

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 3131 OF 2016

1. The State of Maharashtra
Through The Collector, Beed,
2. The Executive Engineer,
Beed Irrigation Division,
Beed, Dist. Beed

**...APPELLANTS
(Ori. Respondents)**

VERSUS

Gangadhar s/o. Shamrao Chalak (Died L.Rs.)

1. Smt. Kusiwarta w/o Gangadhar Chalak
Age:65 years,
2. Laximan s/o Gangadhar Chalak
Age 45 years,
3. Pandurang s/o. Gangadhar Chalak,
Age:30 years,
4. Smt. Urmila w/o Badrinath Chalak,
Age:35 years,

All by Occu.: Agriculture,
R/o. Kingaon, Tq. Georai,
Dist. Beed.

**...RESPONDENTS
(Ori. Claimants)**

...

**WITH
FIRST APPEAL NO.3130 OF 2016**

1. The State of Maharashtra
Through The Collector, Beed,
2. The Executive Engineer,
Beed Irrigation Division,
Beed, Dist. Beed

**...APPELLANTS
(Ori. Respondents)**

VERSUS

Baban s/o. Ramdhan Rathod,
Age:55 years, Occu.: Agriculture,
R/o. Kingaon, Tq. Georai,
Dist. Beed

**...RESPONDENT
(Ori. Claimant)**

...

**WITH
FIRST APPEAL NO.3132 OF 2016**

1. The State of Maharashtra
Through The Collector, Beed,
2. The Executive Engineer,
Beed Irrigation Division,
Beed, Dist. Beed

**...APPELLANTS
(Ori. Respondents)**

VERSUS

Eknath s/o. Alu Chavan
Age:50 years, Occu.: Agriculture,
R/o.Kingaon, Tq. Georai,
Dist. Beed

**...RESPONDENT
(Ori. Claimant)**

...

WITH

FIRST APPEAL NO.3133 OF 2016

1. The State of Maharashtra
Through The Collector, Beed,
2. The Executive Engineer,
Beed Irrigation Division,
Beed, Dist. Beed

**...APPELLANTS
(Ori. Respondents)**

VERSUS

Shri. Trimbak s/o. Shamrao Chalak,
Age:50 years, Occu.:Agriculture,
R/o.Kingaon, Tq. Georai,
Dist. Beed

**...RESPONDENT
(Ori. Claimant)**

...

**WITH
FIRST APPEAL NO.3134 OF 2016**

1. The State of Maharashtra
Through The Collector, Beed,
2. The Executive Engineer,
Beed Irrigation Division,
Beed, Dist. Beed

**...APPELLANTS
(Ori. Respondents)**

VERSUS

1. Haribhau s/o. Tukaram Rathod,
Age:55 years,
2. Eknath s/o. Yeldeo Rathod,
Age:50 years,

both by Occu.: Agriculture,
R/o. Kingaon, Tq. Georai,
Dist. Beed.

**...RESPONDENTS
(Ori. Claimant)**

Mr. S.N. Morampalle, A.G.P. for State.
Mr. D.R. Jaybhar for Respondent Nos. 1 to 3.

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CORAM: P.R.BORA, J.

DATE : December 1st, 2016

ORAL JUDGMENT:

1. Heard.

2. With the consent of learned Counsel appearing for the parties, the present appeals are heard finally at admission stage. Since all these appeals are arising out of common judgment and award passed by the District Judge-III, Beed, on 30th of April, 2010, in Land Acquisition Reference No.79/2009, with four connected Land Acquisition References, I have heard the common argument in all these appeals and I deem it appropriate to decide these appeals by common reasoning.

3. The lands which are subject matter of the present appeals were acquired for construction of Percolation Tank No.1 at village Kingaon, taluka Georai, district Beed. Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act')

in that regard was published in the official gazette on 11th of March, 2004, whereas the award under Section 11 of the Act came to be passed on 25th March, 2006. Possession of the acquired lands was taken prior to issuance of the notification under Section 4 of the Act. The Special Land Acquisition Officer (for short, 'S.L.A.O.')

had assessed the market value of the acquired lands at Rs.620/- and Rs.650/- per Are and has accordingly offered the amount of compensation to the respective claimants. Dissatisfied with the amount of compensation so offered, the claimants preferred applications under Section 18 of the Act to the Collector who, in turn, forwarded all those applications to the District Court at Beed for adjudication. In the proceedings before the Reference Court, the claimants had claimed the compensation at the rate of Rs.3500/- per Are for the non- irrigated lands and double of the same for irrigated lands.

4. In order to substantiate the claim, the claimants in addition to their oral testimonies, did place on record two sale instances (Exh.19 and Exh.20). No oral evidence was adduced on behalf of the State nor any sale instance

was placed on record by the State. Learned Reference Court, after having assessed the oral and documentary evidence on record, determined the market value of the seasonally irrigated lands at the rate of Rs.3,000/- per Are and Rs.2250/- per Are for Jirayat land. Aggrieved thereby, the State has preferred present appeals.

5. Shri S.N. Morampalle, learned A.G.P., appearing for the appellant State, has assailed the impugned judgment and award on several grounds. Learned A.G.P. submitted that the Reference Court has committed an error in determining the market value of the acquired lands at the rate of Rs.3,000/- per Are though they are semi irrigated lands. Learned A.G.P. submitted that the sale instances which have been relied upon by the Reference Court are pertaining to fully irrigated lands wherein the consideration was received at the rate of Rs.3,000/- per Are. Learned A.G.P. further submitted that the Reference Court has also committed an error in awarding interest under Section 34 of the Act from the date of possession. Learned A.G.P., therefore, prayed for setting aside the impugned judgment and award and to

re-determine the amount of compensation on the basis of the evidence on record.

6. Shri D.R. Jaybhar, learned Counsel for the respondents i.e. original claimants in all these appeals, supported the impugned judgment and award. Learned Counsel submitted that since the Reference Court has awarded compensation on the basis of the two sale instances of the comparable lands, no interference is required in the compensation so awarded. Learned Counsel, therefore, prayed for dismissal of the appeals.

7. I have carefully considered the submissions advanced by the learned A.G.P. and the learned Counsel appearing for the original claimants. I have also perused the impugned judgment and the other material on record. It is not in dispute that no oral evidence was adduced on behalf of the State before the Reference Court nor any sale instance was placed on record by the State. Thus, the only evidence before the Reference Court was the oral testimonies of the respective claimants and the two sale instances commonly relied upon by the claimants in

support of their claim.

8. As has been discussed by the Reference Court, all the claimants have deposed that the acquired lands were of high quality fertile lands and optimum income was received from the said lands. It was also the contention of the claimants that the acquired lands were fully irrigated lands and they were taking the crops like sugarcane in the said lands. The evidence on record reveals that the two sale instances brought on record by the claimants (Exh.19 and Exh.20) were pertaining to the lands of village Kingaon and both the lands were irrigated lands. The land which was the subject matter of the sale deed at Exh.19 situate at village Kingaon was admeasuring 40 Are and was sold by registered sale deed executed on 13th of May, 2003, for consideration of Rs.1,25,000/- (Rs. one lac, twenty five thousand) i.e. at the rate of Rs.3125/- per Are whereas the land involved in sale deed at Exh.20, situated at the same village Kingaon, was admeasuring 20 Ares and was sold for consideration of Rs.60,000/- vide the registered sale deed executed on 19th May, 2003. Thus, the rate received to the said land was Rs.3,000/- per

Are. Both the aforesaid lands were admittedly irrigated lands. Learned Reference Court, relying on the aforesaid two sale instances, has determined the market value of the acquired lands.

9. The discussion made by the Reference Court in the impugned judgment reveals that from the evidence on record and more particularly considering the 7/12 extracts of the respective lands and the entries made therein as about the crops taken in the said lands, the Reference Court has held the lands, which were the subject matter of LAR No.79/2009 to 82/2009 to be seasonally irrigated lands whereas the land which was subject matter of LAR No.83/2009 was held by the Reference Court to be Jirayat land. The discussion made by the Reference Court further demonstrates that the lands which were the subject matter of the sale deeds at Exh.19 and Exh.20 were situated at village Kingaon and the distance between the acquired lands and the said lands was merely of half kilometer. The Reference Court has further observed that the sale deeds at Exh.19 and Exh.20 were executed prior to the issuance of the notification under Section 4 of the Act by which the

subject lands were acquired. The Reference Court has further observed that the lands involved in Exh.19 and Exh.20 were irrigated lands. It appears that the Reference Court, therefore, thought it proper to determine the market value of the acquired lands on the basis of the consideration received to the lands which were the subject matter of Exh.19 and Exh.20. Reference Court was right in relying upon the sale instances for determining the market value of the acquired lands since the said lands were also from village Kingaon and the sale instances were of the period prior to issuance of Section 4 notification. The said sale instances, therefore, undoubtedly can be held to be comparable sale instances.

10. The only error which seems to have been committed by the Reference Court while determining the market value of the acquired lands is that though the lands which are the subject matter of LAR No.79/2009 to LAR No.82/2009 are seasonally irrigated lands, the Reference Court determined the market value of the said lands at par with the market value received to the lands which were the subject matter of Exh.19 and Exh.20 and which were

admittedly irrigated lands. The finding recorded by the Reference Court that the lands involved in LAR No.79/2009 to 82/2009 were seasonally irrigated lands has not been denied or disputed by the respective claimants who are respondents in the present appeals.

11. From the evidence on record discussed as above, it is evident that the market value of the acquired lands could not have been determined at par with the lands which were the subject matter of Exh.19 and Exh.20. Considering the fact that the market value of Rs.3,000/- was received to the fully irrigated lands, the market value of the acquired lands which were semi irrigated lands, could not have been determined at Rs.3,000/- per Are. In this context, it was argued by the learned A.G.P. that the Reference Court has committed an error in determining the market value of the acquired lands at the rate of Rs.3,000/- per Are and it was urged by the learned A.G.P. that the market value of the acquired lands shall be determined at the rate of Rs.2250/- per Are since, undisputedly, the said lands were semi irrigated lands.

12. It is true that, as held by the Reference Court, the lands involved in LAR No.79/2009 to 82/2009 are semi irrigated lands whereas the land involved in LAR No.83/2009 is a dry land. In the circumstances, the market value of the acquired lands as determined by the Reference Court cannot be sustained and deserves to be modified. From the available evidence on record, I determine the market value of the lands which were involved in LAR No.79/2009 to 82/2009 at the rate of Rs.2400/- per Are whereas Rs.1800/- per Are of the land which was involved in LAR No.83/2009.

13. Secondly, the impugned order, so far as it relates to grant of interest under Section 34 of the Act from the date of possession also cannot be sustained in view of the Full Bench judgment of this Court in the case of **State of Maharashtra V. Kailash Shiva Rangari (2016 (3) Mh.L.J.457)**. In view of the law laid down by the Full Bench of this Court in the aforesaid matter, the interest under Section 34 of the Act can only be awarded from the date of the award and not from the date of possession. The impugned awards, therefore, need be

modified accordingly.

14. In the result, the following order is passed:

ORDER

1. The compensation in L.A.R.Nos.79/2009 to 82/2009 shall be determined at the rate of Rs.2,400/- per Are.
2. The compensation in LAR No.83/2009 shall be determined at the rate of Rs.1800/- per Are.
3. The claimants are held entitled for the statutory benefits and the interest as provided under the provisions of the Act on the aforesaid amount of compensation.

The First Appeals stand allowed in aforesaid terms.
No order as to the costs.

**(P.R.BORA)
JUDGE**

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