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fa156.00.

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 156 OF 2000

- 1) Banshi S/o Dhondiram Kshirsagar,
Age: 35 years, Occ: Agri.
- 2) Dattatraya Dhondiram Kshirsagar,
Age: 30 years, Occ: Agri.
- 3) Chhabubai Dhondiram Kshirsagar,
Age: 65 years, Occ: Agri.
- 4) Indubai W/o Shankar Kasbe,
Age: 20 years, Occ: Agri.

All R/o Hanuman Takli,
Tq. Pathardi, Dist. Ahmednagar

...APPELLANTS
(Orig. Claimants)

VERSUS

The State of Maharashtra

...RESPONDENT
(Orig. Respondent)

WITH
FIRST APPEAL NO. 159 OF 2000

Ramesh Ghamaji Mule,
Age: 40 years, Occu.: Agril.,
R/o Hanuman Takli, Taluka Pathardi,
Dist. Ahmednagar

...APPELLANT
(Orig. Claimant)

VERSUS

The State of Maharashtra

...RESPONDENT

WITH
FIRST APPEAL NO. 160 OF 2000

Kisan Rabha Waghmare,
Age: Major, Occu.: Agril.,
R/o Hanuman Takli, Taluka Pathardi,
Dist. Ahmednagar

...APPELLANT
(Orig. Claimant)

VERSUS

The State of Maharashtra

...RESPONDENT

WITH
FIRST APPEAL NO. 161 OF 2000

- 1) Maruti S/o Namdeo Barde,
Age: Major, Occu.: Agril.
- 2) Machindra S/o Namdeo Barde,
Age: Major, Occu.: Agril.
- 3) Sopan Namdeo Barde,
Age: Major, Occu.: Agril.

R/o Hanuman Takli, Taluka Pathardi,
Dist. Ahmednagar

...APPELLANTS
(Orig. Claimants)

VERSUS

The State of Maharashtra

...RESPONDENT

WITH
FIRST APPEAL NO. 163 OF 2000

- 1) Mhatardeo S/o Bhau Dagadkher,
Age: Major, Occu.: Agril.
- 2) Smt. Yashodabai Nivrutti Andhale,
Age: 65 years, Occu.: Agril.
- 3) Smt. Kasabai Dhondiba Ghule,
Age: 60 years, Occu.: Agril.
- 4) Bhamabai Ashru Anubhule,
Age: 50 years, Occu.: Agril.

R/o Hanuman Takli, Taluka Pathardi,
Dist. Ahmednagar

...APPELLANTS
(Orig. Claimants)

VERSUS

The State of Maharashtra

...RESPONDENT

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WITH
FIRST APPEAL NO. 185 OF 2000

Suryabhan Bapu Gurav,
Age: Major, Occu.: Agril.,
R/o Hanuman Takli, Taluka Pathardi,
Dist. Ahmednagar

...APPELLANT
(Orig. Claimant)

VERSUS

The State of Maharashtra

...RESPONDENT

WITH
FIRST APPEAL NO. 230 OF 2000

Yadav Maruti Kajale,
Age: Major, Occu.: Agril.,
R/o Hanuman Takli, Taluka Pathardi,
Dist. Ahmednagar

...APPELLANT
(Orig. Claimant)

VERSUS

The State of Maharashtra

...RESPONDENT

Mr S. L. Bhapkar, Advocate for appellant;
Mr G. R. Ingole, Asstt. Govt. Pleader for respondent

CORAM : N.W. SAMBRE, J.

**(Date of reserving the
judgment : 2nd July, 2015**

**Date of pronouncing the
judgment : 6th July, 2015)**

JUDGMENT

Since in all these appeals the awards rendered by the Reference Court under section 18 of the Land Acquisition Act, arising out of one and

the same acquisition proceedings are questioned, they are heard together and being decided by this common judgment.

2. Learned Counsel appearing on behalf of the appellants has restricted the present appeals only to the extent of interest on the amount of compensation so awarded by the Reference Court.

3. For the purpose of considering the issue, the facts of First Appeal No.159 of 2000 are taken into account.

4. The acquisition in question was for a medium irrigation project at village Kopara, Taluka Pathardi, District Ahmednagar. The lands belonging to the appellants were acquired vide notification dated 27th October, 1983, issued under section 4 of the Land Acquisition Act and corrigendum dated 31st October, 1985. The Special Land Acquisition Officer No.5, Ahmednagar (hereinafter referred to as the "S.L.A.O.", for the sake of brevity) passed an award on 27th June, 1987.

5. The appellants herein appeared before the Reference Court so as to record their testimonies and besides that, relied upon the documentary and oral evidence adduced in L.A.R. No.172 of 1988. The References were preferred claiming enhancement of compensation in respect of lands, trees and other structures, on the ground that the S.L.A.O. has

wrongly classified the land, on the basis of assessment of land revenue, for awarding compensation.

6. The S.L.A.O. awarded enhanced compensation, however, declined to award the interest on the compensation amount. Thus, the present appeals.

7. Mr Bhapkar, learned Counsel appearing on behalf of the appellants would urge that the interest as is provided under the relevant provisions, is statutory right of the appellants and the Reference Court, having not awarded interest in the background of provisions of sections 28 and 34 of the Land Acquisition Act, has committed an error and as such the impugned awards need to be modified by awarding interest on the amount of compensation.

8. Learned Asstt. Govt. Pleader appearing on behalf of the respondent, while opposing the claim of the appellants, would urge that they are not entitled for the interest on the compensation as the physical possession of the property had remained with the appellants and, therefore, the Reference Court has rightly proceeded not to award interest to the present appellants. According to him, when the possession of the lands was sought to be taken by the authorities of the respondent, the appellants had resisted the same.

9. With the assistance of the learned Counsel appearing on behalf of the appellants, I have gone through the impugned awards. It is noted that the Reference Court has proceeded to award market price of seasonally irrigated land at the rate arrived at in the award. While dealing with the issue of grant of award of interest, the learned Reference Court has observed in paragraphs no.21 and 22 of the judgment thus :-

“21. This is the peculiar case in which the applicants are excepting the benefit of 12% component to be given u/s.23 of the Act losing all the other mandatory benefits to be given to them u/s.28 & 34 of the Act. It is the law that the cases where possession of the land is taken by the Collector earlier to the notification made u/s.4 or before passing of the award the land owners become entitled to get the interest u/s 28 & 34 of the Act & 9% p.a. For the first year & @ 15% p.a. for the subsequent years, from the date of possession. In all these L.R. Applications arising out of all the three awards the opponent has categorically & very firmly alleged that applicants have not yet handed over actual & physical possession of their lands to the Govt. & still they are in possession of their respective lands. They are enjoying the same in all respects. In support of this contention the opponent – State has produced recent 7 x 12 extracts of all the acquired lands, which shows cultivation & possession entries in the names of the applicants. It is further submitted on behalf of the State that right from the beginning when the Govt. proposed to acquire the lands for the purpose of construction of Kopre Irrigation Tank, the applicants were opposing to the acquisition & construction of the irrigation tank. The reasons are

best known to them. But it was orally submitted that one of the ground of their oppose was that a temple of God Hanuman situated at village Kasar-pimpalgaon is going in the acquired area. They were expressing their religious feelings in respect of the temple. The agitations against acquisition were made. The firing was made by the police & some were injured. So far as these facts are concerned it is becoming the admitted position. Only a dispute regarding acquisition of the land was tried to be made before me. But that dispute is not relevant for deciding L.R. Applications made u/s. 18 of the Act. This Court will not be competent to decide that dispute relating to cancellation or acquisition of lands. So also it is nobody's case. This dispute becomes relevant only for deciding the question of granting mandatory benefits u/s. 28 & 34 of the Act.

22. My attention was drawn towards certain records called by the applicants from SLAO, which consists of the reports given by the SLAO. In the said report it is mentioned that all the applicants have executed the possession receipts in favour of Govt. for handing over possession of their lands to Govt. It was submitted that the applicants have already handed over the possession to the Govt. In reply to this contention Learned DGP has submitted that there was only paper possession & symbolical possession was taken, but still actual & physical possession is with the applicants. Some extract of mutations are produced by the applicant in this case showing transfer of title in the name of Govt. of Maharashtra. It was further submitted that the title is already vested in Govt. The lands stand transferred in favour of the Govt. In my opinion this proof is not sufficient. The factum of possession still remains to be proved separately. The 7x12 extract got produced by the opponent shows that till the current year the cultivation entries are standing in the

names of applicants & that go to show their physical & actual possession on the acquired lands. The applicant's have not given any satisfactory explanation in this behalf. Mr. A.C. Katariya, Adv. For applicants has after relying upon the Judgment reported in AIR 1975 Delhi, Page 188 submitted that there is no difference between symbolical & constructive possession for the purpose of Sec. 28 of the Act. The quantification of compensations refers back to the date of award entitling the applicant to get the interest from that date. I do not fully agree with this submissions made by Mr. Katariya, Adv. because it was the duty of the applicants to handover the possession of the acquired lands to the Govt. either soon after the notification made u/s. 4 of the Act or on such date on which Govt. Officers concerned demanded the possession. I was also taken through the provisions made u/ss. 16 & 17 of the Act. In the present case the applicants have after passing of award u/s. 11 received the compensations under protest, but they did not make the lands free from all encumbrances. No case as u/s. 17 of the Act is made out, but it was tried to be submitted that the question of making payment of compensation unless possession is taken does not arise. The fact that the compensations are already paid, itself establishes that the possession is taken. I do not agree with this submissions. So also it cannot be believed that because the payment is made on 14-7-86, therefore date of possession should be the same i.e. 14-7-86."

10. In my opinion, the view taken by the Reference Court in not awarding the interest as claimed, is just and proper and the same does not call for any interference.

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11. In the result, the appeals fail and stand dismissed with no order as to costs.

(N.W. SAMBRE, J.)

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