

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

FIRST APPEAL NO.1804 OF 2010

The Executive Engineer,
Minor Irrigation Division Beed,
Head quarter at Ambajogai,
Ambajogai, Dist. Beed

= APPELLANT
(Orig. Resp.2)

VERSUS

1. The State of Maharashtra.
Through the Collector,
Dist. Beed

(Resp.No.1)
(Orig. Resp.No.1)

2. Shri Ramnath Masudeo Dubale
Age: 38 years, Occu.:Agri.,
R/o. Limba Rui (Devi),
Tq. and Dist. Beed

(Resp.No.2)
(Orig. Claimant)

WITH

CROSS-OBJECTIONS ST.NO.5030/2012

IN

FIRST APPEAL NO.1804 OF 2010

Shri Ramnath Masudeo Dubale
Age: 38 years, Occu.:Agri.,
R/o. Limba Rui (Devi),
Tq. and Dist. Beed

= APPELLANT
(Orig. Claimant)

VERSUS

1. The State of Maharashtra.
Through the Collector,
Dist. Beed.
2. The Executive Engineer,
Minor Irrigation Division Beed,
Head quarter at Ambajogai,
Ambajogai, Dist. Beed

= RESPONDENTS

(2)

**WITH
FIRST APPEAL NO. 1755 OF 2010**

The Executive Engineer,
Minor Irrigation Division Beed,
Head quarter at Ambajogai,
Ambajogai, Dist. Beed

= APPELLANT
(Orig. Resp.2)

VERSUS

1. The State of Maharashtra.
Through the Collector,
Dist. Beed (Resp.No.1)
(Orig. Resp.No.1)

2. Shri Ramesh Rangnath Kurund
Age: 38 years, Occu.:Agri.,
R/o. Muggaon,
Tq. and Dist. Beed (Resp.No.2)
(Orig. Claimant)

**WITH
FIRST APPEAL NO. 1756 OF 2010**

The Executive Engineer,
Minor Irrigation Division Beed,
Head quarter at Ambajogai,
Ambajogai, Dist. Beed

= APPELLANT
(Orig. Resp.No.2)

VERSUS

1. The State of Maharashtra.
Through the Collector,
Dist. Beed (Resp.No.1)
(Orig. Resp.No.1)

2. Shri Rajaram Ambadas Mendhekar
Age: 58 years, Occu.:Agri.,
R/o. Pategaon,
Tq. and Dist. Beed (Resp.No.2)
(Orig. Claimant)

**WITH
FIRST APPEAL NO. 1757 OF 2010**

The Executive Engineer,
Minor Irrigation Division Beed,
Head quarter at Ambajogai,
Ambajogai, Dist. Beed

= APPELLANT
(Orig. Resp.No.2)

VERSUS

1. The State of Maharashtra.
Through the Collector,
Dist. Beed (Resp.No.1)
(Orig. Resp.No.1)
2. Shri Gokul Masudeo Dubale,
Age: 38 years, Occu.:Agri.,
3. Shri Angad Masudeo Dubale
Age: 35 yrs. Occu.: Agri.,
4. Mandubai Haribhau Dubale
Died through her L.R.
- 4/A Sampat S/o. Haribhau Dubale
Age: 43 yrs. Occu.:Agri.,

All R/o.: Muggon,
Tq. & Dist. Beed. (Resp.No.2 to 4 A)
(Orig. Claimant)

WITH

FIRST APPEAL NO. 1760 OF 2010

The Executive Engineer,
Minor Irrigation Division Beed,
Head quarter at Ambajogai,
Ambajogai, Dist. Beed

= APPELLANT
(Orig. Resp.No.2)

VERSUS

1. The State of Maharashtra.
Through the Collector,
Dist. Beed (Resp.No.1)
(Orig. Resp.No.1)
2. Vasant Munjaba Dubale
Age: 33 years, Occu.:Agri.,

(4)

3. Shri Sunil Munjaba Dubale
Age: 31 yrs. Occu.: Agri.,

All R/o.: Muggon,
Tq. & Dist. Beed.

(Resp.No.2 to 3)
(Orig. Claimant)

WITH

FIRST APPEAL NO. 1763 OF 2010

The Executive Engineer,
Minor Irrigation Division Beed,
Head quarter at Ambajogai,
Ambajogai, Dist. Beed

= APPELLANT
(Orig. Resp.No.2)

VERSUS

1. The State of Maharashtra.
Through the Collector,
Dist. Beed

(Resp.No.1)
(Orig. Resp.No.1)

2. Shri Sampat Haribhau Dubale
Age: 43 years, Occu.:Agri.,

3. Shri Angad Masudeo Dubale
Age: 35 yrs. Occu.: Agri.,

4. Smt. Chandrakalabai Sampat Dubale
Age: 38 yrs, Occu.: Agri.,

5. Smt. Rajamatibai Masudeo Dubale
Age: 71 yrs., Occu.:Agri.,

All R/o.: Muggon,
Tq. & Dist. Beed.

(Resp.No.2 to 5)
(Orig. Claimant)

WITH

FIRST APPEAL NO. 1764 OF 2010

The Executive Engineer,
Minor Irrigation Division Beed,
Head quarter at Ambajogai,
Ambajogai, Dist. Beed

= APPELLANT
(Orig. Resp.No.2)

VERSUS

1. The State of Maharashtra.
Through the Collector,
Dist. Beed (Resp.No.1)
(Orig. Resp.No.1)
2. Smt. Rajmatibai Masudeo Dubale
Age: 73 yrs., Occu.:Agri.,
R/o. Muggon,
Tq. & Dist. Beed (Resp.No.2)
(Orig. Claimant)

**WITH
FIRST APPEAL NO. 1765 OF 2010**

The Executive Engineer,
Minor Irrigation Division Beed,
Head quarter at Ambajogai,
Ambajogai, Dist. Beed

= APPELLANT
(Orig. Resp.No.2)

VERSUS

1. The State of Maharashtra.
Through the Collector,
Dist. Beed (Resp.No.1)
(Orig. Resp.No.1)
2. Smt. Dinanath Rohidas Dubale
Age: 48 yrs, Occu.:Agri.,
R/o. Muggon,
Tq. & Dist. Beed (Resp.No.2)
(Orig. Claimant)

Mr. Ruturaj Patil, Advocate for Appellant;
Mr. P.G.Borade, AGP for Respondent State;
Mr. D.R. Jayabhar, Advocate for Respondent No.2 &
for Appellant in X-obj. St.No.5030/2012

**CORAM : P.R. BORA, J.
DATED : 1st October, 2018.**

ORAL JUDGMENT:-

1) The appellants have preferred the
present appeals challenging judgment and award

passed by District Judge-1, Beed on 16th March, 2007 in LAR No. 390/2005 with the connected LARs.

2) The lands, which are involved in the present appeals, were acquired from villages Limbarni, Muggaon, Pategaon etc. for construction of Mankarnika Large Medium Project. A notification under Section 4 of the Land Acquisition Act, 1894 (herein after referred to as the Act) was published in the official gazette on 15th June, 1995 and Award under Section 11 came to be passed on 16th March, 1999. The Special Land Acquisition Officer had offered the compensation varying from Rs.305/- per Are to Rs.350/- per Are. Dissatisfied with the amount of compensation so offered, the claimants filed an application under Section 18 of the Act to Collector, Beed. The District Collector (herein after referred to as Reference Court) after having assessed oral and documentary evidence brought on record by the claimants, determined the market value of the lands @ Rs. 1,650/- per Are for semi-irrigated land and @ Rs.1237/- per Are for non-irrigated land. For Potkharab land, the Reference Court awarded the compensation @ Rs.100/- per Are.

3) Out of aforesaid eight first appeals, the lands involved in seven matters were semi-irrigated lands and only in one matter, the land was a dry land. Aggrieved by the enhancement given by the Reference Court in the amount of compensation, the acquiring body has preferred the present appeals.

4) Shri Ruturaj Patil, learned counsel appearing for the appellants, assailed the impugned judgment on various grounds. The learned counsel submitted that the Reference Court has implicitly relied upon the sale instance brought on record by the claimants and without carrying out proper scrutiny as to whether the sale instances so brought on record were of the comparable lands, determined the market value of the acquired lands on the basis of the said sale instances and has arbitrarily enhanced the amount of compensation. The learned counsel further submitted that the Reference Court has further grossly erred in awarding the interest under Section 28 as well under Section 34 of the Act from the date of issuance of Section 4 notification and in some cases from the date of taking over possession of

the acquired lands. The learned counsel, therefore, prayed for setting aside the impugned judgment and award and further prayed for restoring the awards passed by the Special Land Acquisition Officer.

5) Shri Jaybhar, learned counsel appearing for the respondents, i.e. original claimants in all these matters, supported the impugned judgment and award. The learned counsel submitted that in one matter, the Reference Court has on the contrary awarded less amount of compensation and the claimants have, therefore, filed cross-objections in the said matter i.e. in FA No. 1804/2010.

6) I have given due consideration to the submissions made by the learned counsel appearing for the appellant and learned counsel appearing for the respondents – original claimants. I have perused the impugned judgment as well as the evidence on record. In order to substantiate the contentions raised in the Reference application, the claimants in each of the Reference Application testified before the court. The record reveals

that a pursis was filed before the Reference Court for clubbing of eight LARs and to record common evidence in all the said Reference applications. Accordingly, common evidence was recorded in LAR No. 390/2005.

7) As noted above, though the claimants testified before the Reference Court and also filed on record the certified copies of some sale-deeds claiming the same to be of the comparable lands, no evidence was adduced on behalf of the acquiring body or by the State Government. The claimants had also placed on record 7/12 extracts of the respective lands acquired for the project.

8) The claimants had brought on record three sale instances to substantiate the claim raised by them. The sale deeds were marked at Exhibits-33 to 35. Sale deed at Exh. 33 pertains to the dry land admeasuring 40 Ares out of Gut No. 29, situated at Mauje Bordevi and was sold, vide registered sale deed executed on 10th April, 1991 @ Rs. 1250/- per Are. The land, which was the subject matter of Exh. 34, was also sold vide registered sale deed

executed on 19th August, 1991 at the same rate of Rs.1250/- per Are. Exhibit-35 is the certified copy of the sale deed dated 22nd February, 1994 by which 40 Ares seasonal land out of Gut No. 81 situated at Mauje Muggaon was sold for the consideration of Rs.60,000/-, i.e. @ Rs. 1500/- per Are.

9) The learned Reference Court preferred to rely upon the sale instance at Exh. 35, observing that it was of the immediate prior period of issuance of Section 4 notification by which the subject lands were acquired. Giving 10% rise in the price received to the land which was subject matter of Exh. 35, the Reference Court determined the market value of the seasonally irrigated land at the rate of Rs.1650/- per Are and determined the market value of the dry land @ Rs. 1238/- per Are and enhanced the amount of compensation accordingly. The Reference Court granted all statutory benefits to the respective claimants as provided under the Land Acquisition Act. After having considered the analysis made by the Reference Court of the sale instance brought on record, it does not appear to me that any error has

been committed by the Reference Court in determining the market value of the acquired lands at the aforesaid rates.

10) Though it was sought to be contended by Shri Ruturaj Patil that the Reference Court must have determined the market value of the acquired lands on the basis of the sale instances at Exh. 33 and 34, i.e. @ Rs. 1250/- per Are, I am not convinced with the argument so advanced by him. Admittedly, both the aforesaid sale instances at Exh. 33 and 34 were of the year 1991. In the circumstances, if the increase of 10% in the value received to the lands, which were the subject matter in the said sale deeds would have given, even on the basis of the said sale deeds, the market value of the acquired lands would not have come less than Rs. 1650/- per Are. In the circumstances, I do not see any reason for causing any interference in so far as market value, as has been determined by the Reference Court. On perusal of the Cross-objections filed by the original claimant - Ramnath Dubale and after having heard the submissions of learned counsel for the said

claimant and learned counsel for the acquiring body, apparently, I see no reason for making any enhancement in the amount of compensation, as has been claimed by the said claimant in the cross objections. I have elaborately discussed herein above that the Reference Court has correctly determined the market value of the acquired lands on the basis of the evidence brought before it. The cross-objection being devoid of any substance, deserve to be dismissed.

11) There is however substance in the further contention raised by the Shri Patil, learned counsel for the acquiring body that the Reference Court committed an error in awarding the interest under Section 28 as well as under Section 34 of the Act. The learned counsel pointed out that the Reference Court has awarded interest under both the aforesaid provisions from the date of issuance of Section 4 notification. Relying upon the judgment of the Full Bench of this Court in the case of State of Maharashtra Vs. Kailash Shiva Rangari - 2016 (4) ALL MR 513 (FB) and the judgment delivered by learned Single Judge of this Court in First

Appeal No.383/2004 on 24.11.2017 and another judgment delivered by learned Single Judge of this Court in FA No. 483/2018 with connected appeals on 5th March, 2018, submitted that the Reference Court could have awarded interest under Sections 28 and 34 of the Act only from the date of declaration of the Award under Section 11 of the Act and not from any prior date.

12) Shri Jaybhar learned counsel appearing for the claimants in all these appeals fairly conceded that in view of the judgments relied upon by learned counsel appearing for the acquiring body, the impugned award in so far as it relates to award of interest under Sections 28 and 34 of the Act from the date of issuance of Section 4 notification, may not be sustained.

13) In the case of Kailash Shiva Rangari (cited supra) the full bench of this Court has ruled that, interest under Section 34 of the Act can only be granted from the date of declaration of the Award under Section 11 of the Act. Further, the learned Single Judge of this Court while

deciding First Appeal no.383/2004 has held that interpretation accorded to Section 34 of the Act by the Full Bench of this Court, would also have its equal application while understanding the import of Section 28 of the Act.

14) In First Appeal no.483/2018 decided by another learned Single Judge of this Court (Coram: Sunil P.Deshmukh,J.) on 5th March, 2018, with connected appeals, the same view is affirmed.

15) In the instant matters, it is not the case of the respondents original claimants that possession of their lands was taken by the acquiring body in accordance with Section 17 of the Act. As such, the interest on the amount of compensation would be payable under Section 28 as well as under Section 34 of the Act only from the date of declaration of the Award under Section 11 of the Act and not from any prior date. To the aforesaid extent, the impugned common judgment and award definitely needs to be corrected. Save and except the aforesaid modification, the other part of the Award has to be maintained as it is. In the

result, the following order is passed, -

ORDER

i. The common impugned judgment and award so far as it relates to grant of interest on the amount of compensation enhanced by the Reference Court under Section 28 as well as under Section 34 of the Act from the date of issuance of section 4 notification, stands set aside and quashed. Instead, the interest under Sections 28 and 34 of the Act shall be paid to the respondents – original claimants from the date of Award declared under Section 1 of the Act;

ii. With the modification to the aforesaid extent, the first appeals stand partly allowed and rest of the challenge in the first appeals stands dismissed;

iii. Modified award be prepared accordingly.

iv. Pending civil application, if any, stands disposed of.

v. The Cross-objection on stamp number stands dismissed.

vi. The amount deposited, if any by the acquiring body is permitted to be withdrawn by the respective claimants after the modification of the

Award in terms of the modified Award.

vii. Balance if any of the deposited amount after the modification of the award be refunded to the acquiring body.

(P.R. BORA)
JUDGE

bdv
jt - BDV
cause title- ASK

fldr 4.10.18