

MHNG010135352016



Presented on : 10/01/2011

Registered on : 10/01/2011

Decided on : 20/03/2025

Duration : YY MM DD
14 02 10

BEFORE AD-HOC DISTRICT JUDGE-3, NAGPUR

(Presided over by A. P. Kulkarni)

L.A.R. NO.23/2011

Exhibit No.

**(MIHAN Project : Mouza-Khapri [Rly.]
LAC No.2/A-65/1998-1999)**

1. Ajay Shantilal Khetrpal

(Since dead)

Through his legal heirs

1a. Neeta Ajay Khetrpal

Aged: 60 years, Occ. Household,
R/o. 701, Madhav Apartment,
Clark Town, Kadbi Chowk, Nagpur.

1b. Smt. Pooja Sachin Luthara

Aged: 42 years, Occ. Household,
R/o. Wardhaman Nagar Nagpur

1c. Akshay Ajay Khetrpal

Aged: 38 years, Occ. Business
R/o. 701, Madhav Apartment
Clark Town Kadbi Chowk, Nagpur.

2. Vijay Shantilal Khetrpal

Aged: 55 years, Occ. Agriculturist

R/o. Nagpur

Through duly constituted power of attorney
holder Pappu Singh Jamait Singh Bagga.

3. Pappu Singh Jamait Singh Bagga,

Aged: 61 years, Occ. Business

R/o. Plot No.48, Behind Hotel Centre Point,
Farmland, Ramdaspath, Nagpur.

... **Applicants**

// **VERSUS** //

1. **State of Maharashtra**
Through Collector, Civil Lines,
Nagpur.
2. **Special Land Acquisition Officer No.3**
Vidarbha Irrigation Development Corporation
Nagpur.
3. **Maharashtra Airport Development Company**
Through its Chief Engineer having
office at 1st Floor, C&F Building SEZ,
MIHAN Khapri, Tah. & Dist. Nagpur.
4. **Punabai Govinda Barai**
Aged: 80 years, Occ. Household,
R/o Khapri, Tah and Dist Nagpur ... **Non-applicants**

**REFERENCE UNDER SECTION 18 OF THE LAND ACQUISITION ACT,
1894 FOR ENHANCEMENT OF COMPENSATION**

Appearance: Shri. Vinay Deotale, Adv. for the applicants.
 Shri.Nandanwar, Adv. for non-applicant Nos.1 & 2.
 Shri. A.M. Adtani, Adv. for non-applicant No.3.

JUDGMENT

(Delivered on this 20th day of March, 2025)

This is the reference under Section 18 of the Land Acquisition Act, 1984 for the enhancement of compensation for the acquired land of the claimants.

2. A few facts, giving rise to the present reference is as under :

Non-applicant No.3 (MADC) needed land situated at village Khapri (Railway) of Nagpur District for the development of International Air Cargo Passenger Terminus And Multimodel Hub, popularly known as "MIHAN PROJECT". In that respect, Award in Land Acquisition Case No.2/A-65/1998-99 of Mouza Khapri (Rly.) came to be passed and declared under Section 11 of the Act, 1894 on 24/12/2004. The Notification under Section 4 of the Act, 1894 was published on different dates and lastly on 22/10/1998. The particulars of land acquired and compensation given are as under :-

1	Village	Khapri (Rly)
2	Khasara No.	82
3	Acquired land area	3.08
4	Value of the land	Rs.6,34,480/-,
5	Value of fruit trees	Nil
6	Value of forest trees	Rs.1,590/-
7	Value of Well	Nil
8	Solatum 30%	Rs.1,90,821/-
9	Component 12%	Rs.2,21,248/-,
10	Total Compensation	Rs.10,48,139/-
11	Less	Rs.6/-
12	Total Compensation Net Payable	Rs.10,48,132/-

3. The applicant's case in nutshell is as under :

The applicants No.1 & 2 have purchased the agricultural land admeasuring 2.63 HR in Kh. No. 82 situated at Mouza- Khapri Tahsil and Dist. Nagpur vide registered sale deed dated 13/12/1983 registered at Sr. No.6115 before the Sub-registrar No.1 Nagpur from Shri. Shankarrao Mahadeorao Nakhate 2) Shri. Mukund

Vishanupatha Sirkhedkar and 3) Shri. Bhaurao Dondbaji Nerkar. Initially the above said agricultural land was belonging to Smt. Punabai Govind Barai, however after the execution of the above said sale deed applicant/claimants No.1 & 2 have become absolute owner in possession of the aforesaid Kh.No.82 admeasuring 2.63 H.R. Accordingly the compensation awarded by the L.A.O. for 2.63 H.R. in Kh.No.82 have also been received by applicants No.1 and 2 subsequently the applicant No.1 and 2 entering into an agreement to sell with Pappusingh Jamaitsingh Bagga on dated 22/07/1997 for the total consideration of Rs.6,00,000/-, however as the above said area was notified u/s 4 for the acquisition of land and the other sanctions impose by the State of Maharashtra the sale deed of the aforesaid agricultural land could not be executed and therefore irrevocable general power of attorney dated 24/11/2005 is executed by the applicants No.1 and 2 at Sr. No.3977/2005 before the Sub-Registrar No.4 for appearing before the competent authority for the Collector, Tahsildar and SDO and Spl. LAO to sign the relevant documents forms, papers, application and other related documents restricted only for 1.32 H.R. of land out of 2.63 H.R. in Kh. No. 82. As the above said agricultural land was notified for the acquisition mutation could not be done even after execution of sale deed dated 13/12/1983 as a result of which the said Khasra bearing No.82 was shown in the name of Smt. Punabai Govind Barai and the SLAO have also passed the award dated 24/12/2004 in respect of the above said agricultural land in favour of Punabai Govind Barai.

4. In view of the above said transactions entered into between applicants No.1 and 2 and Pappusingh Jamaitsingh Bagga and the execution of power of attorney in favour of Pappusingh the applicant No. 1 and 2 have no objections of what-so-ever nature if this court award the enhance compensation in respect of agricultural land admeasuring 1.32 HR out of 2.63 HR in Kh.No.82 situated at Mouza Khapri. As per the agreement to sell date 22/07/1997 the applicants No.1 and 2 have received the entire amount of consideration from applicant No.3 Pappusingh. Moreover the SLAO considering the entitlement of the registered Power of Attorney holder have also awarded compensation in respect of the agricultural land admeasuring 1.32 H.R out of 2.63 H.R. in Kh. No.82 situated at Mouza- Khapri in favour of applicant No.3 Pappusingh. The applicant is solely involved in the agriculture has also developed the said land from time to time for which he has erected/ constructed boundaries of earthen and stone walls leveling, etc, for which incurred huge expenses as claimed herein. That, the aforesaid land is also situated near the Nagpur City and capable of residential agricultural use. The applicant has also planted various types of trees for the purpose of wood to be used for building activity, agriculture and firewood, so also fruit trees, viz Gava, Nilgiri, Teak Wood, Bihada, Adjat etc. The applicant used to cultivate the aforesaid land in question and used to sow various crops like Cotton, Jawar, Toor, Soyabean, Wheat, etc. as the potential of the land was very high yielding.

5. The non applicants should have taken into consideration various aspects as stated above while assessing the compensation but

appears to have miserably failed to apply his mind in assessing the same. The non applicants also failed to appreciate the actual market value of the land of the applicants which would have been granted at higher rates than granted in the award. Therefore, looking to the various other circumstances and the facts narrated above the applicants are entitled for compensation at higher rate as claimed. Hence, the applicants filed this reference for enhancement of compensation along with statutory benefits. The reference is being filed within the period of limitation.

6. Non-applicant No.3 (MADC) has resisted the claim by filing its Written Statement at Exhibit No.8. Non-applicant No.3 denied each and every contention made in the application. According to them, they raised preliminary objections as to maintainability of the reference application u/s 18 of LA Act. The notice under section 12(2) of the L.A. Act issued on 23.9.2005 which is an accepted position. The claim for enhancement of the compensation by the applicant does not stand the scrutiny of law because after the service of notice under Section 9(1)(3) of the L.A. Act upon the applicant, the applicants have failed to file a statement to claim desired compensation before the LAO with supporting documents. The applicants have received the compensation amount for their agricultural land to the extent of Rs.8,94,996/-, without recording written legal protest by way of claiming enhanced compensation before the LAO. Hence on that point, the applicant lost right to claim any higher compensation, therefore instant reference application for grant of enhancement in compensation is not tenable and is liable to

be dismissed as per settled principles of law. It is denied that the applicant developed the entire land by constructing stone walls/boundaries, and planted trees like Guava, Nilgiri, Teak Wood, Behada, Adjat etc. The LAO has taken into consideration all aspects regarding valuation of land and has logically arrived at the value of agricultural land, by considering all the practical norms for fixing the value of land under acquisition by adopting methods of Consideration i.e. (i) Sale transactions of 5 years preceding date of notification u/s Section 4 of the L.A. Act, (ii) Rates derived by adopting income capitalization method of the average yield and the prevalent market prices of various produce of land under acquisition, and, (iii) Rates as per Ready Reckoner of the Government regarding the valuation of land of the area and every aspect is looked into thoroughly, which is also reflected in para-10 of the award. The LAO while passing the award has considered all 3 methods of computing compensation and also reflected in para 10 of the award. Therefore the compensation to the extent of Rs.8,94,996/- is just and proper. The alleged housing or other commercial use over applicants land cannot be considered, because it is an agricultural land and compensation has been granted as per the actual area of agricultural land on site and as per the documents available and provided by the applicant. The LAO has considered all the practical norms for fixing the value of land under acquisition by adopting methods of consideration, specifically Sale transactions of 5 years preceding date of notification u/s 4 of the L.A. Act, and agricultural potential of land is also considered by LAO. Moreover the applicant has not placed any copy of any claim application for as enhanced compensation/valid protest filed before

the LAO, after the service of notice under Section 9 & 12(2) of the Act. The non-applicant No.3 in his award has made very detailed and comparative study of all the above three methods and very logically and scientifically fixed the land compensation for each of the groups of land. Hence the applicant is not entitled to claim enhancement of compensation. The applicants failed to file reference within stipulated time. Therefore, the reference is time barred. Therefore, it prayed for rejecting the reference with heavy costs.

7. Heard learned Advocate Shri. Vinay Deotale for the applicant, learned ADGP Shri.S.S.Nandanwar for non-applicant Nos.1 & 2 and learned Advocate Shri. Adtani for non-applicant No.3. On basis of the pleadings in the reference and the Written Statement, my predecessor in office had framed issues at Exhibit No.9 which are reproduced below with its findings and for reasons to follow:

S.N.	Issues		Findings
1.	Whether the claimants proves that SLAO granted inadequate compensation for the acquired land?	...	Yes.
2.	Whether the reference is within limitation?	...	Yes
3.	Whether the claimants are entitled for the enhance compensation?	...	Partly Yes.
4.	What order?	...	As per final order

REASONS

8. The applicants examined **Akshay Ajay Khetrapal** as AW-1 at Exh.19 and relied upon the documents i.e. true copy of 7/12

extract (Exh.21 & 22), certified copy of judgment in LAR No.405/2009 (Exh.23), certified copy of award (Exh.24). Applicants closed oral evidence vide his evidence close pursis at Exh.25. Non-applicants have not led any oral evidence and closed their oral evidence by filing pursis Exh.26 and 27 respectively.

AS TO ISSUE NO.2:- LIMITATION.

9. This is reference under Section 18 of the Land Acquisition Act, 1894. The proviso to Section 18(2) of L.A. Act deals with the question of limitation. It prescribes 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(2), or within six months from the date of the Collector's award whichever shall first expire.

10. In **Raja Harish Chandra Raj Singh Vs. The Dy. Land Acquisition officer & another (AIR 1961 SC 1500)**, it is observed that the Award of the Collector is not a decision but an offer of compensation on behalf of the Government to the owner of the property and it is not effective until it is communicated to the owner. It is further observed that the making of the Award does not consist merely in physical act of writing the Award or signing it or filing it in the office of the Collector; it also involves the communication of the Award to the owner either actually or constructively. It is held that, consequently, the words "date of the Collector's Award" occurring in

proviso (b) to Section 18 of the Land Acquisition Act requires to be read as referring to the date of knowledge of the essential contents of the Award and not the actual date of the Collector's Award.

11. In present case, the applicants were not present at the time of passing of Award. Therefore, their case falls under the later part of clause (b) of the proviso to Section 18 (2) of the L. A. Act. It is not the case of any party that the applicants were aware of the Award before receipt of the notice under Section 12(2) of the Act. Admittedly, the notice is served upon applicants on 08/10/2005. This application is filed before the Collector on 18/11/2005 i.e. within six weeks from the date of receipt of the notice. Therefore, in view of the above provision and ruling cited supra, it is clear that the application is within limitation. Accordingly, this issue is answered in the affirmative.

AS TO ISSUE NO.1:- Inadequacy of the compensation.

12. While dealing with this issue, one has to keep in mind that the application under section 18(1) of the L.A Act is not appeal against the Award passed by the SLAO. Therefore, the Court cannot take into account the material relied upon by the SLAO in his Award, unless the same material is produced and proved before the Court. It is also to be kept in mind that the application is like Civil Suit. These legal principles are laid down in the matter of Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and another (AIR 1988 Supreme Court 1652).

13. In light of the aforesaid legal principles enunciated in aforesaid citation, it needs to be seen as to whether applicant has proved his case which is set out in the grounds in the reference as well as testified in his evidence affidavit.

14. On the factum of inadequacy of compensation, learned Advocate for applicant has relied upon the Judgment passed by my Predecessor in Office in LAR No.405/2009, wherein compensation is granted in acquisition of land in same notification. The learned Advocate for applicant has submitted to pass appropriate orders in view of the aforesaid earlier Judgment.

15. The land in the aforesaid Judgment and that in the present case are acquired for the same project and by the same notification. Their Award is also same. Therefore, the applicants are entitled to get enhanced compensation at the rates given by the previous Judgment of this Court on the ground of parity.

16. The Judgment in LAR No.405/2009, relied upon by learned Advocate for applicants is arising out of Land Acquisition Case No.2/A-65/1998-1999 of Mouza-Khapri (Rly) and the present case is also arising out of the same Land Acquisition Case No.2/A-65/1998-1999 of Mouza-Khapri (Rly). Hence, principle of parity is applicable in present case.

17. There is nothing on record that the Judgments in LAR No.405/2009 is challenged before the Hon'ble High Court and that

the rates fixed in this Judgment is set-aside or any stay is granted to implementation of the order passed in this Judgment. In absence of any such evidence, and for discussion above, the applicants will be entitled to compensation at the rates given in this earlier Judgment.

18. Though applicants have claimed compensation towards development and laying of the land erecting bundh by earthen/stones boundaries and also compensation for trees, except bare testimony of AW-1 Akshay Khetrapal, there is no other oral or documentary evidence to prove this factum. Independent evidence could have been led to prove the factum of improvement if any done by the applicant. But no such evidence has come on record. In absence of any such evidence on record, the bare testimony of AW-1 Akshay Khetrapal cannot be sufficient evidence to prove this factum. Therefore, the claim of applicants with respect to development and laying of the land erecting bundh by earthen/stones boundaries and also compensation for trees as prayed cannot be accepted.

19. As discussed above, applicants are entitled to get enhanced compensation as granted in earlier Judgment passed in same notification. By the previous Judgment, my learned predecessor in office determined market value of the land @ Rs.12,00,000/- per HR for dry crop land. This rate is more than the rate given by the SLAO. The land bearing Khasara No.82 are totally admeasuring 2.63 HR land is dry crop land. This fact is also reflecting in the E-Statement annexed with the Award. Therefore, applicants are entitled to get

compensation at the rate fixed in the earlier Judgment as stated above.

20. Considering the previous Judgment of this Court and the aforesaid discussion, I am of the opinion that the market value of the acquired lands on the date of notification under Section 4 of L.A. Act, if fixed at the rate of @ Rs.12,00,000/- per HR for dry crop land, would be just, fair and reasonable. It would be also adequate. Hence, the market value of the lands on the date of notification is determined at the above rate. It is to be noted that the SLAO has given the rate less than aforesaid rate. Therefore, it is proved that the SLAO has granted inadequate compensation for the land in question. For all aforesaid discussion, this issue deserves to be answered in affirmative.

AS TO ISSUE NO.3 :- Entitlement

21. In view of discussion on issue No.1, the market value of the acquired lands on the date of notification under Section 4 of L.A. Act is fixed at the rate of Rs.12,00,000/- per HR for dry crop land for acquired land of applicants. The applicants are entitled to get the compensation at aforesaid rate. The applicants are also entitled to 30% solatium on enhanced compensation and 12% component for 1058 days.

22. As stated above, the applicants are held to be entitled for enhanced compensation. Therefore, they are also entitled to interest under Section 28 of the Act on the enhanced compensation at the rate of 9% p.a. for first year and @ 15% p.a. for the subsequent period. It

is to be noted that admittedly the possession is taken under section 16 of L.A. Act. That means it is not taken before passing of the Award by SLAO. In such a situation the applicants are entitle to receive interest from the date of taking possession of the acquired land in view of Section 28 of L.A. Act. It is so held in the matter of Special Land Acquisition Officer Mysore Urban Development Authority Vs. Sakamma ((2010) 14 SCC 503) and D-Block Ashok Nagar (Sahibabad) Plot Holders' Association (Regd.) Vs. State of U.P. and others, ((1997) 10 SCC 77). Therefore, I answer issue No. 3 partly in affirmative.

AS TO ISSUE NO.4

23. Having arrived at aforesaid findings, the reference deserves to be partly allowed. Accordingly, I proceed with following order:

ORDER

1. The reference is partly allowed with proportionate costs.
2. The non-applicants are directed to pay the enhanced compensation to the applicants No.1 & 2 at the rate of market value of Rs.12,00,000/- per HR for total area admeasuring 1.31 HR of dry crop land of Khasra No.82 of Mouza-Khapri(Rly), Tahsil and District Nagpur.
3. The non-applicants are also directed to pay the enhanced compensation to the applicant No.3 at the rate of market value of Rs.12,00,000/- per HR for total area admeasuring 1.32 HR of of Khasra No.82 of Mouza-Khapri(Rly), Tahsil and District Nagpur.

4. The claim of applicants with respect to compensation towards development and laying of the land erecting bundh by earthen/stones boundaries and also compensation for trees is dismissed.
5. The applicants are entitled for the solatium under Section 23(2) of L.A.Act at the rate of 30% on market value & component at the rate of 12 % p.a. for 1058 days.
6. The applicants are entitled for the interest at the rate of 9% p.a. on the amount of compensation for the first year from the date of taking possession of acquired land and, thereafter, at the rate of 15% p.a. till the date of realization of the amount.
7. The amount of compensation granted in the Award be deducted.
8. The ex-gratia compensation (Sanugrah Anudan) if withdrawn by the applicants, then it would be adjusted from the total compensation.
9. The deficient Court Fee be paid by the applicants, if any.
10. Award shall be drawn up accordingly.
(Dictated and pronounced in open Court.)

Nagpur
Dt/- 20/03/2025.

(A. P. Kulkarni)
Adhoc District Judge-3,
Spl. Court Designated under MIHAN,
Nagpur

Endorsement

Case argued on	:	17/03/2025
Judgment dictated & delivered on :	:	20/03/2025
Judgment checked & signed :	:	20/03/2025