

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

FAST/28138/2015
WITH
CA/15898/2015 IN FAST/28138/2015

...
WITH
FAST/28248/2015
WITH
CA/15897/2015 IN FAST/28248/2015

...
WITH
FAST/28159/2015
WITH
CA/15914/2015 IN FAST/28159/2015

WITH
FAST/28172/2015
WITH
CA/15920/2015 IN FAST/28172/2015

WITH
FAST/28183/2015
WITH
CA/15925/2015 IN FAST/28183/2015

WITH
FAST/28193/2015
WITH
CA/15928/2015 IN FAST/28193/2015

WITH
FAST/28235/2015
WITH
CA/15932/2015 IN FAST/28235/2015

WITH
FA ST/28244/2015
WITH
CA/15935/2015 IN FAST/28244/2015

WITH
FAST/28145/2015
WITH
CA/15937/2015 IN FAST/28145/2015

...
THE EXECUTIVE ENGINEER, KUKADI DISTRIBUTION
AND CONSTRUCTION DIVISION, KOLWADI
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr Rajale Gulab B.
AGP for Respondents: Mr S N Morampalle
Advocate for Respondent 2 : Mr N C Garud

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CORAM : V.K. JADHAV, J.
Dated: July 18, 2017

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COMMON ORDER :-

1. Heard.
2. Issue notice to the Respondents. Learned AGP waives notice for respondent-State. Mr. Garud, learned counsel waives notice for respondents-claimants.
3. Heard finally with consent at admission stage.
4. Being aggrieved by the judgment and award passed by the Civil Judge S.D., Shrigonda dated 19.11.2010 in LAR No.814/2003 (main) alongwith other connected land acquisition reference petitions, the acquiring body has preferred these appeals by obtaining leave of the Court. Though, reference court has

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disposed of the above reference petitions by common judgment, common evidence was recorded in L.A.R. No.814/2003 (main).

5. Brief facts, giving rise to the present appeals are as follows :-

a] Lands of the respondents-original claimants came to be acquired for the Kukadi Canal. Section 4 notification was published on 29.12.1997. The Special Land Acquisition Officer has awarded the compensation @ Rs.245/- per Aar considering the acquired lands as Bagayat lands. Being aggrieved by the inadequate compensation awarded by the Special Land Acquisition Officer, the respondents-claimants filed aforesaid land acquisition reference petitions for the compensation in respect of the acquired lands at the enhanced rate. It has been contended in the claim petition that market value determined by the Special Land Acquisition Officer is not just and proper, as per market value on the day of notification under section 4.

b] Respondent-State has strongly resisted the claim petitions by filing written statement. It has been contended that, Special Land Acquisition Officer has fixed the value of the land as per market price prevailing at the time of notification under section 4. It has also been contended that claim is excessive, exorbitant and without any basis.

c] Respondents-claimants have adduced oral and documentary evidence in the main claim petition bearing LAR No.814/2003 and filed pursis to read the said evidence in all the clubbed petitions. Respondent-State has not adduced any evidence.

d] The learned Civil Judge S.D., Shrigonda, by judgment and award dated 19.11.2010 in the aforesaid land acquisition reference petitions partly allowed the said petitions and awarded the compensation @ Rs.1,200/- per Aar. Being aggrieved by the same, the acquiring body has preferred these appeals.

6. Learned counsel appearing for the appellant-acquiring body submits that, respondents-claimants have not impleaded the acquiring body as party to the reference petitions. Learned counsel submits that, Reference Court has considered the acquired lands as Bagayat lands. The learned counsel submits that reference court has considered the award passed in Lok Adalat dated 8.8.2010 in LAR No.37/2004 to 48/2004. Said reference petitions pertains to the land acquired for the same project (Kukadi left Bank Canal). Copy of the said order is produced on record. In the said reference petitions, value of the land is determined at Rs.1,200/- per aar by consent and, respondents-original claimants have also accepted the same rate by filing the purshis. Learned counsel submits that reference court has awarded exorbitant amount of compensation at the enhanced rate only on the basis of the award passed in Lok-Adalat and respondents claimants have not adduced any other evidence.

7. Learned counsel for respondents-claimants

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submits that, though acquiring body was not impleaded as party in the reference petitions, respondent-state has contested the reference petitions by filing written statement and almost raised all the grounds those are available to the acquiring body. Reference Court has considered the award passed in Lok-adalat in respect of the agricultural lands acquired for the same project. By consent of the parties, said award came to be passed in Lok-Adalat and as such, present respondents-claimants have also accepted the same rate for which respondents-State has not taken any objection. Learned counsel submits that, even the appellants-claimants have examined one witness Baban Kondiba Bagal and agricultural land of the present respondent-original claimant and land of the petitioner in LAR No.37/2004 to 48/2004 are acquired for the same project Kukadi Canal. Furthermore, the respondents-claimants have also placed on record copy of the judgment passed in LAR No.459/2003 wherein, on earlier occasion, reference court has determined the value of the acquired lands from the same village for the same project at

Rs.1200/- per Aar and the award passed in Lok-Adalat is also based upon that. Learned counsel submits that, in view of the above, there is no substance in the appeal and the appeals are thus liable to be dismissed.

8. It appears from the judgment and award passed by the Reference Court that, the respondents-claimants have not only adduced the evidence in respect of the acquired lands, but also produced on record copy of the judgment passed in LAR No.459/2003 Exh.12. In LAR No.459/2003 Reference Court had an occasion to deal with the acquisition of the agricultural lands from the same village for the same project and, accordingly after considering the evidence on record, determined the compensation at the enhanced rate of Rs.1200/- per Aar. Even in Lok-Adalat held on 8.8.2010 on the basis of the judgment and award passed in said LAR No.459/2003, award was passed in LAR No.37/2004 to 48/2004 by consent of the parties and accordingly, value of the land is determined at Rs.1,200/- per aar. In the present case, respondents-claimants have also

accepted said value as enhanced market value. Learned counsel appearing for the acquiring body fairly concedes that since said rate is accepted in Lok-Adalat on the basis of judgment and award passed in LAR 459/2003 which has attained finality, no purpose would be served in remanding the matter only on the count that the acquiring body was not impleaded as party to the reference proceedings.

9. In view of the above, I do not find any substance in the present appeals. In order to maintain the uniformity in the enhanced rate of compensation as awarded by the reference court and also the rate as determined in the Lok-adalat, I do not find any fault in the judgment and award passed by the Reference Court. However, the learned counsel for the appellant-acquiring body submits that the reference court in clause no.6 of the operative part of the order has erroneously awarded the interest u/s 34 of the Land Acquisition Act from the date of possession instead of from the date of award. Learned counsel appearing for respondents-original

claimants has also fairly conceded that reference court ought to have awarded the interest under section 34 of the Land Acquisition Act from the date of the award, instead of the date of possession. Thus, with these modifications, appeals can be disposed of. Hence, following order.

O R D E R

1. First Appeal Stamp Nos.28138/2015, FAST/28248/2015, FAST/28159/2015, FAST/28172/2015,FAST/28183/2015, FAST/28193/2015, FAST/28235/2015, FA ST/28244/2015, FAST/28145/2015 (THE EXECUTIVE ENGINEER, KUKADI DISTRIBUTION AND CONSTRUCTION DIV.KOLWADI VS. THE STATE OF MAHARASHTRA AND ANOTHER) are hereby partly allowed. No costs.
2. The judgment and award passed by the Civil Judge S.D.Shrigonda, dated 19.11.2010 in L.A.R.No.**814/2003** (Baban Kondiba Bagal Vs. State of Maharashtra), L.A.R.**808/2003** (Maruti Ganpat Darekar Vs. State of Maharashtra), L.A.R. No.**809/2003** (Mandubai Chagan

Darekar Vs. State of Maharashtra), LAR No.**810/2003** (Ashru Krishnarao Bagal and anr. Vs. State of Maharashtra), LAR No.**815/2003** (Dhanraj Baban Bagal Vs. State of Maharashtra), LAR No.**816/2003** (Shakuntalab Digambar Kulkarni Vs. State of Maharashtra), LAR No.**817/2003** Sumanbai Popat Nimbalkar Vs. State of Maharashtra), LAR No.**818/2003** (Raghu Bapu Darekar Vs. State of Maharashtra) and LAR No.**821/2003** (Meenabai Baban Darekar and Anr. Vs. State of Maharashtra) is hereby modified to the extent of clause no.6 of the operative part of the order and in respect of the interest as awarded by the reference court under section 34 of the LA Act in the following manner :-

- a] The opponent shall pay the interest under section 34 of the Land Acquisition Act from the date of award, till realization of the entire award.
3. Rest of the judgment and award stands confirmed.

4. Award be drawn up as per the above modifications.
5. All the first appeals are accordingly disposed of.
6. In view of disposal of first appeals, pending civil applications, if any, also stand disposed of.

(V.K. JADHAV, J.)

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