

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****5 FIRST APPEAL NO. 4021 OF 2016**

1. The State of Maharashtra,
Through : The Collector, Beed.

2. The Executive Engineer,
M. I. (L.S. Division) Beed,
Tq. & Dist. Beed.

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

VERSUS

1. Bhausahab s/o Tukaram Chagan,
Age : Major, Occu.: Agril.,
R/o.: Shelarwadi, U/v. Kerul,
Tq. Ashti, Dist. Beed.

2. Babasaheb s/o Bhaurao Chagan,
Age : Major, Occu.: Agril.,
R/o.: Shelarwadi, U/v. Kerul,
Tq. Ashti, Dist. Beed.

3. Lilabai Bhausahab Chagan,
Age : Major, Occu.: Agril.,
R/o.: Shelarwadi, U/v. Kerul,
Tq. Ashti, Dist. Beed.

DEAD L.Rs.

3.1 Bhamabai w/o Arjun Gawade,
Age : Major, Occu.: Agril.,
R/o.: Kerul, Tq. Ashti, Tq. Ashti,
Dist. : Beed.

4. Ashok Bhaurao Chagan,
Age : Major, Occu.: Agril.,
R/o.: Shelarwadi, U/v. Kerul,
Tq. Ashti, Dist. Beed.

5. Vitthal Bhaurao Chagan,
Age : Major, Occu.: Agril.,
R/o.: Shelarwadi, U/v. Kerul,
Tq. Ashti, Dist. Beed.

.... **Respondents**
(Ori. Claimants)

WITH**FIRST APPEAL NO. 4022 OF 2016**

1. The State of Maharashtra,
Through : The Collector, Beed.
2. The Executive Engineer,
M. I. (L.S. Division) Beed,
Tq. & Dist. Beed.

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

VERSUS

1. Sayaji Rambhau More,
Age : Major, Occu.: Agril.,
R/o.: Morewadi, Y/v. Kerul,
Tq. Ashti, Dist. Beed.
2. Nanabhau s/o Pvambhau More,
Age : Major, Occu.: Agril.,
R/o.: Morewadi, Y/v. Kerul,
Tq. Ashti, Dist. Beed.
3. Mahadeo Rambhau More,
Age : Major, Occu. Agril.,
Age : Major, Occu.: Agril.,
R/o.: Morewadi, Y/v. Kerul,
Tq. Ashti, Dist. Beed.
4. Pandurang Rambhau More,
Age : Major, Occu.: Agril.,
R/o.: Morewadi, Y/v. Kerul,
Tq. Ashti, Dist. Beed.
5. Shivaji Rambhau More,
Age : Major, Occu.: Agril.,
R/o.: Morewadi, Y/v. Kerul,
Tq. Ashti, Dist. Beed.
6. Bhvsen Rambhau More,
Age : Major, Occu.: Agril.,
R/o.: Morewadi, Y/v. Kerul,
Tq. Ashti, Dist. Beed.

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

...
AGP for Appellant / State : Shri. S. M.Ganachari
Advocate for Respondents: Shri. C. K. Shinde.
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CORAM : P. R. BORA, J.
DATE : 31.07.2017.

ORAL JUDGMENT :

1) Present appeals are filed taking exception to the common judgment and award passed by the District Court at Beed (hereinafter referred to as the Reference Court) in LAR No. 92/2010 with LAR No. 91/2010 decided on 15th February, 2012.

2) The lands which are involved in the present appeals were acquired for village tank No.3 known as Kerul Project. The notification under Section 4 of the Land Acquisition Act 1894 (hereinafter referred to as the Act) in that regard was published in the official gazette of 16.02.2006. After having complied with the procedure, award under Section 11 of the Act was passed on 24.06.2007. The S.L.A.O. had offered compensation at the rates ranging between Rs.750/- to Rs.945/- per Are. Admittedly, the lands involved in both the appeals are Jirayat lands. Dissatisfied with the amount of compensation offered by the S.L.A.O, applications were preferred by the claimants under Section 18 of the Land Acquisition Act to the Collector, Beed and in turn the Collector, Beed, forwarded the said applications for adjudication to the

District Court, Beed. Before the Reference Court, the claimants had claimed the compensation at the rate of Rs.2,500/- per Are.

3) In order to substantiate their claim, the claimants in addition to their own evidence had placed on record three sale instances. No oral or documentary evidence was adduced on behalf of the State. The Reference Court on the assessment of the oral and documentary evidence before it, determined the market value of the subject lands at the rate of Rs.2,215/- per Are and accordingly enhanced the amount of compensation. The Reference Court also made the claimants entitled for the statutory benefits and the interest as provided under the Act. Aggrieved by the same, State has preferred the present appeals.

4) Shri. Ganachari, learned AGP appearing for the State assailed the impugned common judgment and award on various grounds. The learned AGP submitted that the Reference Court has erred in relying upon the sale instances brought on record by the claimants which were pertaining to the small pieces of lands. The learned AGP further submitted that the Reference Court has further erred in not considering that all the sale instances were pertaining to the seasonally irrigated lands. The learned AGP further submitted that the Tribunal has further manifestly erred in ignoring the fact that in all the sale

instances which were brought on record by the claimants, the purchasers of the said lands were adjacent land holders. The learned AGP submitted that since all above aspects were not properly considered by the Reference Court, the market value of the subject lands has been unreasonably determined by the Reference Court on higher side. The learned AGP submitted that the Reference Court has also erred in awarding interest under Section 34 of the Act from the date of possession. Learned AGP, therefore, prayed for modification in the award. The learned AGP submitted that in fact the S.L.A.O. had determined the market value aptly and no interference was required in the amount of compensation so offered by the S.L.O.A. The learned AGP prayed for allowing the appeals in aforesaid terms.

5) Shri C. K. Shinde, learned Counsel appearing for the claimants in both the matters supported the impugned judgment and award. Inviting my attention to the discussion in para no.6 of the impugned judgment the learned Counsel submitted that the learned Reference Court has considered all plus and minus factors and has given appropriate allowance for each of the factor and appropriately determined the market value at the rate of Rs.2,215/- per Are and no interference is required in the market value as has been determined by the Reference Court. Learned Counsel though conceded that the interest under Section 34 of the Act could not have been awarded from the date

of possession in view of the Full Bench judgment of this Court in the case of **State of Maharashtra Vs. Shiva Rangari** reported in **2016 (3) Mh.L.J. 457**, further submitted that the Reference Court has also committed an error in not awarding the interest on the amount of solatium and on 12% component, on the enhanced amount of compensation. The learned Counsel submitted that considering overall circumstances, no interference is warranted in the impugned judgment and award. The learned Counsel, therefore, prayed for dismissal of the appeals.

6) I have carefully considered the submissions advanced by the learned Counsel appearing for the respective parties. I have perused the impugned judgment and the other material placed on record. Perusal of the impugned judgment reveals that three sale instances were produced on record by the claimants in order to substantiate their claim for enhancement in the amount of compensation. Admittedly, no oral or documentary evidence was adduced by the State. All the three instances which are relied upon by the Reference Court pertain to the lands situate at village Kerul. The lands involved in the present appeals are also from village Kerul. It was brought to my notice by the learned Counsel for the claimants that sale instances of the year 2005-2006 were not available and hence were not cited by the claimants. Learned Counsel submitted that even before the S.L.A.O. the sale deeds which were for his

consideration, were of the period 2001 to 2003.

7) Now it would be appropriate to consider the evidence as about the sale instances placed on record by the claimants. The land which was the subject matter of Exh-15 was admeasuring 10 Are and was sold vide the registered sale deed executed on 13th Jule, 2004 for total consideration of Rs.25,000/- i.e. at the rate of Rs.2,500/- per Are. The land which is involved in Exh-21 was admeasuring 20 Are and was sold on 16 September, 2003 for consideration of Rs.50,000/- i.e. again at the rate of Rs.2,500/- per Are. The sale deed at Exh-23 is pertaining to 44 Are land which was sold for the consideration of Rs.1,00,000/- by the registered sale deed executed on 29th September, 2003, the rate of which comes to Rs.2,272/- per Are.

8) From the discussion made by the Reference Court, it reveals that the Reference Court has considered all the three sale instances for determining the market value of the acquired lands. The discussion made by the Reference Court further reveals that the Reference Court has given appropriate notional increase in price of the said lands and has arrived at their market value on the date of issuance of Section 4 notification i.e. 16th February, 2006. The Reference Court has then drawn an average rate of consideration per Are received to the aforesaid lands and on the basis of it, by giving some negative and positive

allowances, has fixed the market value of the subject lands at the rate of Rs.2,215/- per Are.

9) As was pointed out by the learned AGP in all the three sale instances considered by the Reference Court the subject lands were purchased by the adjacent land holders. The learned AGP submitted that this aspect has been completely ignored by the Reference Court while considering the said sale instances for determining the market value of lands involved in the present appeals. The learned AGP submitted that the Reference Court has only considered one aspect that the acquired lands are Jirayat lands and the lands which were subject matter of the three sale instances were seasonally irrigated lands. Some negative allowances were, therefore given and deducting 25% of the said average rate the market rate was fixed of the lands involved in the present appeals by the Reference Court.

10) As was contended by the learned AGP on two grounds the Reference Court was bound to make appropriate deductions, first that the sale instances were pertaining to small pieces of lands and the other that purchaser of the said lands were beneficiaries being adjacent land holders. Learned AGP submitted that had the Reference Court considered the aforesaid two aspects, in no case the market value of the acquired lands would have been determined by the Reference Court at

the rate more than Rs.1,100/- to 1,200/- per Are. Learned AGP, therefore, prayed for modifying the award by directing determination of the compensation at the said market rate. Per contra, it was the contention of the learned Counsel for the claimants that the negative factors were also properly considered by the Reference Court and accordingly the market value has been fixed by the Reference Court.

11) On perusal of the impugned judgment, it is quite evident that Reference Court has failed in not considering the aspect which has been prominently brought on record that in all the sale instances the lands were purchased by the adjacent land holders. It need not be stated that for several reasons the adjacent land holders may purchase the lands adjacent to their existing land and may give a higher price than any other person may give for the said lands.

12) In so far as the another aspect that the lands which were the subject matter of the sale instances were seasonally irrigated lands, the Reference Court has considered the said aspect and has, thus, proportionally reduced the market price on that ground.

13) The lands which were subject matter of the sale instances i.e. in one sale instance 20 Are, in another 10 Are and in last 44 Are, were all comparatively small portions of lands. This aspect also does not

seem to have been appropriately considered by the Reference Court.

14) Thus, aforesaid are the two aspects which need to be considered by this Court. It is undisputed that the lands which were the subject matter of all the three sale instances were purchased by the adjacent land holders. As I noted earlier, it is quite probable that the adjacent land holders had given higher price for the said lands which the other purchaser may not have given. Similarly, the lands involved in the aforesaid sale instances are comparatively of small portions. It need not be stated that the small portions of lands may ordinarily receive the higher price than the price which may be received by the large track of lands. Thus, while determining the market value of the acquired lands on the basis of the lands involved in the aforesaid three sale instances, the Reference Court must have given negative allowances in appropriate proportion. The Reference Court has assessed average price of the lands involved in the sale instances placed on record as on the date of notification under Section 4 of the Act issued for the acquisition of the acquired lands. According to me, the same has been correctly assessed by the Reference Court. While determining the market value of the acquired lands on the basis of said average price, negative allowances are to be given on two grounds as mentioned herein above; first on the count that the concerned lands were purchased by the adjacent holders and other that they were small portions of lands. Giving such

allowances according to me the market value of the acquired lands on the date of Section 4 notification can be determined at the rate of Rs.1,800/- per Are. I hold accordingly and direct that the amount of compensation to be paid to the claimants in the present appeals be redetermined and the award be modified accordingly.

15) In so far as interest rate is concerned, the Reference Court has erred in awarding the interest under Section 34 of the Act from the date of possession. The said fact has also been conceded by the learned Counsel for the original claimants. Such interest is payable from the date of award. Similarly though no appeal has been preferred by the claimants, since the mistake committed by the Reference Court is apparent from the face of the record, I deem it necessary to correct the said mistake by holding the claimant entitled for the interest under Section 34 of the Act on the enhanced amount of 12% component as well as 30% solatium. The impugned awards be modified accordingly.

16) The record shows that the State had deposited the entire amount of award with interest as has been awarded by the Reference Court in this Court and 75% of the said amount was permitted to be withdrawn by the original Claimants. The remaining 25% amount lying with this Court be transmitted to the Reference Court. After modification of the award in view of the present order passed by this

court, if any more amount is found payable to the claimants in addition to the amount already withdrawn by them, the same shall be paid to the claimants or otherwise the said amount be refunded to the State Government.

17) Appeal stands allowed in the aforesaid terms.

(P. R. BORA)
JUDGE