

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5743 OF 2013

Godavari Marathwada Irrigation
Development Corporation Aurangabad,
Through its Executive Engineer,
Osmanabad Minor Irrigation Division,
Osmanabad

.. **Petitioner**

Versus

State of Maharashtra,
Through Secretary Revenue and Forest
Department, Mantralaya, Mumbai
and others

.. **Respondents**

Shri B. R. Surwase, Advocate for the Petitioner.
Shri S. M. Ganachari, A. G. P. for Respondent Nos. 1 and 2.
Respondent Nos. 4 to 6 and 9 served.

CORAM : S. V. GANGAPURWALA AND
K. K. SONAWANE, JJ.
DATE : 22ND JULY, 2016.

PER COURT :-

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 Respondent Nos. 3 to

10 - original claimants have been taken by the acquiring body by private negotiation after notification under section 4 of the Act of 1894, as such Respondents Nos. 3 to 10 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. 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 were taken on 01-01-2004. In that case, Respondent Nos. 3 to 10 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, Respondent Nos. 3 to 10 - 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.

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.

6. Writ petition stands disposed of. No costs.

[K. K. SONAWANE, J.]

[S. V. GANGAPURWALA, J.]

sam/July.16