

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.22 OF 2016
WITH
FIRST APPEAL NOS.23/2016, 24/2016, 25/2016 &
26/2016

The State of Maharashtra & Anr. = **APPELLANTS**

VERSUS

Vitthal Nivrutti Khedkar & Ors. = **RESPONDENTS**

Mr.G.O.Wattamwar, AGP for Appellant/s;
Mr.C.K.Shinde, Adv. For Respondent/s

CORAM : P.R.BORA, J.

DATE : 18th August ,2016.

PER COURT:

1) With the consent of learned counsel appearing for the parties, these appeals are finally heard at the admission stage.

2) Since all these appeals are arising out of the common Judgment and Award passed by the District Judge, Beed on 21st October, 2011 in LAR No.299/2010 with connected LARs, common arguments were heard in all these appeals and I deem it

appropriate to decide all these appeals by a common reasoning.

3) The lands, which are the subject matter of the present appeals, were acquired for construction of village tank No.2 at Sangavi, Tq. Ashti, District Beed. Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred as the Act) in that regard was published in the official gazette on 6th October, 2006; whereas, Award under Section 11 of the Act came to be passed on 22nd July, 2008. Possession of the acquired lands was taken prior to issuance of Section 4 notification. The Special Land Acquisition Officer (for short, the S.L.A.O.) had assessed the market value of the acquired lands @ Rs.750/- 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 application under Section 18 of the Act to Collector, Beed, who in turn forwarded all those applications for adjudication to the District

Court at Beed (hereafter referred to as Reference Court). The Reference Court after having assessed the evidence on record, determined the market value of the acquired lands @ Rs.2,300/- per Are and accordingly enhanced the amount of compensation to be paid to the respective claimants. Aggrieved by, the State has filed the present appeals.

4) Shri Wattamwar, learned AGP appearing for Appellant – State, has criticized the impugned judgment on several grounds. According to learned AGP, the Reference Court has unreasonably enhanced the amount of compensation by determining the market value of the acquired lands on higher side without any evidence there for. The learned AGP further contended that the Reference Court has also erred in awarding the interest under Section 34 of the Act from the date of taking over the possession of the acquired lands. The learned AGP further submitted that in view of 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, no such interest could have been awarded by the Tribunal from the date of possession. The learned AGP submitted that the Special Land Acquisition Officer had properly assessed the market value of the acquired lands taking into account several sale instances and by physically visiting the acquired lands, and as such, no enhancement could have been awarded by the Reference Court in the amount of compensation so fixed by the Special Land Acquisition Officer. The learned AGP, therefore, prayed for setting aside the impugned Judgment and Award and to re-determine the amount of compensation.

5) Shri C.K.Shinde, learned Counsel appearing for the respondents i.e. original claimants, supported the impugned judgment. The learned Counsel submitted that the claimants had produced on record five sale instances in order to support their claim. The learned Counsel

submitted that the Tribunal, after having assessed the evidence on record, has passed a well-reasoned order. The learned Counsel submitted that no interference is required in the impugned Judgment and Award. The learned Counsel was however fair enough in conceding that in view of the Full Bench Judgment of this Court in the Case of Kailas Shiva Rangari (cited supra), the order passed by the Reference Court in so far as it relates to grant of interest under Section 34 of the Act from the date of possession, may not sustain.

6) I have carefully considered the submissions made by learned AGP and learned Counsel appearing for original claimants. I have also perused the impugned judgment and the evidence on record. Admittedly, no oral evidence was adduced on behalf of the State. Neither any sale instance was placed on record by the State. As against it, the claimants testified before the Reference Court and also placed on record six

sale instances to support their claim of enhancement in the amount of compensation. The learned Reference Court has appropriately considered the sale instances brought on record by the claimants. As mentioned herein above, total six sale instances were placed on record by the claimants. The said sale deeds are at Exhibits 17 to 22. All these sale instances had taken place prior to date of issuance of Section 4 notification. It is further not in dispute that three of the sale instances were of the lands situated at village Pargaon, whereas three sale instances were of village Takalsing. The consideration, which was received to the lands, which were the subject matter of the said sale deeds, was averagely Rs.2,400/- per Are. I need not to reproduce the entire evidence which has been appropriately discussed by the Reference Court. Suffice it to say that the Reference Court has determined the market value of the acquired lands on the basis of the aforesaid sale instances which were of the comparable lands and

were executed in the period prior to issuance of Section 4 notification. It has to be further stated that though the acquired land, which was the subject matter of Exhibit-22 had achieved the consideration @ Rs.3,571/- per Are, the Reference Court has kept said sale instance out of consideration holding that it cannot be a comparable sale instance to determine the market value of the acquired lands.

7) After having considered that evidence on record, it does not appear to me that the Reference Court has committed any error in determining the market value of the acquired lands @ Rs.2,300/- per Are. I, therefore, do not see any reason to cause any interference in the market value so determined by the Reference Court of the acquired land. However, there is substance in the contention raised by learned AGP that the Reference Court has wrongly awarded the interest under Section 34 of the Act from the date of possession. As noted earlier, the

learned Counsel appearing for the original claimants, has also conceded the aforesaid fact. Thus, the impugned common Judgment and Award needs to be modified only the aforesaid extent. In the result, the following order, -

ORDER

- I) The impugned common Judgment and Award is set aside in so far as it relates to grant of interest under Section 34 of the Act from the date of possession; and instead, the interest so granted is made payable from the date of passing of Award i.e. 27th July, 2008;
- II) The other part of the common Judgment and Award is maintained as it is;
- III) The appeals are thus partly allowed to the aforesaid extent;
- IV) No order as to costs; Pending Civil Application, if any, stands disposed of.

(P.R.BORA)
JUDGE

bdv/
fldr 25.11.16