

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2236 OF 2016

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|------------|---|-----|-------------|
| 1. | The State of Maharashtra,
Through the Collector, Beed. | | |
| 2. | The Executive Engineer,
M.I.L.S. Division, Beed. | ... | Appellants |
| Vs. | | | |
| 1. | Ambadas s/o Dagdu Kumkar,
Age: Major, Occ. Agril., | | |
| 2. | Uttam s/o Dagdu Kumkar,
Age: Major, Occ. Agril.,
Both R/o Takalsing, Tq. Ashti,
District Beed. | ... | Respondents |

with

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| 1. | The State of Maharashtra,
Through the Collector, Beed. | | |
| 2. | The Executive Engineer,
M.I.L.S. Division, Beed. | ... | Appellants |
| Vs. | | | |
| 1. | Asaraji s/o Aba Takhik,
Age: Major, Occ. Agril., | | |
| 2. | Uttam s/o Dagdu Kumkar,
Age: Major, Occ. Agril.,
Both R/o Takalsing, Tq. Ashti,
District Beed. | ... | Respondents |

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| 1. | The State of Maharashtra,
Through the Collector, Beed. | | |
| 2. | The Executive Engineer,
M.I.L.S. Division, Beed. | ... | Appellants |
| Vs. | | | |
| 1. | Badrinath Dushrath Jagtap,
Age: Major, Occ. Agril., | | |

2. Ramdas Dushrath Jagtap,
Age: Major, Occ. Agril.,

3. Arjun Dushrath Jagtap,
Age: Major, Occ. Agril.,
All R/o Takalsing, Tq. Ashti,
District Beed.

... Respondents

Mr. S.N. Morampalle, AGP for the Appellants.

Mr. C.K. Shinde, Advocate for the respondents.

CORAM : P.R. BORA, J.

DATE : 16-11-2016.

ORAL JUDGMENT :

1. With consent of the learned counsel appearing for the parties the matter is finally heard at the admission stage. The present appeals are filed against the common judgment and award passed by District Judge-3, Beed on 29.03.2010 in Land Acquisition Reference No. 546 of 2006 with L.A.R. NoS. 525 of 2006 to 527 of 2006.

2. The lands which are the subject matter of the present appeals were acquired for construction of village tank at Takalsing, Taluka Ashti, District Beed. Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'the Act') in that regard was published in the government gazette on 08.11.2011, whereas, the award under Section 11 of the Act came to be passed on 28.07.2013. The Special Land Acquisition Officer had determined the market value of the acquired lands @ Rs.700/- per R and has, accordingly, offered the amount of compensation to the respective land holders. Dissatisfied with the amount of

compensation so offered the respondents (hereinafter referred to as the 'claimants') presented applications under Section 18 of the Act seeking enhancement in the amount of compensation to Collector, Beed. Collector Beed in turn forwarded the reference applications for adjudication to the District Court at Beed (hereinafter referred to as 'the Reference Court'). The claimants had claimed the compensation @ of Rs. 2,000/- per R in the reference applications. In order to substantiate the claims so raised, the claimants in addition to their own evidence placed on record two sale instances from the same village. The learned reference court, after having considered oral and documentary evidence brought before it fixed the market value of the acquired lands @ Rs. 1500/- per R and, accordingly, enhanced the amount of compensation. The reference court also awarded to the claimants the amount of solatium and the interest as provided under Section 28 and 34 of the Act. Aggrieved by, the state has preferred present appeals.

3. Shri S.N. Morampalle, the learned A.G.P. appearing for the appellant-state criticised the impugned judgment on various grounds. The learned A.G.P. submitted that, the reference court failed in appreciating that, the sale instances which were relied upon by the claimants cannot be held to be comparable sale instances and the compensation for acquired lands would not have been determined on the basis of the said sale instances. The learned A.G.P. further submitted that, the tribunal has also erred in

awarding interest under section 34 of the Act from the date of possession. The learned A.G.P. further submitted that, despite there being any cogent and sufficient evidence on record the reference court has determined the market value of the acquired lands holding the said lands to be seasonally irrigated lands. The learned A.G.P., therefore, prayed for setting aside the impugned judgment and award.

4. Shri C.K. Shinde, the learned counsel appearing for the respondents i.e. original claimants supported the impugned judgment. The learned counsel submitted that, two sale instances were relied upon by the claimants in order to substantiate the claim so raised by them and the tribunal has rightly relied upon the said sale instances for determining the market value of the acquired lands. The learned counsel further submitted that, the tribunal has moderately enhanced the amount of compensation which in fact could have been more than as awarded by the reference court. The learned counsel, however, conceded that the interest as awarded under section 34 of the Act from the date of possession is apparently unsustainable in view of the full bench judgment of this court in the case of **State of Maharashtra V/s. Kailash Shiva Rangari** reported in **2016(3) Mh.L.J. 457**. The learned counsel, therefore, prayed for passing appropriate orders to that extent by maintaining the market value of the acquired lands as determined by the reference court.

5. I have carefully considered the submissions advanced by the learned A.G.P. and the learned counsel appearing for the claimants. I have also perused the impugned judgment and evidence on record. In so far as factual aspects are concerned there seems no dispute. Though, the learned A.G.P. sought to canvass that the acquired lands were not semi-irrigated lands but were jirayat lands the evidence on record reveal that the acquired lands were seasonally irrigated lands.

6. The learned tribunal has relied upon two sale instances brought on record by the claimants which are at exhibits-12 and 13 respectively in the record of the trial court. From the discussion made by the reference court in para nos. 19 and 20 of the judgment reveal that the tribunal has objectively assessed the evidence placed before it. The sale deed at exhibit-12 pertains to land ad-measuring 1 hectare jirayat land bearing gut no. 69 situated at village Takalsing and it was sold by the registered sale deed executed on 03.11.2000 for the consideration of Rs. 1,60,000/- i.e. @ Rs. 1600/- per R. The land which was the subject matter of exhibit-13 was ad-measuring 40 R and it was a seasonally irrigated land from gut no. 621 situated at village Takalsing. The said land was sold by registered sale deed executed on 09.02.2001 for the value of Rs. 70,000/- i.e. @ Rs. 1750/- per R. Both the sale deeds were executed prior to the issuance of Section 4 notification i.e. prior to 08.11.2001.

7. In the above circumstances, the learned reference court has held the aforesaid sale instances as comparable sale instances and on the basis of the same has determined the amount of compensation. The discussion made by the reference court in para 19 of the impugned judgment reveal that, amongst the aforesaid two sale instances at exhibits-12 and 13 respectively the tribunal has held the sale instance at exhibit-13 more comparable since it was pertaining to seasonally irrigated lands. Relying on the said sale instance and having considered the plus and minus factors attached to the acquired lands the tribunal has determined the market value of the acquired lands @ Rs. 1500/- per R and, accordingly, enhanced the amount of compensation. Admittedly, no oral or documentary evidence was adduced by the respondents i.e. the appellant state.

8. After having considered material on record and on perusal of the impugned judgment, it does not appear to me that, the reference court has committed any error in determining the market value of the acquired lands. Admittedly, the sale instances were pertaining to lands from the same village and were executed prior to about one year of issuance of Section 4 notification. As noted earlier out of these two sale instances the reference court has preferred to consider the sale instance at exhibit-13 for the reason that it was pertaining to seasonally irrigated lands since all the acquired lands were seasonally irrigated lands. The tribunal, has,

thus, correctly determined the market value of the acquired lands and accordingly enhanced the amount of compensation. I do not see any reason to cause interference in the amount of compensation so enhanced.

9. Order of the reference court, granting interest under Section 34 of the Act from the date of possession, however, cannot be sustained in view of the full bench judgment of this court in the case of **State of Maharashtra V/s. Kailash Shiva Rangari** reported in **2016(3) Mh.L.J. 457**. As noted earlier Shri C.K. Shinde, the learned counsel for the claimants has conceded that order of the reference court to the aforesaid extent is unsustainable. It is thus evident that, the impugned judgment and award needs modification only to the aforesaid extent. In the result the following order is passed.

ORDER

- i) The impugned order so far as it relates to grant of interest under Section 34 of the Act from the date of possession, stands quashed and set aside.
- ii) The remaining part of the order is maintained as it is.
- iii) The appeals stand partly allowed in the aforesaid term.

(P.R. BORA)
JUDGE