MHOS020012492023	Received on : 04.07.2022 Registered on: 07.06.2023 Decided on : 29.01.2025 Duration : Y. M. Ds. 02 04 25

IN THE COURT OF JOINT CIVIL JUDGE SENIOR DIVISION,
AT : OSMANABAD.

(Before: Shri.S.D.Kamat)

Land Acquisition Reference No. 86/2023 **Exh. No.53**

Abu Talib Sayyad Hanif Kazi
Died His LRs. -

1) Abdulla Abu Talib Kazi,
Age- 49 yrs., Occup. Agri,
R/o. Apsinga, Tq.Tuljaput, Dist.Dharashiv.

2) Mutalib Abu Talib Kazi
Died His LRs. -

2/A) Shaker Mutalib Kazi
Died LRs. -

2/A/i) Shahajahan Shaker Kazi,
Age- 49 yrs., Occup. Agri,
R/o. Apsinga, Tq.Tuljaput, Dist.Dharashiv.

2/A/ii) Afjal Shaker Kazi,
Age- 34 yrs., Occup. Agri,
R/o. Apsinga, Tq.Tuljaput, Dist.Dharashiv.

2/A/iii) Heena Shaker Kazi,
Age- 25 yrs., Occup. Household,
R/o. Apsinga, Tq.Tuljaput, Dist.Dharashiv.

2/B) Shukur Mutalib Kazi,
Died LRs. -

2/B/i) Raziya Shukur Kazi,
Age- 51 yrs., Occup. Household,
R/o. Apsinga, Tq.Tuljaput, Dist.Dharashiv.

2/B/ii) Kayyum hukur Kazi,
Age- 31 yrs., Occup. Agri,
R/o. Apsinga, Tq.Tuljaput, Dist.Dharashiv.

2/B/iii) Sana Shukur Kazi,
Age- 22 yrs., Occup. Household,
R/o. Apsinga, Tq.Tuljaput, Dist.Dharashiv.

2/C) Farzana Amjad Sayyad,
Age- 46 yrs., Occup. Household,
R/o. Apsinga, Tq.Tuljaput, Dist.Dharashiv.

3) Latif Abu Talib Kazi,
Age- 60 yrs., Occup. Agri,
R/o. Apsinga, Tq.Tuljaput, Dist.Dharashiv.

4) Rafiq Abu Talib Kazi
Died LRs. -

4/A) Shahana Rafiq Kazi,
Age- 53 yrs., Occup. Household,
R/o. Apsinga, Tq.Tuljaput, Dist.Dharashiv.

4/B) Jarona Bashir Jamadar,
Age- 30 yrs., Occup. Household,
R/o. Apsinga, Tq.Tuljaput, Dist.Dharashiv.

4/D) Anjum Haidar Kazi,
Age- 22 yrs., Occup. Household,
R/o. Apsinga, Tq.Tuljaput, Dist.Dharashiv.

4/E) Shamshad Akhil Sayyad,
Age- 28 yrs., Occup. Household,
R/o. Apsinga, Tq.Tuljaput, Dist.Dharashiv.

5) Sadiq Abu Talib Kazi,
Age- 51 yrs., Occup. Agri,
R/o. Apsinga, Tq.Tuljaput, Dist.Dharashiv.

Sr.No. 2/A to 5 through power of attorney holder Abdulla Abu Talib Sr.No.1 as above.

... **Claimants**.

... **Versus** ...

1) The State of Maharashtra,
Through - Collector, Osmanabad.

2) The Executive Engineer,
Irrigation Strengthening Division Omerga,
Tq. Omerga, Dist.Osmanabad.

... **Respondents**.

References : Reference U/sec. 18 of the Land Acquisition Act, 1894 for Enhancement in compensation.

Adv. Shri. R.S.Vatte for Claimants.
Adv. Shri. M.B.Deshmukh, D.G.P. for Respondent Nos.1.
Adv. Shri. S.D.Barbole, for Respondent No.2.

JUDGMENT

(Delivered on: 29th January 2025)

1) Aggrieved by the Award dated 12/03/2004 passed in file No.1999/LNQ/KKCR-12 granting inadequate compensation for the acquired lands, fruit bearing trees, 2 stony pauls and well of the claimant above named have filed the reference under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the "Act") for enhancement of the compensation of acquired lands and well. Description of the suit lands situated at village Apsinga, Tq.Tuljapur, Dist. Osmanabad.

Sr.No.	L.A.R.No.	Gat No.	Area
1)	86/2023	357/2	01H 29R
2)	86/2023	357/3	11H 26R
3)	86/2023	357/4	04H 15R

2) All lands came to be acquired by the respondents for the purpose of "Apsinga Storage Tank, Tq.Tuljapur". Chronological events regarding acquisition of lands are that - the notification under Section 4 of the Act was published on 23/12/1999. The declaration under Section 6 of the L.A. Act was published on 18/10/2001. Possession of the acquired lands had taken on 19/10/1999 by private negotiation prior to the publication of the notification under Section 4 of the Act. LAO however passed the Award on 12/03/2004 behind their back. The compensation which is awarded by the LAO is inadequate and unreasonable. He has not taken into consideration various factors while determining the market value of acquired land. The LAO awarded the total compensation of Rs.5,93,283/- to the share of Abu Talib which is inadequate one.

3) It is the specific contention of the claimants are that acquired lands are highly fertile, black cotton soil up to 15 to 20 feet in depth and equal in level in all its parts. Acquired land is bagayat one with the help of well water. They were raising the double crops in a year such as Tur, Wheat, Jawar etc. and getting the annual income not less than Rs.15,000/- per acre. The acquired land is situated at village Apsinga which is adjacent national highway. Facilities of electricity, PHC, secondary school, Veterinary Hospital etc. were available at village Apsinga. It comes under command area of Sugar Factory at Naldurag and Virag. It is in the vicinity of famous temple of Tulja-Bhavani at Tuljapur. All these factors are not considered by the LAO while determining the market value of the acquired land.

4) LAO calculated the market price of acquired land on the basis of assessment in the 7/12 extract but same is fixed long back i.e. near about 50 years which is not correct.

5) The claimants received the notice under Section 12(2) of the Act on 7/12/2004 but not withdrawn the compensation. However, claimants filed the reference petitions on 07/1/2005 i.e. within a statutory period from the date of service of the notice and therefore within limitation.

6) LAO also acquired the trees, well and stone pauls but awarded inadequate compensation of the same. On the date of notification market rate of the acquired land was @ Rs.1,00,000/- per acre and therefore prayed to allow the petition along with statutory benefit.

7) Respondents No.1 resisted the claim by filing written statement at Exh.09. Respondents No.2 resisted the claim by filing written statement at Exh.14. The contents of the reference petition regarding publication of notice, acquisition and ownership of acquired land was not disputed. It is denied that Award was passed behind the

back of the claimant. It is further denied that LAO ignoring the quality and fertility of the lands and without considering the sale instance of higher amount in the vicinity awarded the inadequate compensation. It is denied that the market value of the acquired land is @ Rs.1,00,000/- per acre. It is denied that acquired land was irrigated with the help of well water.

8) It is submitted that LAO had issued notice under section 9 (3)(4) of the Act to the claimant but they have not filed any reply to the said notice. The award was passed in presence of claimant and amount of compensation was withdrawn by claimant voluntarily. The LAO after considering its quality, fertility and sale instances prior to the notification awarded adequate and reasonable compensation to the claimant. Reference petition filed by the claimant is not within limitation. Hence prayed to dismiss it.

9) On the basis of rival pleadings of the parties Issues came to be framed at Exh.15. I produced them below with my reasoning and findings thereon as under. :-

Sr.No.	Issues		Findings
1)	Whether claimant proves that the compensation paid by the LAO is inadequate and does not reflect the then true market price of the acquired property ?	:	Yes.
1/A)	Whether Tuljabhavani Mandir Trust is necessary party ?	:	No.
1/B)	Who is entitled for claiming amount of enhanced compensation ?	:	Claimant
2)	Whether the reference is within limitation?	:	Yes.
3)	Whether claimant is entitled to claim enhanced compensation ? If yes, at what rate?	:	Yes.
4)	What order, award and costs?	:	As per final order.

REASONS

10) In order to substantiate the claim for enhancement of the compensation, claimants have examined one Abdulla Abu Talib Kazi as C.W.No.1 by filing her affidavit Exh.38 in lieu of examination in chief. Beside oral evidence claimant also relied upon documentary evidence viz. certified copy of the Award Exh.30, Certified copy of E-statement Exh.31, Certified copy of 7/12 extract of Gat no.357/4, 357/3, 357/2 at Exh.32, 39, 40, Certified copy of sale deed dt.16/03/1998 at Exh.33 of village Katri, Certified copy of sale deed dt.11/02/1998 at Exh.34 of village Apsinga, Certified copy of sale deed dt.08/01/1998 at Exh.35 of village Apsinga, Certified copy of Judgment in LAR No.166/2009 at Exh.36, Certified copy of Judgment in LAR No.915/2010 at Exh.37, xerox copy of Judgment in LAR No.01/2006, xerox copy of Judgment in RCA No.07/2010, xerox copy of Judgment in Writ Petition No.7150/2008. Claimants have filed evidence close pursis at Exh.41. In rebuttal respondents have not examined any witness. Respondent no.2 have filed certified copy of sale deed dt.23.12.1998 from village Apsinga at Exh.48. Heard learned counsel for the claimant Shri. R.S.Vatte and DGP Shri. M.B.Deshmukh for Respondent no.1 and Adv. S.D.Barbole for Respondent No.2.

AS TO ISSUE No.1 to 3 :-

11) All these issues are interlinked with each other and therefore decided simultaneously. In the present case facts are not in dispute that claimants are owner of suit land which is acquired by the respondents for the public purpose i.e. for "Apsinga Storage Tank". The notification under Section 4 and 6 of the Act are published on 23/12/1999 and 18/10/2001 respectively. Possession of the acquired lands were taken on 19/10/1999 and Award Exh.30 was passed on 12/03/2004. The LAO has determined the market value of acquired lands Rs.5,93,283/- for the share of Abu Talib as per their revenue assessment under Section 11 of the L.A.Act.

12) It is the specific contention of the claimants are that acquired lands are highly fertile, black cotton soil up to 15 to 20 feet in depth and equal in level in all its parts. Acquired land is bagayat one with the help of well water. They were raising the double crops in a year such as Wheat, Jawar, Tur, etc. and getting the annual income not less than Rs.15,000/- per acre. The acquired land is situated at village Apsinga which is adjacent to national highway. Facilities of electricity, PHC, secondary school, Veterinary Hospital etc. were available at village Apsinga. It comes under command area of Sugar Factory Naldurag and Vairag. It is in the vicinity of famous temple of Tulja-Bhavani at Tuljapur. All these factors are not considered by the LAO while determining the market value of the acquired land.

13) In order to determined the market value of the acquired land three methods are adopted namely (1) Sale statistic method, (2) Capitalization of net income method and (3) Agricultural yield basis method. While fixing the correct market value of the acquired land method of comparable sale instances is preferred than other method. Because it furnished accurate evidence for determination of the market value of the acquired lands at which a willing purchaser would pay for acquired land if it has been sold in the open market at the time of issuance of notification under Section 4 of the Act. While fixing the market value on basis of comparable sale method following factors required to be consider.

(1) The sale must be genuine transaction.
(2) Sale must have executed at the time proximate to the date of issue of notification under Section 4 of the L.A.Act.
(3) Land covered by sell must be in the vicinity of the acquired lands.
(4) That the land covered by sale must be similar to acquired land. And That the size of the plot of land covered by sell be comparable to the land acquired.

14) It is also material to note that the factors like whether agricultural land is irrigated or non irrigated, extent of facility of irrigation, locality of the land, closeness from road or highway, position

of land in different seasons are also required to taken into account. It is well settled that genuine and bonafides sale transaction in respect of land under acquisition or in its absence the bonafied sale transaction proximate to the point of the acquisition of the land situated in the neighborhood of acquire land, possessing similar value or utility taken place in between willing Vendee and willing Vendor which could be expected to reflect the true value as agreed between reasonable prudent person acting in the normal market condition are real basis to determined the market value.

15) In the case of ***State of Maharashtra V/s Prashram Jagannath Aute, reported in 2007(5) Mh.L.J. 403,*** wherein it is held that, " Court has to determined the compensation / market value inconsonance with statutory provision of section 23 and 24 read in conjuncture with various judicial pronouncement for arriving at such determination with reference to facts and circumstances as also evidence led by parties in his case. It is neither permissible nor proper court to lay down any straight Jacket formula universally applicable to all land acquisition case at any leveled of proceeding.

16) Let us now considered evidence adduced by the claimant to see whether compensation awarded by the LAO is inadequate and what is the market value of acquired lands on the date of publication of notification under Section 4 of the L.A.Act. In the instant case LAO has applied comparable sale method. The impugned Award shows that for estimation of the market value of the acquired lands LAO has collected information of sale transaction from office of Sub-Registrar for the period of three years preceding the date of notification under Section 4 of the L.A.Act. Said information consist of as many as 10 sale transactions of village Apsinga respectively which have been quoted in the impugned Award giving details of lands which were subject matter of sale price paid by purchaser, the rate per hector, land revenue assessment of those lands and dates of sale deed. Before determination of the market value of the acquired lands LAO has firstly ascertain the category of acquired lands as well as lands which were subject matter of sale transaction on the basis of

land revenue. LAO after considering the sale instances and the rates of ready reckoner determined the market value of land.

17) LAO has selected few sale instances and ignored the sale instances of higher price of which no sound reason are recorded. Basically the selection of the sale transaction of the land falls in particular group itself has no rational base as group of land was made on the bases of land revenue. Assessment of the lands can be seen from 7/12 extract which is maintained by the Revenue Department of the State Government. There is no evidence led on behalf of State Government as to when survey of the land carried in the State or at least in the region from where land have been acquired for 'Apsinga Storage Tank'. There is no evidence as to what was basis for determining the assessment of the lands, point of the time when survey was undertaken. It is not contended that old assessment was not continued but fresh assessment was done on the basis of fertility and quality of the acquired land on the date of publication of notification. LAO should have considered sale instances of land similar to acquired land in addition to proximate from time and angle and situation angle which are the basic factor to be consider if comparable sale method of the valuation is adopted. I am therefore of the opinion that the method adopted by the LAO for determination of the market value was defective and hence it is very difficult to accept it.

18) In the reference petition it is the contention of the claimants that LAO wrongly treated the acquired lands as dry lands but it is the bagayat land. However, in the evidence of C.W.No.1 Abdulla Abu Talib Kazi nothing is stated that acquired lands are bagayat lands with the help of well water. As per the E-statement and Award and also deposition of C.W.No.1, claimant has established that the acquired lands were bagayat lands and therefore treated as irrigated lands.

19) In order to determine the market value of the acquired lands claimant has relied upon certified copy of sale deed produced at Exh.33 to 35. Admittedly, land under sale transaction Exh.33 was executed on 16/03/1998 and notification under Section 4 was published on 23/12/1999 and therefore proximate from time angle and it is

pertaining to the post notification period immediately preceding the date of notification. As per the decision of LAR No. 166/2009 and 915/2010 the market value of bagyat land is determine @ Rs.1,09,500/- per acre. Hence, applying same rate to lands acquired in present LAR market value of bagayat land comes to Rs.1,09,500/- per acre for bagayat land.

20) By this, claimant has been able to show by virtue of Judgment in LAR No.166/2009 and 915/2010 that the compensation awarded by the LAO was inadequate and unreasonable one. Hence, onus now shift on respondents to adduce sufficient evidence to sustain the Award as clearly held in the case of ***Special Land Acquisition Officer V/s Sidhappa Omenna Tumari 1995 (Supp) SCC 168***. It is well settled principle of law that unless and until material relied by the LAO in the Award is proved before the Court the sale cannot be consider at the time of fixing of market value as held that in the case "***Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona" in AIR 1988 SC 1652*** , in the instance case respondents failed to produce any cogent evidence either by oral or documentary to substantiate the contention of LAO has awarded the appropriate, fair and reasonable market value of the suit lands.

21) In the present case claimant also claimed enhancement in the compensation of the well, trees and stone pauls. However, in order to determine the valuation of well, stone pauls and trees on the date of notification, claimant have not adduce any sort of evidence and therefore claimants are not entitled for enhancement in the compensation of well, trees and stone pauls.

22) Hence considering the overall evidence on record and discussion made above claimants by adducing the positive evidence proved that compensation of the acquired lands awarded by the respondent is inadequate and entitled for the enhancement in compensation @ Rs.1,09,500/- per acre for bagayat land.

23) In the instance case it is the contention of the respondents is that reference petition which is filed by the claimants are beyond the

period of limitation and therefore ought to be dismiss. Section 18(2) of the Act containing the provision regarding limitation period for filing the reference petition which reads as follows .:-

Proviso to sub section (2) of Section 18 of the Act states 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 six 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.

24) After proper scrutiny of this provision it clearly emerge that if the claimant is present before the Collector while passing of the Award then within 6 month from the date of Award and if he is not present before the Collector then he has to file the reference petitions within six week from the date of receipt of the notice under Section 12(2) of the Act or within six month from date of Award which ever is earlier. Learned counsel for the claimants submitted that period of limitation required to be counted from the date of the knowledge of the Award. Merely passing of the Award is not sufficient but claimants must have knowledge of its contents.

25) Respondents not lead any evidence to show that prior to the 07/12/2004 claimant was having the knowledge about the award. Further, below Exh.01. i.e. reference petition shows that it is filed on 07/01/2005. The claimants received the notice under Section 12(2) of the Act on 07/12/2004 but not withdrawn the compensation. However, claimants filed the reference petitions on 07/01/2005 i.e. within a statutory period from the date of service of the notice and therefore within limitation.

26) Respondent no. 1 & 2 have objected that Tuljabhavani Devasthan was necessary party as their name appears in 7/12 extract and C.W.No.1 has admitted said fact in his cross-examination. Ld. Counsel for

claimant have relied on decision in LAR No.01/2006 to support their claim that they are entitled for enhancement of compensation. In said decision it has been held that legal heirs of Sayyad Papamiya Kazi are entitled for receiving compensation in respect of land Gat No.357/1 to 357/5. So also as per the decision in RCA No.07/2010 it has been held that the heirs of Papamiya are entitled for perpetual injunction in respect of disbursement of compensation by present respondent no. 1 & 2. So also the said decision has been confirmed by Hon'ble High Court in Writ Petition No.7150/2008. As such the objection raised by Respondent no. 1 & 2 for inclusion of Tuljabhavani Mandir Trust and their entitlement of claiming enhanced compensation is without any proper foundation. I therefore, answer Issue No.1 to 3 accordingly.

27) Claimants are entitled to claim the components @ 12% per annum under Section 23(1-A) of the Act from the date of notification till the date of award and 30% solatium under Section 23(2) of the Act. Claimants are also entitled to interest under Section 28 of the Act. It is however material to note that additional amount under Section 23(1-A) of the Act is to awarded only on market value determined under first factor of Section 23 of the Act excluding solatium i.e. market value of the acquired land has held in the case of **State of Punjab V/s Amarjitsingh and another A.I.R.2011 S.C.982.** The directions are given to respondents to verify whether compensation amount has been deposited in respect of share of claimant out of Gat No.357/2 Adm. 01H 29R, Gat No.357/3 Adm. 11H 26R, Gat No.357/4 Adm. 04H 15R previously and withdrawn by any other person prior to decision of this land reference and for that purpose the respondents shall file their detailed report about verification done at their end about depositing of amount and or disbursement of compensation amount prior to depositing amount as per this Judgment. Hence, I proceed to pass the following order.

O R D E R

1. The reference is partly allowed.
2. The respondents shall pay the claimant in **LAR No. 86/2023**

enhanced compensation at the rate of Rs.1,09,500/- per acre for the share of claimant out of the acquired irrigated land from Gat No. 357/2 Adm. 01H 29R, Gat No. 357/3 Adm. 11H 26R amd Gat No. 357/4 Adm. 04H 15R along with all statutory benefits. The amount of compensation which is already withdrawn by the claimant under protest be deducted by the enhanced amount of compensation.

3. The respondents shall also pay to all the claimant solatium at the rate of 30% on the above additional market price.
4. The respondents shall also pay to the claimants interest at the rate of 9% per annum for the first year from the date of notification under Sec.4 of the Act and at the rate of 15% per annum for the subsequent years till realization of entire amount.
5. The respondents shall pay additional amount at the rate of 12% per annum on the additional compensation from the date of notification till the date of award.
6. The claim of compensation in respect of well, trees and stone pauls are hereby rejected.
7. Deficit court fees if any, be recovered.
8. Award be prepared accordingly.

(Judgment dictated and pronounced in open Court)

Sd/-
(S.D.Kamat)
Dated :- 29.01.2025 Jt. Civil Judge, Senior Division,
Osmanabad.