Received on : 20-08-2009.
Registered on : 02-11-2009.
Decided on : 06-12-2014.
Duration : 05Y 03M 16D

IN THE COURT OF THE CIVIL JUDGE { S. D. }, AT NILANGA.

(Before : Shri. S. R. Tamboli)

Exh. No. 65.

1. **L. A. R. No. 44 of 2009.**

Shripati s/o Madhav Niture
age 50 years, Occu. Agri.
R/o Hadoli, Tq. Nilanga .. **APPLICANT.**

2. **L. A. R. No. 46 of 2009**

Babu s/o Sakharam Halkare
age 55 years, Occu. Agri.
R/o Hadoli Tq. Nilanga .. **APPLICANT.**

3. **L.A.R. NO. 47 OF 2009**

Shyamrao s/o Sakharam Halkare
age 65 years, Occu. Agri.
R/o Hadoli Tq. Nilanga

4. **L.A.R. NO. 48 OF 2009**

1] Deelip s/o Marotirao Halkare
age 44 years, Occu. Agri.
R/o Hadoli Tq. Nilanga

2] Maroti s/o Marotirao Halkare
age 29 years, Occu. Agri.
Both R/o Hadoli Tq. Nilanga

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5. **L.A.R. NO. 49 OF 2009**

Bhivaji s/o Shivaji Kumbhar

age 70 years, Occu. Agri.
R/o Hadoli Tq. Nilanga

6. **L.A.R. NO. 52 OF 2009**

Babruvan s/o Limbaji Chaphekar
age 68 years, Occu. Agri.
R/o Hadoli Tq. Nilanga

7. **L.A.R. NO. 53 OF 2009**

Vitthal s/o Sakharam Halkare
age 65 years, Occu. Agri.
R/o Hadoli Tq. Nilanga

V E R S U S

1. The State of Maharashtra,
   Through – the Collector, Latur,
   Dist. Latur.

2. The Spl. Land Acquisition Officer
   PT & IT, Latur

3. The Executive Engineer,
   Lower Terna Canal Project Division 1,
   Division, Latur.

.. **RESPONDENTS IN ALL ABOVE REFERENCES.**

Reference under Section 18 of the Land Acquisition Act.

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Mr. A.G. Patil, Advocate for the applicants.
Mr. G. T. Deshmukh, A.G.P. for the respondent No.1 & 2.
Mr. V.S. Pawar, Adv. for respondent no.3

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COMMON JUDGMENT.

(Delivered on : 06-12-2014)

1. In the instant group of applications, applicants have prayed for enhancement of the compensation under Section 18 of the Land Acquisition Act, 1894.

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2. In short, the case of the applicants is as under.

- According to applicants, they are the owners of the land of village Hadoli, Tq. Nilanga, Dist. Latur, as mentioned in following table. The respondents acquired the properties mentioned in the following table for the construction of Lower Terna Right canal distributors at village Hadoli.

Sr. No.	*Case No. of 2009*	*Name of the applicant*	*Gat /Sy. No.*	*Area in "R"*	*Rate per R.*	*Value of the land*	*Amount claimed*
1	44	Shripati	65	18	590	10620	25000
2	46	Babu	97	12	710	8520	25000
3	47	Shamrao	97	11	710	7810	25000
4	48	Deelip	97	11	710	7810	25000
5	49	Bhivaji	98	37	590	21830	50000
6	52	Babruwan	98	24	590	14160	25000
7	53	Vithal	97	12	710	8250	25000

3. It is also averred by the applicants that Government has published notification under Section 4 of the Act on 14-09-2000. Prior to that, in year 1998, respondents took possession of the acquired land by private negotiation. However, they have not given rental compensation to the applicants. L.A.O., has not awarded proper compensation to applicants. The lands of the applicants were adjacent to the Latur-Gulbarga State Highway. Population of village Shend was up to 4000. Facilities like

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education, electricity, post, panchayat water supply etc. were available to the village. Acquired land was coming under the command area of Killari Shetkari Co-operative Sugar factory. It was fertile land, having rich black soil. Applicants were irrigating land with the help of water of well and river. They were taking cash crop like sugarcane, wheat, jwar, vegetable etc. After deducting expenses, they were getting income of Rs.50,000 to 75,000/- per acre. The market value of the acquired land was Rs.4,00,000/- per acre. However, L.A.O. awarded compensation at the rate of Rs.23600/- to 34,400/- per acre. He did not consider the above factors while determining the compensation. After deducting the amount withdrawn by applicants, they are entitled for the amount of compensation mentioned against their name as shown in aforesaid table with all statutory benefits. They are also entitled for rental compensation.

4. Respondent No.1 and 2 filed their W.S. at Exh.09 and respondent no.3 field his say at Exh. 19. According to them, the acquired land was of medium type. Applicants were taking only Kharip crop from the acquired land. There was no permanent source of water to irrigate the said land. Prior to passing of the award, L.A.O. visited the place of the acquired land. He verified the existing condition of the vicinity and locality of the acquired land. After considering the quality, fertility and productivity of the acquired land, he passed the award. The compensation awarded to the applicants is reasonable. Applicants are not legally entitled to claim any interest prior to the date of notification under Section 4 of the Act. Applicants have not filed the applications within

limitation. Applications are false. Hence, it be dismissed with costs.

5. In view of pleading of the parties, this court has framed following issues below Exh.20. Findings and reasons thereon are as under :-

	ISSUES		FINDINGS
1)	Whether the applicants prove that the amount of compensation paid by the L.A.O., is inadequate and does not reflect correct market price ?	:	In the affirmative.
2)	Whether applicants are entitled to enhanced compensation ?	:	In the affirmative.
3)	Whether reference-applications are within limitation ?	:	In the affirmative.
4)	What order ?	:	As per final order.

REASONS

6. Before adverting to the rival contentions, it is necessary to mention admitted facts. It is undisputed that applicants are the owners of the lands and respondents acquired it as shown in the aforesaid table. It is also undisputed that notice u/s.4 of the Act has been published in the village on 16-10-2000. Land was acquired for Lower Terna Right canal distributors at village Hadoli.

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Issue No.1 :-

7. To substantiate their claim, applicants examined Shamrao Halkare PW-1 (Exh.48). He is applicant no.1. He has reiterated contents of the applications. His evidence discloses that the applicants were taking cash crops like sugarcane, vegetable, jwar etc. The applicants were getting annual income of Rs. 50,000 to Rs. 75,000/- per acre, after deducting expenses from the acquired land.

8. This witness has disclosed all these facts with intent that court should fix the market price on the basis of the income of the acquired land. It means that applicant wants to fix the market value of the acquired land on the basis of the capitalization method.

9. However, besides the bare testimony of this witness, applicants have not adduced any other evidence about the annual income of Rs. 50,000/- to 75,000/- from the acquired land. Hence, on the basis of bare testimony of aforesaid witness, it cannot be said that applicants were getting annual income of Rs. 50,000 to 75,000 per acre. Therefore, market value of the acquired land cannot be fixed by way of capitalization method. In the present case, said method is inappropriate for determining market price of the acquired land.

10. Evidence of Shamrao Halkare PW-1 shows that sale deeds have been executed prior to the publication of Notification u/s. 4 of the Act. He deposed that on 14-08-2000, one

Chandrakant Chopane purchased 34 R land of sy. no. 14/C of village Hadoli from Narayan Chopane for Rs. 53,000/-. Evidence of this witness shows that court should use sale comparative method for determination of the market price.

11. Applicants have produced said sale deed (Exh.47). It shows that purchaser had purchased 34 R land for Rs.53,000/- of village Hadoli on 14-08-2000. It means that purchaser purchased said land for Rs.1559/- per R. Notification u/s. 4 of the Act has been published on 16-10-2000. Considering 10% increase for one year, value of the land comes up to Rs. 1734/- per R.

12. Per contra, respondents placed reliance on the sale-deed (Exh.57). It shows that on 28-10-98, purchaser purchased 1 H 34 R land of gat no.119 of village Hadoli for Rs. 75,000/-. It means that he purchased said land @ Rs. 560/- per R. The sale deed has been executed prior to 2 years of the notification u/s.4 of the Act. Considering 20% increase for these years, the value of the land comes up to Rs. 672/- per R.

13. Respondents also relied on another sale deed (Exh. 58). It shows that on 10-05-2000, purchaser purchased 1 H 44 R land of gat no. 16/A/1 of village Hadoli for Rs. 95,000/-. It means that he purchased said land @ Rs. 660/- per R. Considering 10% increase, value of the land comes up to Rs. 726/- per R.

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14. Aforesaid three sale deeds are of village Hadoli. It is

settled principle of law that the court should accept the sale deed which is more in value.

15. Sale deed (Exh. 47) shows that value of the land involved in the sale deed was Rs. 1714/- per R. Its value is more than the other sale deeds. Therefore, this court has accepted the said sale deed as a guide to determine the market price of the acquired land.

16. Applicants are coming with the case that acquired land was irrigated land. They were taking water from the well and river. They were taking cash crops like sugarcane.

17. However, applicants have not produced documentary evidence to support said contention. Award (Exh. 44) also shows that acquired land is dry land. Therefore, this court hold that acquired land is dry land. Applicants failed to prove that acquired land was irrigated land. Land involved in the sale deed (Exh.47) is also dry land, therefore, this court hold that market value of the acquired land was Rs. 1714/- per R.

18. Applicants are coming with the case that respondent has acquired land by private negotiation in 1998. Notification has been issued on 16-10-2000. Therefore, applicants are entitled for rental compensation since the date of possession of the acquired land.

19. However, in this regard, this court is of the view that

rental compensation can be claimed from the Collector. Court cannot award rental compensation in the reference u/s. 18 of the Act.

20. In **The State of Maharashtra Vs. Laxman Motiram Patil etc. – First Appeal No.1085 of 1999 dated 01.07.2011,** Hon'ble Bombay High Court observed as under :-

> "**16.** The legal position which emerges from the aforesaid decisions of the Apex Court regarding the applicability of the aforesaid provisions dealing with grant of interest to a case where the possession of the land under acquisition is taken over prior to the date on which notification under Section 4 (1) of the said Act is published can be summarised as under :
>
> (i) The interest under section 23 (1 A) shall be payable in such a case from the date of publication of the notification under Section 4 (1) up to the date of award under Section 11.
>
> (ii) The interests as per Section 34 will not be payable as the possession has not been taken over in accordance with the provisions of the said Act.
>
> (iii) The interest under section 28 shall not be payable from the date of possession when the possession is taken over prior to the date on which notification under Section 4 (1) of the said Act is published. In such a case, the starting point of interest under section 28 will be the date on which Award under section 11 of the said Act is made."

21. The ratio laid down in aforesaid case clearly shows that when possession is taken prior to the notification under Section 4 of the Act, Section 34 cannot be invoked. Section 34 will apply only when possession is taken either under Section 16 or Section 17 of the said Act. Even in aforesaid case Hon'ble High

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Court set-aside the order of Lower Court passed for grant of the interest.

22. In view of the above discussion, it is clear that the market value of the acquired land was Rs. 1714/- per R. However, LAO has valued the acquired land at lower rate. Therefore, this court hold that compensation granted by L.A.O. is inadequate. Accordingly, applicants are entitled for enhancement of the compensation.

23. In view of the above discussion, applicants are entitled for enhancement of the compensation at the rate as stated above. It has been shown in the following table.

Sr. No.	*Case No. of 2009*	*Name of the applicant*	*Gat /Sy. No.*	*Area in "R"*	*Rate per R.*	*Value of the land*	*Value of the land paid by LAO*	*Payable amount*
1	44	Shripati	65	18	1714	30852	10620	20232
2	46	Babu	97	12	1714	20568	8520	12048
3	47	Shamrao	97	11	1714	18854	7810	11044
4	48	Deelip	97	11	1714	18854	7810	11044
5	49	Bhivaji	98	37	1714	63418	21830	41588
6	52	Babruwan	98	24	1714	41136	14160	26976
7	53	Vithal	97	12	1714	20568	8250	12318

24. Applicants are entitled for the compensation as

mentioned in the aforesaid table. Therefore, this court answer as to the issue No.1 & 2 accordingly, partly in the affirmative.

Issue No.3 :-

25. Respondents have averred in their W.S. that the reference-applications are not filed within limitation.

26. However, the applicants are coming with the case that they came to know about the award on 21-07-04. Reference is filed on 20-08-2004. The opponents have not produced any record to show that applicants were aware about the Award prior to that date. Reference-applications are filed within six months from the date of the knowledge of the Award. Hence, this court hold that the reference-applications are filed within limitation. Hence, this court answer as to issue No.3 in the affirmative.

27. In the present case, L.A.O. has not awarded proper compensation. At the same time, applicants claimed exorbitant compensation. Considering this fact, this court is of the view that applicants are entitled for proportionate costs of the applications. In the result, this court pass following order :-

ORDER

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1. Applications are partly allowed.

2. Each applicants are entitled to recover excessive amount of compensation as shown against his name in the following table.

Sr. No.	*Case No. of 2009*	*Name of the applicant*	*Payable amount*
1	44	Shripati	20232
2	46	Babu	12048
3	47	Shamrao	11044
4	48	Deelip	11044
5	49	Bhivaji	41588
6	52	Babruwan	26976
7	53	Vithal	12318

3. Applicants are entitled for 30% solatium on the aforesaid amount. They are also entitled for additional component interest of 12% on the aforesaid amount from 26-03-2000 to 25-01-2001.
4. Applicants are also entitled to recover the interest @ 9% for one year from the date of notification u/s. 4 of the Act dated 16-10-2000 to 15-10-2001 and thereafter interest @ 15% per year for subsequent years till depositing the amount by respondents in Court.

5. Respondents do pay the proportionate costs of the application to applicant and to bear their own costs.

6. Award be drawn accordingly.

6.12.14

Date : 06-12-2014.

(S. R. Tamboli)
Civil Judge, Senior Division,
Nilanga.