that the contents of this P.D.F. File are word to word as per original order/judgment.

Name of the Steno	:	D. P. Sharma.
Name of the Court	:	4th Jt. Civil Judge Sr. Dn., Dhule.
PDF Uploading Date	:	20/01/2024.

Sd/-
Stenographer (Grade-II)