

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

FIRST APPEAL NO.:979 OF 2016

THE STATE OF MAHARASHTRA AND ANOTHER
VERSUS
PRAKASH DHONDOPANT DANI AND ANOTHER

WITH

FIRST APPEAL NO.:980 OF 2016

THE STATE OF MAHARASHTRA AND ANOTHER
VERSUS
SARASWATIBAI RAMKISHAN GARJE

AND

FIRST APPEAL NO.:981 OF 2016

THE STATE OF MAHARASHTRA AND ANOTHER
VERSUS
TRIMBAK BAPURAO KULKARNI AND ANOTHER

Mr.A.M.Phule, AGP for the Appellants in all the appeals.

Mr. Chandrakant K. Shinde, Advocate for the Respondents in all the appeals.

CORAM : **V. K. JADHAV, J.**

DATE : 04th April, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the common judgment and award passed by District Judge-2, Beed dated 3rd April, 2012 in LAR No.360 of 2010 and other connected reference petitions, the State has

preferred the appeals against the judgment and award passed in LAR Nos.360, 361 and 882 of 2010 to the extent of para 6 of the operative part of the order wherein the Reference Court has directed the State to pay the interest at the rate of 9% per annum under Section 34 of the Land Acquisition Act on the awarded amount i.e. from 27th December, 2001 to 23rd January, 2009.

3 The learned AGP submits that in a case **State of Maharashtra Vs. Kailash Shiva Rangari**, reported in, **2016 (3) MH.L.J. 457**, the Larger Bench has dealt with the following questions:

"If the possession is taken before notification under Section 4(1) of the Act of 1894 is published and/or before the award is passed, whether the landowner would be entitled for interest as per Section 34 of the Act of 1894 from the date of publication of the notification under Section 4(1) of the Act of 1894 or from the date of passing of the award?"

4 In para 32 of the judgment, the Larger Bench has summarized the position of law 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 MANU/MH/1296/2007 : 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 per centum 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.”

5 In para 33 of the judgment, the Larger Bench has answered the question of reference as under:

“**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 MANU/MH/0733/2012 : 2012(4) Mh.L.J. 742, lays down a correct position of law and it does not require reconsideration.”

6 The learned AGP submits that in view of the answer to the question of reference by the Larger Bench as above, para 6 of the operative part of the order passed in the aforesaid land acquisition reference petitions, does not survive and the State is liable to pay the interest necessarily from the date of passing of the award under Section 11 of the Land Acquisition Act. The learned AGP submits that though the Reference Court has observed that the possession has been taken in accordance with Section 17 of the Land Acquisition Act, in fact, the possession was taken on 27th December, 2001 without applying the provisions of Section 17 of the Land Acquisition Act.

7 The learned counsel appearing for the Respondents / Claimants has fairly conceded that even though the possession is taken before notification under Section 4(1) of the Land Acquisition Act, the same was not taken in accordance with Section 17 of the Act and as such, the Claimants are entitled for the interest as per Section 34 of the Land Acquisition Act from the date of passing of the award under Section 11 of the Land Acquisition Act and not from the date of possession as mentioned in para 6 of the operative part of the order.

8 In view of the above submissions, the impugned judgment and award passed by the Reference Court requires modification to the

extent of clause (6) of the operative part of the judgment. Hence, the following order:

ORDER

- I. The appeals, are hereby partly allowed. No costs.
- II. Clause (6) of the operative part of the order is modified in the following manner:.

“The Respondents do pay interest at the rate of 9% per annum under Section 34 of the Land Acquisition Act on the awarded amount paid by the Special Land Acquisition Officer from the date of award till the date of actual payment of the awarded amount.”

- III. Rest of the judgment and award stands confirmed.
- IV. Award be drawn up as per the above modification.
- V. All the appeals are accordingly disposed of.

[V. K. JADHAV, J.]