

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1155 OF 2017
WITH
CIVIL APPLICATION NO. 11610 OF 2012

THE STATE OF MAHARASHTRA AND ANOTHER
VERSUS
SAHEBRAO SAKHARAM GAYAKWAD

.....
AGP for the appellants: Mr. B.V. Virdhe
Advocate for respondent-claimant: Mr. C.K. Shinde
.....

CORAM : V. K. JADHAV, J.
DATED : 12th APRIL, 2017

PER COURT:-

1. With consent of the parties, heard finally at admission stage.
2. Being aggrieved by the judgment and award dated 26.2.2010 passed by the learned District Judge-2, Beed in L.A.R. No. 500 of 2006, the respondent State has preferred this appeal to the extent of clauses [c], [d] and [e] of the operative part of the judgment and award wherein the learned District Judge has awarded interest under the provisions of Section 34 of the Land Acquisition Act from the date of possession i.e. 31.5.1995 till 30.5.1996 with interest @ 9% p.a. and thereafter @ 15% p.a. till the date of payment of the award passed by S.L.A.O.
3. Learned A.G.P. for the appellants submits that in view of the

judgment of Larger Bench in the case of ***State of Maharashtra vs. Kailash Shiva Rangari, reported in 2016 (3) Mh.L.J. 457***, the clauses [c], [d] and [e] of operative part of the judgment require modification and the claimant/land owner shall be entitled for interest as per Section 4 necessarily from the date of passing of the award under Section 11 of the Act. Learned A.G.P. submits that Reference Court has erroneously awarded interest vide aforesaid clauses of operative part of the judgment from the date of possession instead of date of award.

4. Learned counsel appearing for the respondents/claimants fairly concedes this position in view of authoritative pronouncement of Larger Bench on the point of reference as summarized in para 33 of the judgment.

5. The Larger Bench of this Court in the case of ***State of Maharashtra vs. Kailash Shiva Rangari (supra)*** in para 32 of the judgment summarized the position of law so far as grant of interest under the provision of Section 34 of Land Acquisition Act. Para 32 of the said judgment reads as under:-

“32. Keeping in view the entire scheme of the Land Acquisition Act and the ratio of the decisions of the Apex Court in the cases of R.L. Jain and Lila Ghosh, cited supra, the position of law can

be summarized as under :

(i) If the possession of the land under acquisition is taken under Section 16 of the said Act i.e. after an award is made by the Collector under Section 11 therein, the interest would be payable under Section 34 from the date of passing of the award and we are in agreement with such a view expressed by the Division Bench of this Court (S/Shri N.V.. Dabholkar and M.G. Gaikwad, JJ.) in the case of ***State of Maharashtra & Anr. v. Rajendra Narayanrao Gaikwad, reported in 2008 (1) BCR 839.***

(ii) The interest as provided under Section 34 of the said Act shall start running from the date of possession, only if the possession is taken by the Collector in exercise of his powers under Section 17 of the said Act which would obviously be after issuance of notice under Section 9(1) of the said Act. If the possession is taken under Section 17, the interest payable under Section 34 of the said Act shall start running from the date of possession and not from the date of award.

(iii) Where the possession of the land under acquisition is taken prior to issuance of notification under Section 4(1), then there would be no question of invoking the urgency clause under Section 17 of the said Act and the interest under Section 34 shall start running from the date of passing of the award.

(iv) The starting point for the purposes of calculating the amount of additional component under Section 23(1-A) of the said Act at the rate of twelve percent per annum is the date of publication of the notification under Section 4 of the said Act, and the terminal point is either the date of the award or the date of taking possession, whichever is earlier.

(v) We hold that in none of the eventualities, the claimant shall be entitled to interest under Section 34 of the said Act from the date of publication of the notification under Section 4(1) of the said Act.

(vi) There is no overlapping of the benefits under Section 23(1-A) and Section 34 of the said Act. The terminal points under Section 23(1-A) are the starting points under Section 34 of the said Act and both the provisions operate in different fields.

(vii) We express our full agreement with the view taken by the Division Bench of this Court in Lalitkumar Shah's case, cited supra, that in a case where possession is taken prior to issuance of notification under Section 4(1) of the said Act, the interest under Section 34 shall start running from the date of award only.

(viii) We also express our full agreement with the view taken by the Division Bench of this Court in Lalitkumar Shah's case, cited supra, that the decision of the Division Bench in the case of ***Jafarali Mithabhai Hirani & Ors. v. State of Maharashtra & Ors., reported in 2009 (3) All MR 779***, and the similar view taken in other matters is no longer a good law.”

6. In view of above legal position, the Larger Bench in para 33 of the judgment has answered the said question of Reference:-

“33. In view of above, we answer the question of reference as under:

(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 v. 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.”

7. In the light of above observations, more particularly, in para 33 of the case cited above, clauses [c], [d] and [e] of operative part of the impugned judgment requires modification and the claimant/land owner is entitled for interest under Section 34 of the Act from the date of award i.e. 21.01.2001.

8. So far as award of interest vide clauses [d] under Section 28 of Land Acquisition Act is concerned, in the case of ***R.L. Jain vs. D.D.A. and others, reported in 2004 AIR (SC) 1904***, para 18 and 19 the Supreme Court has made the following observations:-

“18. In a case where the land owner is dispossessed prior to the issuance of preliminary notification under Section 4(1) of the Act the government merely takes possession of the land but the title thereof

continues to vest with the land owner. It is fully open for the land owner to recover the possession of his land by taking appropriate legal proceedings. He is therefore only entitled to get rent or damages for use and occupation for the period the government retains possession of the property. Where possession is taken prior to the issuance of the preliminary notification, in our opinion, it will be just and equitable that the Collector may also determine the rent or damages for use of the property to which the land owner is entitled while determining the compensation amount payable to the land owner for the acquisition of the property. The provision of Section 48 of the Act lend support to such a course of action. For delayed payment of such amount appropriate interest at prevailing bank rate maybe awarded.

19. The case may be examined from the equitable consideration as well. In the earlier acquisition proceedings the notification under Section 4(1) had been published on 13.11.1959 and the Collector had made an award for Rs.6301/- for the plot in dispute on 30.12.1961. The award was made within 1-1/2 months of dispossession which allegedly took place on 10.11.1961. This amount was paid to R.L. Jain and was retained by him. Learned counsel for the respondent has placed before the Court a copy of the sale certificate issued in favour of R.L. Jain on 31.8.1961 which shows that the plot was purchased by him for Rs. 3200/- only and thus he had received almost double amount of compensation. Therefore, even on equitable ground he is not entitled to any amount from the date of dispossession till the date of second notification under Section 4(1) of the Act which was issued in 1992."

9. It is thus clearly laid down by the Apex Court in the case of

R.L. Jain vs. D.D.A. and others (supra) that where the land owner is dispossessed prior to the issuance of preliminary notification under Section 4(1) of the said Act, the Government merely takes possession of the land but the title thereof continues to vest with the land owner and it is open for the land owner to recover the possession and can claim rent and damages for use and occupation of the period the Government retains possession.

10. In view of the ratio laid down in the above cited case, clauses [c], [d] and [e] of the impugned judgment and award require modification. Hence, I proceed to pass the following order:-

O R D E R

- I. The first appeal is hereby partly allowed. No costs.
- II. The judgment and award dated 26.02.2010, passed by the District Judge-2, Beed in L.A.R. No. 500 of 2006 is hereby modified to the extent of date of commencement of interest and the date of terminal point in clauses [c], [d] and [e] in the following manner;
 - [c] Under section 23 (1-A) of the Act, at the rate of twelve per centum per annum on market value for the period

commencing from 25.01.2001 i.e. from the date of publication of Section 4 notification till the date of award i.e. 8.12.2003.

[d] Under Section 28 of the Act, the claimant is allowed to charge 9 per centum interest for the period commencing from publication of Section 4 notification till one year i.e. upto 24.01.2002 and 15 per centum per annum interest on the amount awarded by Court till the date of realization of amount.

[e] Under section 34 of the Act, 9 per centum interest granted on award amount of Special Land Acquisition Officer from 08.12.2003 to 07.12.2004 and 15 per centum per annum interest granted from 08.12.2004 till the date of realization of entire amount.

III. Rest of the judgment and award passed by the Reference Court stands confirmed.

IV. Decree be drawn up as per the above modification.

V. The first appeal accordingly disposed of.

VI. Pending civil application is also disposed of.

(V. K. JADHAV, J.)