

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

FIRST APPEAL STAMP NO. 25955 of 2012

1. The State of Maharashtra,
Through The Collector, Beed.
2. The Executive Engineer,
Minor Irrigation Divn., Head Quarter
Ambajogai, Dist. Beed.

**...APPELLANTS
(Ori.Respondents)**

VERSUS

1. Santram s/o Mahadev Hange,
Age Minor u/g of mother petitioner No.3.
2. Amit s/o Mahadev Hange,
Age Minor, u/g of mother petitioner No.3.
3. Saraswatibai w/o Mahadev Hange,
Age 45 years, Occupation Agriculture,
R/o. Hangewadi, Tq. Kaij,
District Beed.

**...RESPONDENTS
(Ori.Claimants)**

...

WITH

FIRST APPEAL STAMP NO. 26008 of 2012

1. The State of Maharashtra,
Through The Collector, Beed.
2. The Executive Engineer,
Minor Irrigation Divn., Head Quarter
Ambajogai, Dist. Beed.

**...APPELLANTS
(Ori.Respondents)**

VERSUS

Vishwanath s/o Laxman Hange,
Age 55 yrs., Occu. Agriculture,
R/o Hangewadi, Tq. Kaij, Dist. Beed.

**...RESPONDENTS
(Ori.Claimants)**

...

with

FIRST APPEAL STAMP NO. 26011 OF 2012

1. The State of Maharashtra,
Through The Collector, Beed.
2. The Executive Engineer,
Minor Irrigation Divn., Head Quarter
Ambajogai, Dist. Beed.

**...APPELLANTS
(Ori.Respondents)**

VERSUS

Namdeo s/o Laimba Aghav,
Age 20 yrs., Occu. Agriculture,
R/o Hangewadi, Tq. Kaij, Dist. Beed.

**...RESPONDENTS
(Ori.Claimants)**

...

with

FIRST APPEAL STAMP NO.26014 OF 2012

1. The State of Maharashtra,
Through The Collector, Beed.
2. The Executive Engineer,
Minor Irrigation Divn., Head Quarter
Ambajogai, Dist. Beed.

**...APPELLANTS
(Ori.Respondents)**

VERSUS

1. Suresh s/o Deiwan Hange,
Age 30 yrs. Occu. Agriculture,
R/o. Hangewadi, Tq. Kaij, Dist. Beed.
2. Shivaji s/o Dadu Sanap,
Age 40 yrs., Occu. & r/o as above.

**...RESPONDENTS
(Ori.Claimants)**

...

with

FIRST APPEAL STAMP NO.25999 of 2012

1. The State of Maharashtra,
Through The Collector, Beed.
2. The Executive Engineer,
Minor Irrigation Divn., Head Quarter
Ambajogai, Dist. Beed.

**...APPELLANTS
(Ori.Respondents)**

VERSUS

Sampat s/o Narayan Hange,
Age 50 yrs., Occu. Agriculture,
r/o Hangewadi, Tq.Kaij Dist. Beed.

**...RESPONDENTS
(Ori.Claimants)**

...

with

FIRST APPEAL STAMP NO.26005 of 2012

1. The State of Maharashtra,
Through The Collector, Beed.
2. The Executive Engineer,
Minor Irrigation Divn., Head Quarter
Ambajogai, Dist. Beed.

**...APPELLANTS
(Ori.Respondents)**

VERSUS

1. Narayan s/o Hari Hange,
Age 50 yrs., Occu. Agriculture,
r/o Hangewadi, Tq. Kaij, Dist. Beed. (Died)
 - 1(i) Kadubai w/o Narayan Hange, age 45 yrs.,
occu. Agri., R/o Nangewadi, Tq. Kaij Dist.
Beed.
 - (ii) Asaram s/o Narayan Hange, age minor,
Occu. Agri., r/o Hangewadi, Tq. Kaij,
Dist. Beed.
 - (iii) Kiran s/o Narayan Hange, Age minor,
u/g of Kadubai Narayan Hange, age 45
yrs., Occu. Agri., r/o Hangewadi, Tq. Kaij
Dist. Beed.
2. Shivaji s/o Hari Hange, age 45 years,
Occu. Agri., r/o Hangewadi, Tq. Kaij Dist. Beed
(DIED)

Legal Representatives:

- 2(i) Sumitra w/o Shivaji Hange,
Age 40 yrs., Occu. Agri., R/o Hangewadi,
Tq. Kaij Dist. Beed.
- 2(ii) Dinesh s/o Shivaji Hange, age minor,
U/g of Sumitra w/o Shivaji Hange r/o as
above.
- 2 (iii) Shelesh s/o Shivaji Hange, age minor,
u/g of Sumitra w/o Shivaji Hange, r/o as
above.

**...RESPONDENTS
(Ori.Claimants)**

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Mr. S.P.Sonpawale, AGP for appellants.
Mr. D.M.Hange, Advocate, for respective respondents /
claimants.

CORAM: P.R.BORA, J.

DATE : JULY 14th, 2017

ORAL JUDGMENT:

1. In view of the order passed by this Court on Civil Applications for condonation of delay, the present appeals are taken up for hearing with the consent of learned Counsel for the parties.

2. The lands which are subject matter in the present appeals were acquired for construction of percolation tank at Hangewadi, Taluka Kaij, district Beed. Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred as `the Act') was published in the official gazette on 19th September, 1996, and the award under Section 11 came to be passed on 22nd July, 1999. Though the claimants had claimed the compensation at the rate of Rs.1,000/- to Rs.1250/- per Are, the Special Land Acquisition Officer offered the compensation at the rate of Rs.240/- to Rs.250/- per Are. Dissatisfied with the amount of compensation so offered,

the claimants preferred Reference Applications under Section 18 of the Act and the Reference Court, while deciding the Reference Applications by common judgment and award, determined the market value of the acquired lands at the rate of Rs.900/- per Are and accordingly enhanced the amount of compensation. Aggrieved thereby, the State has preferred the present appeals.

3. Shri Sonpawale, learned A.G.P. appearing for the State, submitted that only two sale instances were placed on record by the claimants at Exh.23-C and Exh.24-C. Learned Counsel submitted that the land which was the subject matter of Exh.23-C was admeasuring 1 Hectare 16 Ares and was sold by registered sale deed executed on 7th February, 1996, for consideration of Rs.53,000/-. Thus, the said land was sold at the rate of Rs.456/- per Are. Learned A.G.P. further submitted that the land which was involved in Exh.24-C was sold by registered sale deed on 31st of January, 1991, for consideration of Rs.40,000/-. It was admeasuring 35 R. and thus, it was sold at the rate of Rs.1142/- per Are. Learned A.G.P. submitted that both the lands were of village Waghe Babhulgaon whereas

subject lands were situate at village Hangewadi. Learned A.G.P. submitted that, in the circumstances, the Reference Court could not have determined the market value of the acquired lands on the basis of the sale deeds at Exh.23-C and Exh.24-C. Learned Counsel further submitted that the Reference Court has also relied upon the judgment delivered in LAR No.18/2001 and 30/2001, arising out of the acquisition made for percolation tank at Waghe Babhulgaon. Learned A.G.P. submitted that in the said matter, both the sale deeds which are considered in the present matter i.e. Exh.23-C and 24-C, were considered, and the Reference Court awarded compensation to the claimants therein at the rate of Rs.800/- per Are. Learned A.G.P. submitted that there was no reason, therefore, for the Reference Court, in the present matters to determine the market value at the rate of Rs.900/- per Are. Learned A.G.P. submitted that the market value ought to have been determined by the Reference Court on the basis of the sale instances at Exh.23-C which was the real comparable sale for determining the market value. Learned A.G.P., therefore, prayed for modifying the award and for re-determination of the market value on the basis

of the sale deed at Exh.23-C.

4. Learned A.G.P. further submitted that the Reference Court has also erred in awarding interest under Section 34 of the Act on the enhanced amount of compensation from the date of possession whereas in view of the Full Bench judgment of this Court in the case of State of Maharashtra vs. Kailash Shiva Rangari (2016(3) Mh.L.J. 457), the same could not have been awarded from the date of possession. Learned A.G.P., therefore, prayed for setting aside the award to that extent.

5. Shri Hange, learned Counsel appearing for the respondents / original claimants, opposed the submissions made on behalf of the State. Learned Counsel, taking me through the discussion made by the Reference Court in paragraph nos.15 and onwards, submitted that the Reference Court has elaborately discussed the oral and documentary evidence brought on record by the claimants and has appropriately determined the market value of the acquired lands at the rate of Rs.900/- per Are. Learned Counsel submitted that the agricultural land which was

subject matter of Exh.24-C was sold in the year 1991 at the rate of Rs.1140/- per Are. Learned Counsel submitted that though the said land was a small piece of land, the said sale instance could not have been ignored by the Reference Court while determining the market value of the acquired lands. Learned Counsel submitted that the Reference Court has rightly considered the said sale instance and by giving weightage to the plus factors and, thereafter, making appropriate deductions because the sale instance was pertaining to a small piece of land, has rightly arrived at the market value of the acquired lands at the rate of Rs.900/- per Are. Learned Counsel submitted that the appeals filed by the State are devoid of substance and deserve to be dismissed.

6. I have carefully considered the submissions advanced by the learned Counsel appearing for the respective parties. I have also perused the impugned judgment and the other material placed on record. Perusal of the impugned judgment reveals that though the Reference Court has made some discussion about the sale instances placed on record by the claimants at Exh.23-C

and Exh.24-C, ultimately the Court has relied upon the earlier judgments in LAR No.18/2001 and LAR No.30/2001 pertaining to the acquisition made for construction of percolation tank at village Waghe Babhulgaon. In the said matter, the Reference Court has determined the market value of the acquired lands therein at the rate of Rs.800/- per Are. In the present matter also, the claimants were relying upon the sale instance of the same village Waghe Babhulgaon which are Exh.23-C and Exh.24-C. The same sale instances were relied upon by the Reference Court while deciding the Reference Applications Nos.18/2001 and 30/2001. Nothing is placed on record by the appellant State to show that the judgments in LAR No.18/2001 and 30/2001 were challenged before the High Court and/or are set aside or modified by the High Court. In such circumstances, it appears to me that the Reference Court has taken the said judgments as basis for determining the market value of the lands acquired in the present matters. It is, however, not understood as to why the Reference Court has then determined the market value of the present lands at the rate of Rs.900/- per Are. When the sale instances from village Waghe Babhulgaon

were relied upon by the present applicants also, the Tribunal must have held the market value of the acquired lands at the most at the said rate and if at all the Reference Court was of the view that some more amount is to be awarded in the present matter, must have made some discussion and assigned some reasons in that regard while enhancing the amount of compensation. On perusal of the impugned judgment, it appears that there is no such discussion and without making any such discussion, the Reference Court has awarded the compensation in the present matters by determining the market value of the acquired lands at the rate of Rs.900/- per Are. It is, thus, evident that the Reference Court, without any sufficient evidence, has determined the market value of the acquired lands at the rate more than Rs.800/- per Are. To that extent, the appellant State has certainly made out a case and the award to that extent needs to be modified.

7. In so far as interest part is concerned, learned A.G.P. has brought to my notice the discussion made by the Reference Court in paragraph no.25 of the said judgment. In para No.25 the Reference Court has

observed that the claimants are entitled for interest under Section 28 and 34 of the Act, and the proportionate costs. While passing the order, vide clause 6 of the order, the Reference Court has awarded interest under Section 28 of the Act. It is, thus, evident that the interest which has been awarded by the Reference Court vide clause 7 pertains to interest under Section 34 of the Act. Reading of order clause 7 reveals that the Reference Court has awarded interest under Section 34 of the Act from the date of taking possession of the land whereas, the same could have been awarded by the Reference Court only from the date of the award. The Full Bench of this Court in the case of Shiva Rangari (cited supra), has categorically held that the interest under Section 34 of the Act can only be awarded from the date of award and not from the date of possession. The mistake so committed by the Tribunal in awarding interest under Section 34 of the Act also needs to be corrected.

8. In view of the discussion made above, following order is passed:

ORDER

1. The impugned awards be modified by determining the market value of the acquired lands at the rate of Rs.800/- per Are and by awarding interest under Section 34 of the Act from the date of the award under Section 11 of the Act.

2. If the amount of compensation as awarded by the Reference Court is already withdrawn by the claimants, and if it is noticed that it is in excess of the amount which would become payable to them after re-determination of the compensation at the rate of Rs.800/- per Are, it would be open for the State to recover the said amount from the respective claimants.

3. The First Appeals stand partly allowed in aforesaid terms. No costs.

(P.R. BORA, J.)

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