

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL (STAMP) NO. 5876 OF 2016

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| 1. | The State of Maharashtra,
Through the Collector and
the Special Land Acquisition Officer,
No.9, Ahmednagar. | | |
| 2. | The Executive Engineer,
Minor Irrigation Division,
Local Sector, Ahmednagar. | ... | Appellants |
| Vs. | | | |
| 1. | Mohan Rambhau Kolhe,
Age-Major, Occ. Agriculturist, | | |
| 2. | Namdeo Mahadeo Borate,
Age-Major, Occ. Agriculturist,
R/o. Jawala, Tq. Jamkhed,
Dist. Ahmednagar. | ... | Respondents |

WITH
FIRST APPEAL (STAMP) NO. 5924 OF 2016

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| 1. | The State of Maharashtra,
Through the Collector and
the Special Land Acquisition Officer,
No.9, Ahmednagar. | | |
| 2. | The Executive Engineer,
Minor Irrigation Division,
Local Sector, Ahmednagar. | ... | Appellants |
| Vs. | | | |
| 1. | Asarabai Hausrao Dhonde,
Age-Major, Occ. Agriculturist, | | |
| 2. | Kesharbai Balbhim Naiknaware,
Age-Major, Occ. Agriculturist,
R/o. Jawala, Tq. Jamkhed,
Dist. Ahmednagar. | ... | Respondents |

WITH
FIRST APPEAL (STAMP) NO. 5912 OF 2016

1. The State of Maharashtra,
Through the Collector and
the Special Land Acquisition Officer,
No.9, Ahmednagar.
 2. The Executive Engineer,
Minor Irrigation Division,
Local Sector, Ahmednagar. ... Appellants
- Vs.**
1. Rhadhu Bansi Londhe,
Age-Major, Occ. Agriculturist,
 2. Rana Bhaiva Londhe,
Age-Major, Occ. Agriculturist,
R/o. Jawala, Tq. Jamkhed,
Dist. Ahmednagar. ... Respondents

**WITH
FIRST APPEAL (STAMP) NO. 5918 OF 2016**

1. The State of Maharashtra,
Through the Collector and
the Special Land Acquisition Officer,
No.9, Ahmednagar.
 2. The Executive Engineer,
Minor Irrigation Division,
Local Sector, Ahmednagar. ... Appellants
- Vs.**
- Radhabai Dattatraya Hajare,
Age-Major, Occ. Agriculturist,
R/o. Jawala, Tq. Jamkhed,
Dist. Ahmednagar. ... Respondents

**WITH
FIRST APPEAL (STAMP) NO. 5930 OF 2016**

1. The State of Maharashtra,
Through the Collector and
the Special Land Acquisition Officer,
No.9, Ahmednagar.
 2. The Executive Engineer,
Minor Irrigation Division,
Local Sector, Ahmednagar. ... Appellants
- Vs.**
1. Rajendra Dhondiba Mote,
Age-Major, Occ. Agriculturist,

2. Rajabai Dadasaheb Mote,
Age-Major, Occ. Agriculturist,
3. Tushar Subhashrao Mote,
Age-Major, Occ. Agriculturist,
4. Shrikant Dadasaheb Mote,
Age-Major, Occ. Agriculturist,
R/o. Jawala, Tq. Jamkhed,
Dist. Ahmednagar. ... Respondents

**WITH
FIRST APPEAL (STAMP) NO. 5933 OF 2016**

1. The State of Maharashtra,
Through the Collector and
the Special Land Acquisition Officer,
No.9, Ahmednagar.
 2. The Executive Engineer,
Minor Irrigation Division,
Local Sector, Ahmednagar. ... Appellants
- Vs.**
- Tukaram Ganpat Hajare,
Age-Major, Occ. Agriculturist,
R/o. Jawala, Tq. Jamkhed,
Dist. Ahmednagar. ... Respondents

**WITH
FIRST APPEAL (STAMP) NO. 5927 OF 2016**

1. The State of Maharashtra,
Through the Collector and
the Special Land Acquisition Officer,
No.9, Ahmednagar.
 2. The Executive Engineer,
Minor Irrigation Division,
Local Sector, Ahmednagar. ... Appellants
- Vs.**
1. Balu Balbhim Hajare,
Age-Major, Occu. Agriculturist,
 2. Rajendra Digambar Hajare,
Age-Major, Occ. Agriculturist,
 3. Dhasharat Digambar Hajare,

Age-Major, Occ. Agriculturist,
All R/o. Jawala, Tq. Jamkhed,
Dist. Ahmednagar.

... Respondents

**WITH
FIRST APPEAL (STAMP) NO. 5921 OF 2016**

1. The State of Maharashtra,
Through the Collector and
the Special Land Acquisition Officer,
No.9, Ahmednagar.

2. The Executive Engineer,
Minor Irrigation Division,
Local Sector, Ahmednagar.

... Appellants

Vs.

1. Vitthal Ranganath Baraskar,
Age-Major, Occu. Agriculturist,
2. Narayan Ranganath Baraskar,
Age-Major, Occ. Agriculturist,
3. Mahadev Ranganath Baraskar,
Age-Major, Occ. Agriculturist,
All R/o. Jawala, Tq. Jamkhed,
Dist. Ahmednagar.

... Respondents

**WITH
FIRST APPEAL (STAMP) NO. 5903 OF 2016**

1. The State of Maharashtra,
Through the Collector and
the Special Land Acquisition Officer,
No.9, Ahmednagar.

2. The Executive Engineer,
Minor Irrigation Division,
Local Sector, Ahmednagar.

... Appellants

Vs.

1. Shindhu Pratap Pawar,
Age-Major, Occu. Agriculturist,
2. Abhaysingh Pratap Pawar,
Age-Major, Occ. Agriculturist,
3. Nagarbai Dhondiba Mote,
Age-Major, Occ. Agriculturist,

All R/o. Jawala, Tq. Jamkhed,
Dist. Ahmednagar.

... Respondents

**WITH
FIRST APPEAL (STAMP) NO. 5915 OF 2016**

1. The State of Maharashtra,
Through the Collector and
the Special Land Acquisition Officer,
No.9, Ahmednagar.

2. The Executive Engineer,
Minor Irrigation Division,
Local Sector, Ahmednagar.

... Appellants

Vs.

1. Madukar Janu Shewale,
Age-Major, Occu. Agriculturist,

2. Suresh Janu Shewale,
Age-Major, Occ. Agriculturist,
Both R/o. Jawala, Tq. Jamkhed,
Dist. Ahmednagar.

... Respondents

**WITH
FIRST APPEAL (STAMP) NO. 5882 OF 2016**

1. The State of Maharashtra,
Through the Collector and
the Special Land Acquisition Officer,
No.9, Ahmednagar.

2. The Executive Engineer,
Minor Irrigation DivisionBorate,
Local Sector, Ahmednagar.

... Appellants

Vs.

1. Arjun Shivaji Borate,
Age-Major, Occu. Agriculturist,

2. Shantabai Shivaji ,
Age-Major, Occ. Agriculturist,
Both R/o. Jawala, Tq. Jamkhed,
Dist. Ahmednagar.

... Respondents

**WITH
FIRST APPEAL (STAMP) NO. 5909 OF 2016**

1. The State of Maharashtra,
Through the Collector and

the Special Land Acquisition Officer,
No.9, Ahmednagar.

2. The Executive Engineer,
Minor Irrigation Division,
Local Sector, Ahmednagar. ... Appellants

Vs.

1. Adinath Murlidhar Ghadage,
Age-Major, Occu. Agriculturist,
2. Ganesh Dattatray Duche,
Age-Major, Occ. Agriculturist,
3. Sudhir Dattatray Duche,
Age-Major, Occ. Agriculturist,
All R/o. Jawala, Tq. Jamkhed,
Dist. Ahmednagar. ... Respondents

**WITH
FIRST APPEAL (STAMP) NO. 5906 OF 2016**

1. The State of Maharashtra,
Through the Collector and
the Special Land Acquisition Officer,
No.9, Ahmednagar.
2. The Executive Engineer,
Minor Irrigation Division,
Local Sector, Ahmednagar. ... Appellants

Vs.

1. Shahadu Balbhim Borate,
Age-Major, Occu. Agriculturist,
2. Mahadev Balbhim Borate,
Age-Major, Occ. Agriculturist,
3. Sopan Balbhim Borate,
Age-Major, Occ. Agriculturist,
4. Tukaram Balbhim Borate,
Age-Major, Occ. Agriculturist,
5. Sanjay Balbhim Borate,
Age-Major, Occ. Agriculturist,
All R/o. Jawala, Tq. Jamkhed,
Dist. Ahmednagar. ... Respondents

**WITH
FIRST APPEAL (STAMP) NO. 5900 OF 2016**

1. The State of Maharashtra,
Through the Collector and
the Special Land Acquisition Officer,
No.9, Ahmednagar.
 2. The Executive Engineer,
Minor Irrigation Division,
Local Sector, Ahmednagar. ... Appellants
- Vs.**
- Dattatray Govind Borate,
Age-Major, Occ. Agriculturist,
R/o. Jawala, Tq. Jamkhed,
Dist. Ahmednagar. ... Respondents

**WITH
FIRST APPEAL (STAMP) NO. 5879 OF 2016**

1. The State of Maharashtra,
Through the Collector and
the Special Land Acquisition Officer,
No.9, Ahmednagar.
 2. The Executive Engineer,
Minor Irrigation Division,
Local Sector, Ahmednagar. ... Appellants
- Vs.**
- Sambhaji Haribhau @ Ukanday Borate,
Age-Major, Occ. Agriculturist,
R/o. Jawala, Tq. Jamkhed,
Dist. Ahmednagar. ... Respondents

**WITH
FIRST APPEAL (STAMP) NO. 5894 OF 2016**

1. The State of Maharashtra,
Through the Collector and
the Special Land Acquisition Officer,
No.9, Ahmednagar.
 2. The Executive Engineer,
Minor Irrigation Division,
Local Sector, Ahmednagar. ... Appellants
- Vs.**
1. Kisan Laxman Dhage,
Age-Major, Occu. Agriculturist,

2. Jagannath Laxman Dhage,
Age-Major, Occ. Agriculturist,
3. Akush Laxman Dhage,
Age-Major, Occ. Agriculturist,
All R/o. Jawala, Tq. Jamkhed,
Dist. Ahmednagar. ... Respondents

**WITH
FIRST APPEAL (STAMP) NO. 5897 OF 2016**

1. The State of Maharashtra,
Through the Collector and
the Special Land Acquisition Officer,
No.9, Ahmednagar.
 2. The Executive Engineer,
Minor Irrigation Division,
Local Sector, Ahmednagar. ... Appellants
- Vs.**
1. Laxman Mahadeo Kolhe,
Age-Major, Occu. Agriculturist,
 2. Shivaji Laxman Kolhe,
Age-Major, Occ. Agriculturist,
Both R/o. Jawala, Tq. Jamkhed,
Dist. Ahmednagar. ... Respondents

**WITH
FIRST APPEAL (STAMP) NO. 5885 OF 2016**

1. The State of Maharashtra,
Through the Collector and
the Special Land Acquisition Officer,
No.9, Ahmednagar.
 2. The Executive Engineer,
Minor Irrigation Division,
Local Sector, Ahmednagar. ... Appellants
- Vs.**
- Ajinath Mahadu Kohale,
Age-Major, Occ. Agriculturist,
R/o. Jawala, Tq. Jamkhed,
Dist. Ahmednagar. ... Respondents

**WITH
FIRST APPEAL (STAMP) NO. 5888 OF 2016**

1. The State of Maharashtra,
Through the Collector and
the Special Land Acquisition Officer,
No.9, Ahmednagar.
 2. The Executive Engineer,
Minor Irrigation Division,
Local Sector, Ahmednagar. ... Appellants
- Vs.**
- Dev Mhalari Hajare,
Age-Major, Occ. Agriculturist,
R/o. Jawala, Tq. Jamkhed,
Dist. Ahmednagar. ... Respondents

**WITH
FIRST APPEAL (STAMP) NO. 5891 OF 2016**

1. The State of Maharashtra,
Through the Collector and
the Special Land Acquisition Officer,
No.9, Ahmednagar.
 2. The Executive Engineer,
Minor Irrigation Division,
Local Sector, Ahmednagar. ... Appellants
- Vs.**
1. Haribhau Balbhim Dhage,
Age-Major, Occu. Agriculturist,
 2. Lahanu Balbhim Dhage,,
Age-Major, Occ. Agriculturist,
Both R/o. Jawala, Tq. Jamkhed,
Dist. Ahmednagar. ... Respondents

Mr. S.N. Morampalle, Advocate for the Appellants.
Mr. P.B. Shirsath, Advocate for the respondents.

**CORAM : P.R. BORA, J.
DATE : 06-10-2016.**

ORAL JUDGMENT :

1. Issue notice to the respondents, Learned counsel Mr.

Shirsath waives service for all the respondents in all these appeals who are the original claimants in the respective land acquisition references. With consent of the parties the matter is taken up for final hearing at the admission stage.

2. The subject lands were acquired for the construction of the percolation tank at Village Jawala, Tq. Jamkhed, District Ahmednagar. Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) in that regard was published on 10/01/2000, whereas, the award under Section 11 of the Act came to be passed on 10/06/2003. The Special Land Acquisition Officer (for short 'S.L.A.O.') assessed the market value of the acquired lands at different rates ranging from Rs. 39,000/- per hectare to Rs. 93,600/- per hectare. By taking into account, the nature and quality of the land and accordingly offered the amount of compensation to the respective land holders. The S.L.A.O. had determined the market value of the irrigated class-II lands at the rate of Rs. 93,600/- per hectare, whereas, for jirayat class-I land the rate offered was Rs. 39,000/- per hectare and for jirayat class-II land the compensation was offered at the rate of Rs. 46,800 per hectare. Dissatisfied with the amount of compensation so offered the land holders preferred applications under Section 18 of the Act to Collector, Ahmednagar. Collector, Ahmednagar, who, in turn forwarded all these applications for adjudication to the District Court at Ahmednagar (hereinafter referred to as the 'Reference

Court'). Before the reference court out of twenty claimants three deposed on behalf of all of them and certain sale instances were placed on record by the claimants. No oral or documentary evidence was adduced by the state.

3. The learned reference court after having assessed the oral and documentary evidence placed on record by the claimants determined the market value of the acquired lands at the rate of Rs. 1,80,000/- per hectare for the irrigated lands, Rs. 90,000/- per hectare for non-irrigated lands and Rs. 45,000/- for the pot-kharab land. Aggrieved by, the state has filed the present appeals.

4. Mr. Morampalle, the learned A.G.P. has assailed the impugned judgment and award on various grounds. The learned A.G.P. submitted that, the reference court has implicitly relied upon the sole sale instance at exhibit-30. The learned A.G.P. further submitted that, the reference court has failed in appreciating that there was no plausible evidence to show that, the land which was the subject matter of exhibit-30 was an irrigated land. The learned A.G.P. Submitted, that without their being any sufficient evidence, the reference court has held the said lands to be irrigated land and on the basis of the price received to the said lands has determined the market value of the acquired lands. The learned A.G.P. submitted that, the reference court has failed in appreciating that while fixing the amount of compensation S.L.A.O. had considered

more than 57 transactions and has also visited the respective lands and, as such, the market value fixed by the S.L.A.O. was just and proper and no interference was warranted in the market value so fixed by the S.L.A.O.

5. The learned A.G.P. further submitted that, reference court has erred in awarding the interest under Section 34 of the Act from the date of possession of the acquired lands. Relying upon the judgment of the full bench of this court in the case of **State of Maharashtra V/s. Kailash Shiva Rangari** reported in **2016(4) ALLMR 513**, the learned AGP submitted that no such interest could have been awarded by the reference court under Section 34 of the Act from the date of possession. The learned A.G.P., therefore, prayed for setting aside the common judgment and award impugned in the present appeals and has consequently prayed for re-determination of the amount of compensation on the basis of the evidence on record and more particularly the award passed by the S.L.A.O.

6. It is further significant to note that the S.L.A.O. after having considered around 58 sale transactions preferred by rely upon the sale instances pertaining to gut no. 887 of the year 1995 wherein the consideration received to the land which was the subject matter of the said sale deed was Rs. 45,936/- per hectare it was further observed by the S.L.A.O. that the lands acquired which

are the subject matter in present appeals were adjacent land to aforesaid gut no. 887. After having considered the evidence as such the S.L.A.O. had fixed the market value of the acquired land @ Rs. 50,000/- per hectare for non-irrigated class-I, Rs.75,000/- per hectare for the semi irrigated land class-I and @ Rs. 58,000/- per hectare for jirayat lands class-II, Rs. 87,000/- per hectare for semi irrigated lands class II and Rs. 1,16,000/- for irrigated land class-II however the collector did not approved the market value so fixed by the S.L.A.O. and he reduced the market value as below:

Collector	S.L.A.O.
Rs. 39,000/-	Rs. 50,000/-
Rs. 58,500/-	Rs. 75,000/-
Rs. 46,800/-	Rs. 58,000/-
Rs. 70,200/-	Rs. 87,000/-
Rs. 93,600/-	Rs. 1,16,000/-

7. Mr. Shirsath learned counsel appearing for the original claimants, has supported the impugned judgment, the learned counsel submitted that in para 9, 10 and 11 of the impugned judgment the reference court has elaborately discussed the evidence on record and on the objective assessment of the said evidence has rightly determined the market value of the acquired lands, as well as, the fruit bearing trees existing in the said land and, as such, no interference is warranted in the judgment and award so passed. The learned counsel, therefore, prayed for dismissal of the appeals.

8. I have carefully considered the submissions made on behalf of the learned A.G.P. and the learned counsel appearing for the original claimants. I have also perused the impugned judgment and other material placed on record. At the outset, it has to be stated that, the state did not adduce any oral or documentary evidence before the reference court. Thus, the evidence which was placed on record by the claimants was only available for the reference court to determine the market value of acquired lands. On perusal of the impugned judgment, it reveals that the sale deed at exhibit-30 has been considered by the reference court to be a comparable sale instance for determining the market value of the acquired lands. As has been observed by the reference court the land which was the subject matter of the sale deed at exhibit-30 was of the same vicinity and was of the same quality and having same potentials.

9. The reference court has further observed that it was an irrigated land. The discussion made by the reference court further reveals that, in the contents of the sale deeds earlier it was mentioned that there is a well in the said land, however, the said portion was subsequently erased. The learned reference court has further observed that, the sale deed read as a whole, it reveals that, there was a well in the said land and electric motor was also installed therein and the vendor was intending to sell 1/8th right in

the said well and electric connection to the vendee. The reference court has on the basis of such evidence has recorded a conclusion that the land which was the subject matter of exhibit-30 was irrigated land.

10. As is further revealing from the discussion made by the reference court price received to the said land was @ Rs. 1,50,0000/- per hectare, the said sale transaction had admittedly taken place prior to the issuance of the notification under Section 4 of the Act whereby the subject lands were acquired. Considering the said factor the reference court has given proper increase in the amount of consideration so received and has determined the market value of the acquired land @ of Rs. 1,80,000/- per hectare for irrigated land, Rs. 90,000/- for non-irrigated irrigated land and Rs. 45,000/- per hectare for the pot-kharab land.

11. After having considered the entire evidence on record more particularly the evidence as regards to the said instance it does not appear to me reference court has committed any error in determining the market value of the acquired lands, nothing has been brought to the notice in the appeals also so as to drawn an inference that market value determined by the reference court was in arbitrary manner or that the amount of compensation has been disproportionately enhanced.

12. For the reasons stated above, I do not see any merit in

the objections raised as about the determination of the market value of the acquired lands by the reference court. However, there is substance in the contention raised by the learned A.G.P. as about the award of interest by the reference court under Section 34 of the Act from the date of taking possession of the acquired lands and to that extent, the interference is certainly required. Learned counsel for the claimants was fair enough in submitting that in view of the full bench judgment of this court such interest is not liable to be awarded, thus, present appeals needs to be allowed to the aforesaid extent. Hence the following order:

ORDER

- i) The appeals are partly allowed.
- ii) The impugned common judgment and award so far as it relates to grant of interest under Section 34 of the Act stands set aside and quashed.
- iii) The other part of the impugned judgment is maintained as it.
- iv) Appeals stands disposed of in aforesaid terms.

(P.R. BORA)
JUDGE