

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 FIRST APPEAL NO. 1493 OF 2016
WITH FA/1494/2016 WITH FA/1495/2016
WITH FA/1496/2016

THE STATE OF MAHARASHTRA
VERSUS
VISHNU GOVIND GARJE AND OTHERS

...
Advocate for Appellant (AGP) : S.P. Sonpawle
Advocate for Respondents : G.B. Choudhari for R. 1 & 2
...

CORAM : V.K. JADHAV, J.
DATE : 23-02-2017.

P.C. :

1. Heard finally with consent at the admission stage.
2. Being aggrieved by the common judgment and award passed by Learned District Judge-2, Beed, dated 03.02.2012 in L.A.R. No. 567 of 2010 and other connected reference the appellant-state has preferred these appeals.
3. Brief facts giving rise to these appeals are as follows.
4. The land under the reference petitions has been acquired for construction of village tank no.1 at Village Chincholi, Taluka Patoda, District Beed. Notification under section 4 of the Land Acquisition Act, 1894 was published on 01.04.2004. The S.L.A.O. by his award dated 13.11.2006 awarded compensation to the reference petitioners for their acquired lands @ Rs. 435/- per R.

Being aggrieved by the inadequate compensation awarded by the S.L.A.O., the respondent-original petitioners has preferred the reference petitions claiming the compensation at the enhanced rate @ Rs.1500/- per R. It has contended in the said reference petitions that, the compensation awarded by the S.L.A.O. is extremely meager, inadequate and not as per prevailing market price of the locality. The S.L.A.O. has not called upon the copies of the said transactions and sale deeds. He has made classification of the acquired lands on the basis of land revenue assessment which is improper and unsafe. It has also contended that, at the relevant time of the notification the market price of the acquired land was Rs. 60,000/- per acre i.e. Rs. 1500/- per R.

The respondent-state has resisted all the reference petitions by filing written statement. It has contended that the S.L.A.O. has determined the compensation as per the prevailing market rate for the acquired lands. The S.L.A.O. has called the detailed information from the village Talathi and also the sale transaction and accordingly fixed the market rate and thereupon passed the award. According to the state, the compensation under the award is just and reasonable.

The respondent-original claimants adduced oral and documentary evidence in support of their contention. The respondent-state has not any adduced evidence. The learned

District Judge-2, Beed vide its impugned judgment and award dated 03.02.2012 awarded the enhanced compensation @ Rs. 1500/- per R. Being aggrieved by the same the state has preferred these appeals.

5. The learned A.G.P. submits that, the reference court has not considered the sale instances at exhibit-17 and exhibit-19 respectively for the reason that the land under those sale instances situated at village Nivdanga and further the said sale instances are of the year 1997 and 1998. The Reference Court has discarded the sale instances for the reason that those are not the comparable sale instances. The learned A.G.P. submits that, the Reference Court has considered the earlier judgment delivered by II Ad-hoc Additional District Judge, Beed in L.A.R. No. 9 of 2003 on 14.07.2006. The lands in those references were also acquired from the same village for the construction of water tank. In the said reference petitions the Court has awarded the compensation at the enhanced rate of Rs.900/- per R. The learned A.G.P. submits that, the Reference Court at the most ought to have awarded the same rate as enhanced compensation for the acquired land in the present reference petitions, however, the Reference Court has erroneously increased 10% per year by comparing the notification of the said reference with the notification of Section 4 of the present acquired lands. The learned A.G.P. submits that, the Reference Court has also erroneously awarded the interest under Section 34 of the Land

Acquisition Act. The learned counsel submits that, in view of the Full Bench judgment of this Court in the case of **State of Maharashtra V/s. Kailash Shiva Rangari** reported in **M.L.J. 2016 (3) 457**, such interest cannot be awarded.

6. The learned counsel for the respondent-claimants submits that, though, the Reference Court has not considered the sale instances at exhibits-17, 18 and 19, the Reference Court has rightly considered the judgment and award passed by the II Ad-hoc Additional District Judge, Beed in L.A.R. No. 9 of 2003 and other connected matters. The said judgment and award is marked at exhibit-31. The lands in those reference petitions were also acquired for construction of a tank in the same village. After considering the sale instances prior to the notification under Section 4 of that project, the Reference Court in the aforesaid L.A.R. No. 9 of 2003 exhibit-31 awarded the compensation @ Rs. 900/- per R. The learned counsel submits that, the notification under Section 4 of the acquired land of that reference petition was published on 19.12.1996, whereas, the notification under Section 4 under the present reference petitions is published on 01.04.2004. The Reference Court has, therefore, rightly considered the rise in the market price of agricultural land and accordingly awarded the just and reasonable compensation at enhanced rate of Rs.1500/- per R. The learned counsel submits that, the Reference Court has rightly awarded the interest @ 9% under Section 34 of the Land

Acquisition Act on the awarded amount paid by the S.L.A.O. from the date of taking possession till the date of actual payment of award. No interference is required. There is no substance in the appeals and the appeals are liable to be dismissed.

7. On careful perusal of the record and proceedings, most particularly the judgment and award passed by the II Ad-hoc Additional District Judge, Beed dated 14.07.2006 in L.A.R. No. 9 of 2003 and other connected land acquisition references, it appears that, in the said reference petitions the claimants therein relied upon two sale instances exhibit-27 and 29 respectively. The sale deed at exhibit-27 came to be executed on 25.05.1993, whereas, the sale deed at exhibit-28 came to be executed on 29.10.1992. After considering those sale deeds, the Reference Court in those reference petitions has come to the conclusion that, the market price of the acquired land in the said village prior to the notification under Section 4 is at Rs. 1,000/- per R. Furthermore, the Reference Court in those reference petitions has also placed reliance upon the 11 transactions considered by the S.L.A.O. particularly one sale transaction in respect of 20 R land out of survey no. 235 of village Chincholi. The said sale deed was executed on 29.04.1992. In that sale deed the purchaser had purchased the said land @ Rs. 750/- per R. Considering the evidence and the documents as aforesaid the Reference Court in those reference petitions has awarded the compensation at the enhanced rate of Rs. 900/- per R. In the

instant case, the Reference Court has considered the dates of Section 4 notification in both the reference petitions in L.A.R. No. 9 of 2003, Section 4 notification was published on 19.12.1996, whereas, in the instant matter, the Section 4 notification was published on 01.04.2004. The lands under the said reference petition no. 9 of 2003 and the land acquired under the present reference petitions, are from one and the same village.

8. The learned Judge of the Reference Court has, therefore, rightly considered 10% increase per year and awarded just and reasonable compensation at the enhanced rate of Rs. 1500/- per R. No interference is required so far as this enhanced rate is concerned.

9. In the case of **State of Maharashtra Vs. Kailash (Supra)** relied upon by the learned A.G.P. in para no. 33, the Full Bench has answered the question under reference, the same is reproduced hereinbelow:

33.

(a) If the possession is taken before the notification under section 4(1) of the Land Acquisition Act is published and/or before the award is passed, the land owner would be entitled for interest as per section 34 necessarily from the date of passing of the award under section 11 of the said Act, except in cases where the possession is taken in accordance with section 17 of the said Act, and in that situation only, the provision of section 34 of the said Act shall start operating from the date of possession.

(b) We also hold that the decision of the Division Bench of this Court in the case of *Lalitkumar Himmatlal Shah Vs. State of Maharashtra and others*, decided by Smt. Vasanti A. Naik and Shri Prasanna B. Varale, JJ., and reported in 2012 (4) *Mh.L.J.* 742, lays down a correct position of law and it does not require reconsideration.

10. In view of the above observation, most particularly the observation in para no. 33 (a), the respondent-claimants are not entitled for the said interest as awarded by the Reference Court, in para 6 of the operative part of the order. In view of the above, the impugned judgment and award passed by the Learned District Judge-2, Beed requires interference. Hence the following order:

ORDER

- i) First Appeal Nos. 1493 of 2016, 1494 of 2016, 1495 of 2016 and 1496 of 2016 are hereby partly allowed, no costs.
- ii) The judgment and award passed by the District Judge, Beed dated 03.02.2012 in L.A.R. Nos. 567 of 2010, 568 of 2010, 569 of 2010 and 570 of 2010 are hereby quashed and set aside to the extent of para no.6 of the operative part of the order directing thereby the respondent-state to pay interest @ 9% per annum under Section 34 of the Land Acquisition Act on the awarded amount paid by the S.L.A.O. from the date of taking possession till the date of the actual payment of

awarded amount from 16.11.2000 till 16.05.2008
is hereby quashed and set aside.

iii) Rest of the judgment and award stands
confirmed.

iv) Award be drawn up accordingly.

v) All the appeals are accordingly disposed of.

(V.K. JADHAV)
JUDGE