

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

25 FIRST APPEAL NO. 1473 OF 2016

1. The State of Maharashtra,
Through – The Collector Beed.
2. The Executive Engineer,
Minor Irrigation (Local Sector) Division,
Beed.

.. Appellants
(Orig. Respondents)

VERSUS

Parmeshwar s/o. Bayaji Bagal
Age : Major, Occu : Agril,
R/o. Morewadi, Tq. Ashti, Dist. Beed

.. Respondent
(Orig. Claimant)

WITH

FIRST APPEAL NO.1474 OF 2016

1. The State of Maharashtra,
Through – The Collector, Beed.
2. The Executive Engineer,
Minor Irrigation (Local Sector) Division,
Beed.

.. Appellants
(Orig. Respondents)

VERSUS

1. Ambadas s/o. Waman Gvate,
Age : Major, Occu : Agril,
R/o. Morewadi, Tq. Ashti,
Dist. Beed
2. Mahadeo s/o. Waman Gvate,
Age : Major, Occu : Agril,
R/o. Morewadi, Tq. Ashti,
Dist. Beed
3. Parbhati s/o. Waman Gvate,
Age : Major, Occu: Agril,
R/o. Morewadi, Tq. Ashti,
Dist. Beed

..Respondents
(Ori. Claimants)

WITH**FIRST APPEAL NO.1475 OF 2016**

1. The State of Maharashtra,
Through – The Collector, Beed.
2. The Executive Engineer,
Minor Irrigation (Local Sector) Division,
Beed.

.. Appellants
(Orig. Respondents)

VERSUS

Murlidhar s/o. Bapu Bhalekar,
Age : Major, Occu : Agril,
R/o. Morewadi, Tq. Ashti,
Dist. Beed

..Respondent
(Ori. Claimant)

WITH**FIRST APPEAL NO. 1476 OF 2016**

1. The State of Maharashtra,
Through – The Collector, Beed.
2. The Executive Engineer,
Minor Irrigation (Local Sector) Division,
Beed.

.. Appellants
(Ori. Respondents)

VERSUS

Bhagwan s/o. Babu Sabale,
Age : Major, Occu : Agril,
R/o. Morewadi, Tq. Ashti,
Dist. Beed

..Respondent
(Ori. Claimant)

WITH**FIRST APPEAL NO. 1477 OF 2016**

1. The State of Maharashtra,
Through – The Collector, Beed.
2. The Executive Engineer,
Minor Irrigation (Local Sector) Division,
Beed.

.. Appellants
(Orig. Respondents)

VERSUS

Zumbarbai s/o. Jayaji Bhawar,
Age : Major, Occu : Agril, R/o. Morewadi,
Tq. Ashti, Dist. Beed

..Respondent
(Ori. Claimant)

WITH**FIRST APPEAL NO. 1478 OF 2016**

1. The State of Maharashtra,
Through – The Collector, Beed.
2. The Executive Engineer,
Minor Irrigation (Local Sector) Division,
Beed.

.. Appellants
(Ori. Respondents)

VERSUS

Satyabhama s/o Bayaji Bagal,
Age : Major, Occu : Agril,
R/o. Morewadi, Tq. Ashti,
Dist. Beed

..Respondent
(Ori. Claimant)

WITH**FIRST APPEAL NO. 1479 OF 2016**

1. The State of Maharashtra,
Through – The Collector, Beed.
2. The Executive Engineer,
Minor Irrigation (Local Sector) Division,
Beed.

.. Appellants
(Ori. Respondents)

VERSUS

1. Dadasaheb s/o. Sona Gawate,
Age : Major, Occu : Agril,
R/o. Morewadi, Tq. Ashti,
Dist. Beed
2. Babasaheb s/o. Sona Gawate,
Age : Major, Occu : Agril,

R/o. Morewadi, Tq. Ashti,
Dist. Beed

3. Haribhau s/o. Sona Gawate,
Age : Major, Occu: Agril,
R/o. Morewadi, Tq. Ashti,
Dist. Beed

..Respondents
(Ori. Claimants)

WITH

FIRST APPEAL NO.1480 OF 2016

1. The State of Maharashtra,
Through – The Collector, Beed.
2. The Executive Engineer,
Minor Irrigation (Local Sector) Division, Beed.

.. Appellants
(Orig. Respondents)

VERSUS

1. Trimbak s/o. Bhanudas Gavate,
Age : Major, Occu : Agril,
R/o. Morewadi, Tq. Ashti,
Dist. Beed
2. Sarjerao s/o. Bhanudas Gavate,
Age : Major, Occu : Agril,
R/o. Morewadi, Tq. Ashti,
Dist. Beed

..Respondents
(Ori. Claimants)

WITH

FIRST APPEAL NO. 1481 OF 2016

1. The State of Maharashtra,
Through – The Collector, Beed.
2. The Executive Engineer,
Minor Irrigation (Local Sector) Division,
Beed.

.. Appellants
(Orig. Respondents)

VERSUS

Saheba s/o. Sayaji Gvate,
Age : Major, Occu: Agril,
R/o. Morewadi, Tq. Ashti,
Dist. Beed

..Respondent
(Ori. Claimant)

WITH**FIRST APPEAL NO. 1482 OF 2016**

1. The State of Maharashtra,
Through – The Collector, Beed.
2. The Executive Engineer,
Minor Irrigation (Local Sector) Division,
Beed.

.. Appellants
(Orig. Respondents)

VERSUS

Bhagubai s/o. Namdev Kapse,
Age : Major, Occu: Agril,
R/o. Morewadi, Tq. Ashti,
Dist. Beed

..Respondent
(Ori. Claimant)

....

In all the matters
AGP for appellant : Shri. R.B. Bagul
Advocate for respondents : Shri. C.K. Shinde

...

CORAM : P.R. BORA, J.
Dated: July 31, 2017

PER COURT :-

. The State has filed the present appeals challenging the common Judgment and Award passed by the District Court at Beed (hereinafter referred to as the 'Reference Court') on 14.12.2011 in Land

Acquisition Reference No.194/2010 with the connected land acquisition references. The lands, which are involved in the present appeals, were acquired for the construction of Village Tank No.3 at Morewadi, Tal. Ashti, Dist. Beed. The notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter in short 'Act') was published in the official gazette on 22.05.2003 and Award under Section 11 of the Act came to be passed on 12.10.2007. The Special Land Acquisition Officer (hereinafter referred to as the 'SLAO') had offered the compensation at the rate of Rs.610/- per *Are*. Dissatisfied with the amount of compensation so offered, the respondents in these appeals, who are hereinafter referred to as claimants had preferred the applications under Section 18 of the Act seeking enhancement in the amount of compensation. The claimants had claimed the compensation at the rate of Rs.2500/- per *Are*.

2. In order to substantiate the claims so raised by them in addition to their oral evidence, the claimants placed on record two sale instances. No oral or documentary evidence was adduced on behalf of the State. The Reference Court after having assessed the oral and documentary evidence brought on record before it, determined the market value of the acquired lands at the rate of Rs.2000/- per *Are* and accordingly enhanced the amount of compensation. Aggrieved by, the State has preferred the present appeals.

3. Shri Bagul, learned AGP appearing for the State assailed the

impugned common Judgment and Award on two grounds: (1) that, the Reference Court has determined the market value on higher side though there was no sufficient evidence therefor, and (2) that, the Reference Court has awarded the interest under Section 34 of the Act from the date of possession. The learned AGP pointed out that, the SLAO had considered overall circumstances and has also considered the sale instances during relevant period, and only thereafter has determined the market value of the acquired lands at the rate of Rs.610/- per *Are*. The learned AGP submitted that, in fact no such material was before the Reference Court so as to cause interference in the amount of compensation so offered by the SLAO.

4. The learned AGP further submitted that, the two sale instances which have been relied upon by the claimants in order to substantiate their claim cannot be said to be the comparable sale instances. The learned AGP submitted that, the land involved in Exh.17 was admeasuring only 20 *Are*, whereas the land which was the subject matter of Exh.19 was 40 *Are*. The learned AGP further submitted that, in the entire judgment the Reference Court has nowhere discussed that, the sale instances which were relied upon by the claimants were of the comparable lands so as to determine the market value of the lands involved in present appeals on the basis of the said sale instances. The learned AGP further submitted that, a wrong method was applied by the Reference Court for determining the market value of the acquired lands that of drawing the average of the price received to the lands which were the subject matter of

the sale instances cited by the claimants. The learned AGP submitted that, even if Reference Court was to rely upon sale instance at Exh.19, no further increase was liable to be given in the market rate received to the said land. The learned AGP pointed out that, the Reference Court has given increase in the price of the said land at 15% which was not permissible. The learned AGP further submitted that, the market price so determined by the Reference Court, which is not based on the evidence is liable to be redetermined on the basis of the assessment made by the SLAO.

5. The learned AGP further submitted that, the interest awarded under Section 34 of the Act has also been wrongly awarded by the Reference Court from the date of possession. The learned AGP, therefore, prayed for appropriate modifications in the Award.

6. Shri C.K. Shinde, learned Counsel appearing for the respondent - Original claimants supported the impugned Judgment and award. The learned Counsel submitted that, nothing has been brought on record in the cross - examination of the witnesses examined by the claimant so as to suggest that, the lands which were subject matter of Exhs.17 & 19 were not comparable. The learned Counsel submitted that, the land involved in Exh.19 was admeasuring 40 *Are* and cannot be said to be a small piece of land. The learned Counsel further submitted that, the lands which were acquired and were subject matter of the land acquisition references are also the small pieces of land. The learned Counsel inviting

my attention to the particulars provided by the Reference Court in para 6 of the Judgment submitted that, except the land involved in LAR No.189/2010, the lands which are the subject matter of the other land acquisition references are all less than 40 *Are* of land. The learned Counsel submitted that, half of the lands are less than 25 *Are*. The learned Counsel submitted that, there is no substance in the objection raised by the State that the tribunal has relied upon the sale instance of a small portion of land to determine the market value of the acquired lands. The learned Counsel submitted that the tribunal has rightly relied upon the sale instances and has accordingly determined the market value of the acquired lands. The learned Counsel submitted that, no interference is, therefore, warranted in the market value as has been determined by the Reference Court.

7. Insofar as the award of interest under Sec.34 of the Act, the learned Counsel was fair enough in submitting that, the same could not have been awarded by the Reference Court from the date of possession.

8. I have carefully considered the submissions advanced by Ld. AGP and Ld. Counsel appearing for the respondent. I have perused the impugned Judgment and the other material placed on record.

9. It is not in dispute that, the State has not adduced any oral or documentary evidence to substantiate the defences raised by it or to rebut the contentions raised by the claimants in claiming the compensation at the

rate of Rs.2500/- per *Are*. The record reveals that, the two sale instances (Exhs.17 & 19) were placed on record by the claimants. As has been noted earlier, the land which was involved in Exh.17 was admeasuring 5 R + 15 R (total 20 R) and was sold on 18.09.2002 for the consideration of Rs.58,000/- i.e. at the rate of Rs.2900/- per *Are*. The land, which was involved in Exh.19, was admeasuring 40 *Are* and was sold for the consideration of Rs.70,000/- on 13.05.2002. The rate at which the land was sold comes to Rs.1750/- per *Are*. The discussion made by the Reference Court reveals that, the Reference Court has drawn the average of the consideration received in two sale instances and arrived at the price to Rs.1992/-. Though the method so adopted by the Reference Court cannot be accepted or appreciated, the market value if determined on the basis of the value received to the land which was the subject matter of Exh.19, the difference in the market rate may not be much. The sale deed at Exh.19 was executed on 13.05.2002 i.e prior to about one year of issuance of Sec.4 notification in the matter. In these circumstances, if the price received to the said land is increased by 10%, the market value of the said land on the date of notification comes to Rs.1925/-. Considering the said aspect, it does not appear to me that, while determining the acquired lands at the rate of Rs.2000/- the Reference Court has arbitrarily exercised its powers or has determined the market value on much higher side and it also cannot be said that, there was no evidence so as to determine the said market value. After having considered the evidence on record, it does not appear to me that, any interference is warranted in the market value as has been

determined by the Reference Court.

10. Insofar as the objection raised as about the grant of interest under Sec.34 of the Act, the learned Counsel for the respondents has also accepted that, the Reference Court has erred in awarding the interest under Sec.34 of the Act from the date of possession. In view of the Full Bench Judgment delivered by this Court in case of **State of Maharashtra Vs. Kailash Shiva Rangari [2016 (3) Mh.L.J.] 457** the interest under Sec.34 of the Act can only be made payable from the date of award. To that extent, the impugned award certainly needs to be modified. For the reasons stated above, the following order is passed.

ORDER

1. The impugned common Judgment and Award so far as it relates to award of interest under Section 34 of the Act from the date of possession is modified and the interest as such is made payable from the date of the Award under Section 11 of the Act. The impugned Awards be modified accordingly.

The appeals thus stand partly allowed in the aforesaid terms.

(P.R. BORA, J.)

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