

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2783 OF 2016

Udhav Bhujangrao Chawal,
 Age-66 years, Occu.- Agri.,
 R/o – village Wanjola,
 Tq. - Mantha, Dist. - Jalna

.. Appellant
 (Original Claimant)

Versus

1] The State of Maharashtra,
 through the Collector, Jalna,
 having his office at Collector
 Office, Jalna

2] The Special Land Acquisition Officer,
 M.I.W. Jalna, having
 his office at Collector Office, Jalna

3] The Executive Engineer
 Lower Dudhana Project Division, Selu
 District Parbhani. Since, this department is
 abolished at present Jalna Irrigation Department,
 Jalna, Office at Motibagh, Jalna,
 Tq. And Dist. Jalna

.. Respondents
 (Original Respondents)

WITH
FIRST APPEAL NO. 2784 OF 2016

Datta Mahadeo Chaval (died)
 through Lrs.

Ahilyabai W/o Dattarao Chaval,
 Age – 43 years, Occu.-Agri.,
 R/o – village Wanjola,
 Tq. - Mantha, Dist. - Jalna

.. Appellant
 (Original Claimant)

Versus

1] The State of Maharashtra,
 through the Collector, Jalna,
 having his office at Collector
 Office, Jalna

2] The Special Land Acquisition Officer,
M.I.W. Jalna, having
his office at Collector Office, Jalna

3] The Executive Engineer
Lower Dudhana Project Division, Selu
District Parbhani. Since, this department is
abolished at present Jalna Irrigation Department,
Jalna, Office at Motibagh, Jalna,
Tq. And Dist. Jalna

.. Respondents
(Original Respondents)

WITH
FIRST APPEAL NO. 2785 OF 2016

Dnyanoba Sukhdeo Chaval,
Age – 58 years, Occu.-Agri.,
R/o – village Wanjola,
Tq. Mantha, Dist.-Jalna

.. Appellant
(Original Claimant)

Versus

1] The State of Maharashtra,
through the Collector, Jalna,
having his office at Collector
Office, Jalna

2] The Special Land Acquisition Officer,
M.I.W. Jalna, having
his office at Collector Office, Jalna

3] The Executive Engineer
Lower Dudhana Project Division, Selu
District Parbhani. Since, this department is
abolished at present Jalna Irrigation Department,
Jalna, Office at Motibagh, Jalna,
Tq. And Dist. Jalna

.. Respondents
(Original Respondents)

AND
FIRST APPEAL NO. 2786 OF 2016

Haribhau Ashroba Chaval,
Age : 56 years, Occu.-Agri.,
R/o Village Wanjola,
Tq.-Mantha, Dist. - Jalna

.. Appellant
(Original Claimant)

Versus

- 1] The State of Maharashtra,
through the Collector, Jalna,
having his office at Collector
Office, Jalna
- 2] The Special Land Acquisition Officer,
M.I.W. Jalna, having
his office at Collector Office, Jalna
- 3] The Executive Engineer
Lower Dudhana Project Division, Selu
District Parbhani. Since, this department is
abolished at present Jalna Irrigation Department,
Jalna, Office at Motibagh, Jalna,
Tq. And Dist. Jalna

.. Respondents
(Original Respondents)

Mr. Deepak M. Kakade, Advocate for the appellants in all F.A.s
Mr. S.P. Deshmukh, AGP for the respondent/State in all matters
Mr. Raturaj C. Patil, Advocate for respondent no.3 in all F.A.s

CORAM : P. R. BORA, J.
DATE : 01/09/2016

ORAL JUDGMENT :

Heard.

2. **Admit.** With consent of learned counsel for the parties, the appeals are heard finally.

3. Since all these appeals are arising out of the common judgment and award passed by the District Judge – 2 at Jalna in L.A.R. No. 219 of 1999 with the connected land acquisition references decided on 17/1/2008, common arguments were heard in these matters and I deem it appropriate to decide these appeals by

common reasoning.

4. The lands which are the subject matter of the present appeals, were acquired for Lower Dudhna project. Section 4 notification of the Land Acquisition Act (for short “**the Act**”) in that regard was published on 13/7/1995, whereas the award under section 11 of the Act came to be passed on 31/3/1999. The Special Land Acquisition Officer (for short “**the S.L.A.O.**”) fixed the market value of the acquired lands ranging in between Rs.450/- per R to Rs.600/- per R and accordingly, determined the amount of compensation to be paid to the land holders. Dis-satisfied with the compensation so offered, the appellants – claimants filed the reference applications under section 18 of the Act, which were forwarded by the District Collector, Jalna to the District Court for adjudication.

. Before the reference Court, the claimants had claimed the market value of the their acquired lands at the rate of more than Rs.2000/- per R. Certain sale instances were placed on record by the claimants in order to substantiate the claim so made by them. The learned Reference Court, however, determined the market value for the jirayat land under the acquisition, at the rate of Rs.1200/- per R, at the rate of Rs.1600/- per R for the semi-irrigated lands and for the irrigated lands at the rate of Rs.1800/- per R.

. According to the claimants, the enhancement so granted by the reference Court is also inadequate and, therefore, the present appeals are filed seeking enhancement in the amount of compensation so determined by the reference Court.

5. When the present matters were taken up for hearing today, learned counsel appearing for the claimants tendered across the bar, copy of the common judgment delivered by this Court on 14th October, 2015 (Coram : S.V. Gangapurwala, J.) in First Appeal No. 2561 of 2015 with connected first appeals. Learned counsel submitted that the lands which were the subject matter of the aforesaid appeals, were also acquired for Lower Dudhna project by the same notification. Learned counsel further submitted that all these lands which were the subject matter of the said appeals were of village Wanjola. Learned counsel submitted that in the decided appeals, this Court has enhanced the amount of compensation by determining the market value of the lands, which were the subject matter in the said appeals at the rate of Rs.1500/- per R for jirayat lands, Rs.1800/- per R for semi-irrigated lands and Rs.2100/- per R for irrigated lands. Learned counsel submitted that since the acquired lands which are subject matter of the present appeals also are from village Wanjola and were acquired by the same notification for the Lower Dudhna project, the appellants in the present appeals are entitled for the similar compensation, as determined by this Court in the aforesaid judgment.

6. Shri Ruturaj Patil, learned counsel appearing for the acquiring body concedes that vide the judgment delivered by this Court (Coram : S.V. Gangapurwala) on 14th October, 2015 in the aforesaid appeals, the amount of compensation has been enhanced, as has been submitted by learned counsel appearing for the appellants. Learned counsel further submitted that in view of the fact that the acquiring body has not preferred the appeals against the decision in the aforesaid appeals, there may not be any difficulty in enhancing the amount of

compensation, similarly, as enhanced in the aforesaid appeals.

. Learned counsel further submitted that while enhancing the amount of compensation, the Court shall pass a speaking order as about the interest to be paid in all these matters. Learned counsel submitted that there is lot of confusion as about the grant of interest under section 28 and 34 of the Act and in many of the orders passed by the reference Courts, it is noticed that the interest is being awarded even under section 34 of the Act from the date of possession and not from the date of award. Learned counsel read out section 28 and section 34 of the Act.

. Learned counsel also relied upon the judgment of the Hon'ble Apex Court in the matter of **Lila Ghosh (Smt.) (dead) through LR. Tapas Chandra Roy Vs. State of W.B.** reported in (2004) 9 S.C.C. 337. Learned counsel submitted that the Hon'ble Supreme Court has crystallized the manner in which the interest is to be awarded by the Court under section 28 and/or section 34 of the Act. Learned counsel also referred to the Full Bench judgment of this Court in the case of **State of Maharashtra Vs. Kailash Shiva Rangari** reported in 2016(3) Mh.L.J. 457.

7. Insofar as the award of interest is concerned, Shri Kakade, learned counsel appearing for the claimants has not disputed the submission, as has been made by Shri Patil, learned counsel appearing for the acquiring body.

8. After having considered the submissions, as advanced and more particularly, taking into account, the fact that for the lands which were acquired for the same project by the same notification, this Court has determined the market value at the rate of Rs.1500/- per R for non-irrigated lands, Rs.1800/- per R for

semi-irrigated lands and Rs.2100/- per R for irrigated lands, I do not see any reason to adopt any other course.

. As held by the Division Bench of this Court (Coram : A.S. Oka and F.M. Reis, JJ.) in the case of **Special Land Acquisition Officer (N) and another Vs. Krishnabai Abasaheb Rane (deceased) through L.Rs. Shivajirao Abasaheb Rane and others** reported in **2011 (1) Mh.L.J. 278**, the market value determined in a judgment passed by the High Court, can also be the basis for the purpose of determining the compensation in a subsequent matter, if the lands are acquired for the same purpose and are from the same village.

. In the present matters also, as noted by me earlier, the lands, which are the subject matter of the present appeals, are from village Wanjola and were acquired for Lower Dudhna project vide notification under section 4 of the Act published in the Government gazette on 13/7/1995. The lands which were the subject matter in First Appeal No. 2561 of 2015 and connected First Appeals decided by this Court (Coram : S.V. Gangapurwala, J.) on 14th October, 2015 were also acquired for the Lower Dudhna project. They are also from village Wanjola and were acquired by the same notification. I have, therefore, no hesitation in determining the amount of compensation for the lands, which are subject matter in the present appeals, at the same rate. The appeals, therefore, deserve to be allowed to the aforesaid extent.

9. It has to be noted that the appellants in the present appeals have filed undertakings, waiving their right to claim the interest of the period of delay, which has been committed by them in filing the present appeals. In view of such

undertakings given by them, they will not be entitled to the interest for the period of delay occurred in filing the appeals by them. Hence, the following order:-

ORDER

- I) The market value of the lands under acquisition in the present appeals is determined at the rate of Rs.1500/- per R for non-irrigated lands, at the rate of Rs.1800/- per R for semi-irrigated lands and at the rate of Rs.2100/- per R for irrigated lands and the amount of compensation is enhanced to the aforesaid extent.
- II) The appellants are entitled for the interest as provided under section 28 of the Act on the enhanced amount of compensation from the date of award till actual payment of the compensation.
- III) The appellants are entitled for the interest under section 34 of the Act on the amount of compensation as determined by the S.L.A.O. from the date of award till the payment of said amount by the Collector.
- IV) The appellants are also entitled for the statutory benefits on the enhanced amount of compensation.
- V) The appellants shall not be entitled for the statutory benefits of the period of delay committed by them in filing the appeals.

VI) The appellants shall deposit the deficit Court fees, if any. After the deficit Court fees is deposited, the modified awards be prepared accordingly.

VII) First Appeals stand allowed in above terms.

[P. R. BORA]
JUDGE

arp/