

WRIT PETITION NO. 5770 OF 2013

Godavari Marthwada Irrigation
Development Corporation, Aurangabad
Through its Executive Engineer ...PETITIONER

versus

The State of Maharashtra and others ...RESPONDENTS

.....
Mr. B.R. Surwase, Advocate for petitioner
Mr. S.M. Ganachari, AGP for respondents No. 1 and 2
Mr. Ganesh S. Patil, Advocate for respondents No. 3 to 13

**CORAM : S. V. GANGAPURWALA AND
K.K. SONAWANE, JJ.**

DATED : 7th JULY, 2016.

Order :-

1. Order passed by Special Land Acquisition Officer (for short "SLAO") granting dual benefits i.e. interest under section 34 of the Land Acquisition Act, 1894 (for Short "Act of 1894"), additional component under section 23(1-A) of the Act of 1894 and rental compensation, is assailed in present petition.
2. Mr. Surwase, learned counsel for petitioner - acquiring body submits that possession of the properties of respondents No. 3 to 13 -original claimants has been taken by the acquiring body by private negotiation after notification under section 4 of the Act of 1894, as such respondents No. 3 to 13 are not entitled for rental compensation. Learned counsel further submits that benefit of section 34 of the Act of

1894 has been granted from the date of possession. Actually, it ought to have granted from the date of award. According to learned counsel, said benefit is also sought in the Reference Application filed under Section 18 of the Act of 1894. The original claimants cannot claim dual benefits.

3. Mr. Patil, learned counsel for respondents No. 3 to 13 – original claimants submits that benefit of section 34 of the Act of 1894 can be awarded from the date of possession. According to learned counsel, Reference Court has not awarded interest under section 34 of the Act of 1894 and the SLAO has taken care while passing the order itself that respondents - original claimants will not be entitled to dual benefit and also for rental compensation.

4. We have considered the submissions canvassed by the learned counsel for respective parties. The claimants are entitled for rental compensation only if possession of their properties have been taken prior to issuance of notification under section 4 of the Act of 1894. From the award passed by SLAO, it appears that notification under section 4 of the Act of 1894 has been published in Government Gazette on 25-12-2003 and possession of the properties was taken on 01-01-2004. In that case, respondents No. 3 to 13 would not be entitled for rental compensation and order passed to the extent of rental compensation is required to be set aside.

4. So far as granting benefit under section 34 of the Act of 1894 is concerned, respondents No. 3 to 13 - original claimants would be

entitled for the same from the date of possession as held by Full Bench of this Court, at Nagpur vide decision dated 18-04-2016 in First Appeal No. 251 of 2003 (State of Maharashtra Vs. Kailash Shiva Rangari). The SLAO while passing impugned order has taken care that if amount is claimed under the Reference then claimants would not have claim for dual benefits. Mr. Patil learned counsel for respondents No. 3 to 13 intimates that Reference is already decided by the Reference Court and benefit of section 34 is not extended to respondents No. 3 to 13 claimants.

5. In that view of the matter, the impugned judgment and order will be required to be implemented by the Acquiring body for that purpose. Considering the fact that payment is pending since long, acquiring body shall make endeavour to make the payment after verifying the award of the Reference Court, as expeditiously as possible, preferably within six months from the date of this order.

14. Writ petition stands disposed of. No costs.

Sd/-

[K. K. SONAWANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

MTK