

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.3204 OF 2016

- 1) The State of Maharashtra
Through the Collector, Beed.
- 2) The Executive Engineer,
M.I.(L.S.) Div. Beed. = **APPELLANT/S**
(orig. Respondents)

VERSUS

- 1) Bapusaheb Gopinath Fasale
- 2) Lakhuji Gopinath Fasale
- 3) Ankushrao Gopinath Fasale

All Age:Major, occ.Agril.
R/o Dawlawadgaon, Tq.Ashti
District Beed.
Through S.P.A. - Gopinath
Bapurao Fasale
age:Major, occu. Aglril.
R/o Dawlawadgaon, Tq.Ashti
District Beed.

= **RESPONDENT/S**
(Orig. Petitioners)

Mr.SM Ganachari, AGP for Appellants;
Mr.CK Shinde, Adv. for Respondent/s.

CORAM : P.R.BORA, J.

DATE : 17th July, 2017.

ORAL JUDGMENT:

1) Heard. The present appeal is filed against Judgment and Award dated 24th June, 2011 in LAR No.76/2010 passed by Joint Civil Judge, Senior Division, Beed.

2) Two lands, which are the subject matter of the present appeal, one admeasuring 70 Are and another admeasuring 1 hectare and 82 Are, were acquired for the purpose of construction of village tank at Dawlawadgaon, Tq. Ashti, District Beed. Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) was published in the official Gazette on 16th February, 2006 and Award under Section 11 of the Act came to be passed on 24th June, 2007. The Special Land Acquisition Officer had offered the compensation @ Rs.700/- per Are. Dissatisfied with the amount of compensation so offered, the claimants preferred an application under Section

18 of the Act claiming compensation @ Rs.2,500/- per Are.

3) The Reference Court, on the basis of the evidence brought before it, determined the market value of the subject lands @ Rs.2,000/- per Are and accordingly enhanced the amount of compensation. Aggrieved by, the State has preferred the present appeal.

4) Shri Ganachari, learned AGP, assailed the impugned Judgment and Award on several grounds. The learned AGP submitted that the Reference Court has erred in determining the market value of the acquired lands on the basis of the sale instances at Exhibits-14, 15 and 16, which all were pertaining to small pieces of lands. The learned AGP further submitted that the land which was involved in Exhibit-14, was admeasuring 40 Ares; whereas the lands which were the subject matter of Exhibits 15 and 16, both were admeasuring only 15 Ares each.

. The learned AGP submitted that on the basis of the sale instances pertaining to the small pieces of lands, the market value of the lands admeasuring more than 2 hectares and 52 Ares, could not have been determined at par with the said lands by the Reference Court. The learned AGP further submitted that in other respect also, i.e. nature, quality and potentiality, the sale instances, which were relied upon by the Reference Court, were not of a comparable lands.

. The learned AGP submitted that the Reference Court has unreasonably enhanced the amount of compensation. He further submitted that the Special Land Acquisition Officer had correctly offered the compensation @ Rs.700/- per Are and no interference was required in the amount of compensation so offered by the Special Land Acquisition Officer. The learned AGP further submitted that the Reference Court has also erred in awarding the interest under Section 34 of the Act from the date of

possession. He, therefore, prayed for setting aside the impugned Judgment and Award.

5) Shri Shinde, learned counsel appearing for the Respondent – original claimants supported the impugned Judgment and Award. The learned Counsel submitted that though the sale instances which were relied upon by the claimants, were all of small portions of lands, the Reference Court while determining the market value of the subject land has given appropriate deductions and has correctly determined the market value of the acquired lands. The learned Counsel submitted that no interference is, therefore, warranted in the impugned Judgment and Award. He, therefore, prayed for dismissal of the appeal.

6) Two grounds are raised in exception to the impugned Judgment and Award. Firstly, that the Reference Court while determining the market value of the subject lands, has relied upon the sale instances pertaining to the small pieces of

lands. Three sale instances were placed on record by the claimants. The land which was the subject matter of Exhibit-14 was admeasuring 40 Ares and was sold for the consideration of Rs.1,00,000/- by registered sale deed executed on 30th November, 2002. The said land was thus sold @ Rs.2,500/- per Are. The lands which were the subject matter of Exhibits-15 and 16, both were admeasuring 15 Ares each and were sold respectively for the consideration of Rs. 40,000/- and Rs. 45,000/-, rate of which comes to Rs.2,666/- per Are and Rs.3,000/- per Are respectively.

. The sale instances, which have been relied upon by the Reference Court, were of the years 2002 and 2003. By giving appropriate rise in the price and by considering the notional increase in the market value, the market value of the said lands would have been more than Rs.3,000/- per Are on the date of issuance of the notification in the year 2006. Considering that the subject land was large piece of land, the

Reference Court, after giving allowances to the said negative factor, has correctly determined the market value of the said lands at the rate of Rs.2,000/- per Are. From the material on record, it is quite evident that the lands under acquisition, were seasonally irrigated lands and the sale instances which were brought on record were also pertaining to the seasonally irrigated lands.

7) After having considered the aforesaid aspects and the discussion made by the Reference Court in that regard, it does not appear to me that the Reference Court has committed any error in determining the market value of the subject lands @ Rs.2,000/- per Are.

8) However, in so far as the another objection raised by learned AGP as about the interest awarded under Section 34 of the Act is concerned, it appears to me that the Reference Court has committed an error in awarding the same

from the date of possession of the lands. In view of the law laid down by the Full bench of this court in the case of State of Maharashtra Vs. Kailash Shiva Rangari - 2016 (3) Mh.L.J. 457, interest under Section 34 of the Act could not have been granted from the date of possession. To that extent, the award needs to be modified.

9) For the reasons stated herein above, following order is passed, -

ORDER

i) The impugned award in so far as it relates to grant of interest under Section 34 of the Act, stands quashed and set aside;

ii) The interest under Section 34 of the Act shall be paid from the date of award under Section 11 of the Act;

iii) The First Appeal stands allowed in the aforesaid terms. Pending civil

application, if any, stands disposed of.

(P . R . BORA)
JUDGE

bdv/