

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

FIRST APPEAL NO. 2343 OF 2013

1. The State of Maharashtra
Through the Collector, Beed.
2. The Executive Engineer, M.I.(L.S.),
Beed. ...Appellants...
(orig. respondents)

VERSUS

1. Uttam Genu Nagare (Deceased)
Through His L.Rs.
- 1/a. Chandrabhaga w/o Uttam Nagare,
age 65 years, Occ. R/o at Dagadwadi,
Post Raimoha, Tq. Shirur (Kasar)
Dist. Beed.
- 1/b Ramrao s/o Uttam Nagare,
age 45 years, R/o as above.
- 1/c Nanibai w/o Anjiram Sirsath,
age 47 yrs, r/o Pimparkhed (Bu)
Tq. Ghansavati, Dist. Jalna.
- 1/d. Janabai Devidas Sirsath,
age 46 yrs, R./o as above.
- 1/e Kamalbai Bhausaheb Jaybhave
age 44 yrs, R/o at Dagadwadi,
Po Raimoha, Tq. Shirur (Kasar)
Dist. Beed.
- 1/f Radhabai Ambadas Sirsath,
age 40 yrs, R/o at Post Pimparkhed (Bu)
Tq. Ghansavagi, Dist. Jalna.
- 1/g Lilabai Shivaji Kedar,
age 35 yrs, r/o Dagadwadi,

Post Raimoha, Tq. Shirur (K)
Dist. Beed.

2. Baban Genu Nagare, (Died)
Through His Lrs.,
 - 2/a Mahadeo Baban Nagare,
age 70 yrs, R/o at Dagadwadi,
Po. Raimoha, Tq. Shirur (Kasar)
Dist Beed.
 - 2/b Babasaheb Baban Nagare,
age 65 yrs, R/o as above.
 - 2/c Vishnu Baban Nagare,
age 60 yrs, R/o as above.
 - 2/d Sitaram Baban Nagare,
age 57 yrs, R/o as above.
 - 2/e Sheshrao Baban Nagare,
age 55 yrs, R/o as above.
 - 2/f Yamunabai Dnyandeo Sirsath,
age 62 yrs, R/o at Post Pimparkheda(Bu)
Tq. Ghansavangi, Dist. Jalna,
 - 2/g Gayabai Genaji Sirsath,
age 53 yrs, R/o as above.
 - 2/h Prayagbai Manikrao Mundhe
age 50 yrs, R/o at Po. Pawarwadi,
Tq. Majalgaon, Dist. Beed.
3. Sonba Genu Nagare,
age 80 yrs.
4. Bhagwan Genu Nagare.
Age 75 years.
5. Smt. Jaibai w/o Nana Katale.
Age 70 yrs.

6. Ramdas Narayan Katale
age 55 yrs, All Occ. Agri.
R/o Kharabwadi, U/v. Raimoha,
Tq. Shirur (K), Dist. Beed. ..Respondents..
(orig. petitioners)

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AGP for Appellants : Mr G O Wattamwar
Advocate for Respondents : Mr D R Jayabhar

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CORAM : V.K. JADHAV, J.
Dated: June 08, 2016
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ORAL JUDGMENT :-

1. Being aggrieved by the judgment and award passed by the learned Jt. Civil Judge S.D., Beed in LAR No.96 of 2011, the respondents preferred this appeal.

2. Brief facts, giving rise to the present appeal are as under :-

The lands of the respondents/petitioners were acquired by the Government for construction of village Tank No.2 at Kharabwadi, U/v Raimoha, Tq. Shirur (K) District Beed. The notification under section 4 (1) of the Land Acquisition Act was published on 27.2.2003 and award was passed on 29.7.2006. Since the petitioners raised objections to the Award passed by the Special Land Acquisition Officer on various grounds, the applications were referred to the Civil Court. In this

case, possession of the land was taken on 15.1.2001 i.e. prior to the publication of the date of notification. The S.L.A.O. has awarded compensation @ Rs.440/- per R and Rs.15/- for pot kharab lands. The respondents/original claimants have claimed compensation @ Rs.2,500/- and Rs.1,500/- for pot kharab lands. According to the respondents/claimants, the acquired lands situated near Beed-Kalyan State highway and also at the distance of 35 kms from Beed District place Beed and 12 kms from Taluka Place Shirur Kasar. Furthermore, the acquired lands of the respondents-claimants were highly irrigated lands, however, the S.L.A.O. has failed to classify the lands as Bagayat lands. The S.L.A.O. has not considered the potentiality of the acquired lands. The acquired lands are situated within the operation area of sugar factory and thus, capable of yield sugarcane crop and fetch maximum income.

3. Respondent-State and acquiring body strongly resisted the petition by filing written statement. According to them, respondents/claimants have claimed

exorbitant amount of compensation. It has further contended that the acquired lands are of interior quality and the S.L.A.O. has granted proper consideration after considering the all the aspects. The respondents/original claimants have adduced oral and documentary evidence in support of their contention. The learned Jt. Civil Judge S.D., Beed by its impugned judgment and award dated 17.1.2012 partly allowed the reference petition and awarded enhanced compensation for the acquired lands @ Rs.2200/- per R and Rs.1100/- per R for potkharab lands. Hence, this appeal.

4. The learned AGP submits that, the respondents-original claimants have not placed before the reference court the comparable sale instances to prove the prevailing market price of the acquired lands. On the contrary, after considering the comparable sale instances and fertility of the acquired lands, the S.L.A.O. has rightly awarded the compensation.

5. It is further submitted that, the reference court has awarded exorbitant amount of compensation. The

learned AGP further submits that, the reference court has awarded interest from the date of possession and the same is not permissible. It is further submitted that, at the most the respondents-claimants are not entitled to claim rental compensation for the reason that the possession was taken prior to the publication of the notification u/s 4 of the Act. The learned AGP in order to substantiate his contention placed his reliance on a case **State of Maharashtra Vs. Kailash Shiva Rangari** reported in **2016 (3) Mh.L.J. 457**, wherein the larger Bench expressed full agreement with the view taken by the Division Bench of this Court in Lalit Kumar Shah's case held that in a case where possession is taken prior to the issuance of the notification u/s 4 (1) of the said Act, interest u/s 34 starts running from the date of award only. Learned AGP also places his reliance on a case of **Lalit Kumar Himmatlal Shah Vs. State of Maharashtra and others**, reported in **2012(4) Mh.L.J.743**.

6. Learned counsel for respondents/original claimants submits that, the reference court has rightly

placed his reliance on the sale instances Exh.13,14 and 15 respectively which came to be executed prior to the date of notification in the present case. Furthermore, the respondents-claimants also places their reliance on a Judgment in LAR No.674/2006 certified copy of the judgment delivered in the said LAR 674/2006 is placed before the Reference Court and the same is marked as Exh.16. It was the reference for the lands acquired for the construction of village tank no.3, at Raymoha Tq. Shirur. Learned counsel submits that, Reference Court has rightly placed his reliance on a judgment in LAR No.674/2006 for determining the market price of the acquired lands. In that judgment, the reference court has granted enhanced compensation @ Rs.2200/- per R. Learned counsel submits that, after considering the oral and documentary evidence on record and compensation awarded in LAR No.674/2006 the reference court has rightly fixed the market price of the acquired land of the petitioners @ Rs.2200/- per R and Rs.1100/- per R for potkharab lands. Learned counsel submits that, the possession of the acquired land was taken on 15.1.2001. Notification u/s 4(1) of the Act was

published on 27.2.2003 and award was passed on 29.7.2006. Learned counsel submits that, reference court, after considering the provisions of Land Acquisition Act most particularly, provisions of section 28 rightly awarded the interest @ 9% p.a on the aforesaid amount of compensation from 15.1.2001 i.e. the date of possession for one year and thereafter @ 15% p.a. on the said amount from 15.1.2002 till the realization of the entire amount.

7. On careful perusal of the record and proceeding, it appears that, the Reference Court has rightly considered sale instances Exh.13,14,15 as a comparable sale instances in the reference petition. So far as sale deed vide exh.13 is concerned, on 20.5.1996 one Digambar Kawale had purchased 12 R of land for a consideration of Rs.30,000/-. As per sale deed Exh.14 on 2.9.1998 one Bajirao Ranmare has purchased 19 R of land for a consideration of Rs.67,000/- and as per sale instance vide Exh.15 on 27.8.1999 one Raichand Karnawat had purchased 25R of land out of gat no.54 for the consideration of Rs.1,60,000/-. As per these

three sale instances, rate per AAr comes to Rs.2,500/-, 3,526/- and 6400/- per R respectively. It further appears that, reference court has considered the distance between the lands under the sale instances and the acquired lands. Considering the advantages attached to the lands under sale instances, reference court has deducted 30% of the amount from the purchased price those lands. After deducting that amount, market price of the land under sale instance comes to Rs.1,750/-, Rs.2,468/- and Rs.4,480/- per R respectively. Furthermore, the learned Judge of the reference court has added 10% increase per anum in the price of the land since the sale deed is executed prior to the date of notification. It further appears that, reference court has applied the principle of average in determining the fair market value of the lands.

8. On perusal of the judgment delivered in LAR No.674/2006 Exh.16, it appears that said reference was for the land acquired for the construction of village Tank No.3 at Raymoha and reference court has awarded enhanced compensation @ Rs.2,200/- per R. Thus,

after considering the oral and documentary evidence on record, and compensation awarded in said L.A.R No.674/2006, the Reference Court has rightly fixed the market price of the acquired lands at Rs.2,200/- and Rs.1100/- for pot kharab lands.

9. The reference court has rightly held that, the petitioners are entitled to get solatium @ 30 per cent and component at the rate of 12 percent per annum, however, in view of the authoritative pronouncements of larger bench in First Appeal No.251/2003, the State of Maharashtra Vs. Kailash (supra), most particularly, paragraph No.32 (Vii), the reference court has committed error while awarding the interest from the date of possession. The claimants are entitled for the interest u/s 34 of the Act from the date of award only. In view of this, the clause no.3 of the operative part of the order of the impugned judgment and award is liable to be quashed and set aside. The claimants are at liberty to file a representation to the Collector for rental compensation from the date of the possession in respect of the acquired lands and, the Collector may take an

appropriate decision in the matter in accordance with law.

ORDER

- I. Appeal is hereby partly allowed.
- II. The impugned judgment and award passed by the learned Joint Civil Judge, S.D. Beed dated 17.01.2012 in L.A.R.No.96 of 2011 is modified in the following manner.

“The petitioners would be entitled to get interest u/s 34 of the Land Acquisition Act on the amount of compensation determined u/s 23 of the Act from the date of award till the amount is actually paid to the petitioners.”

- III. Rest of the judgment and award stands confirmed.
- IV. Award be drawn up accordingly.
- V. Respondents-claimants are at liberty to make a representation to the Collector for rental compensation of the acquired lands from the date of possession and the Collector shall take appropriate decision on the representation in accordance with law.

VI. Appeal accordingly disposed of. No costs.

(V.K. JADHAV, J.)

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