

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

212 FIRST APPEAL NO. 333 OF 2004

The State of Maharashtra
Through the Collector Beed. ..Appellant

VERSUS

Dadarao s/o.Vaijnath Agarkar
Age: 55 yrs., Occu.: Agri.,
R/o.Kanadimali,
Tal.Kaij, District Beed. ..Respondent

...

AGP for Appellant : Mr.A.M.Phule
Advocate for Respondents : Mr.M.M.Patil Beedkar,
Mr.S.P.Katneshwarkar (absent)

...

WITH

FA/334/2004 WITH FA/335/2004 WITH FA/336/2004 WITH
FA/337/2004 WITH FA/338/2004

...

CORAM : M.S.SONAK, J.

DATE : 29.1.2018

ORAL JUDGMENT:-

1) Heard Mr.A.M.Phule learned AGP for the appellant in
all these appeals.

2) In all these appeals, the Reference Court has

enhanced the compensation in respect of the acquired land from Rs.120/- per Are to Rs.600/- per Are. In addition, the Reference Court has held that the claimants are entitled to interest under Section 34 of the Land Acquisition Act, 1984, @ 9% p.a. for a period of one year from the date of taking possession i.e. 31.10.1985 to 30.10.1986 and @ 15% p.a. from 31.10.1986 to the date of payment i.e. 31.1.1991.

3) Mr.A.M.Phule learned AGP submits that there was no basis for grant of enhancement from Rs.120/- per Are to Rs.600/- per Are and in any case he submits that the award of interest under Section 34 of the Land Acquisition Act is contrary to the law laid down by the Full bench of this Court in the case of **State of Maharashtra Vs. Kailash Shiva Rangari [AIR 2016 Bom. 141]**. On these two grounds, Mr.Phule submits that impugned Judgments and awards are liable to be set aside.

4) In so far as the enhancement is concerned, the record and proceeding has been perused and on the basis of the same, it cannot be said that there is any legal infirmity on the part of the Reference Court in ordering enhanced compensation from Rs.120 per Are to Rs.600/- per Are, such increase is supported by the evidence on record and therefore, there is no case made out to interfere with the enhancement.

5) However, in so far as award of interest under Section 34 of the Land Acquisition Act is concerned, Mr.Phule is right that the award is contrary to the law laid down by this Court in the case of **Kailash Shiva Rangari** (supra) and therefore, modification is necessary. In **Kailash Shiva Rangari** (supra), the Full Bench has held as follows:-

"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 (AIR 2004 SC 1904) and Lila Ghosh (AIR 2004

SC 288), 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 and Anr. v. Rajendra Narayanrao Gaikwad, reported in (2008) 1 Bom CR 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(1A) 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(1A) and Section 34 of the said Act. The terminal points under Section 23(1A) 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 v. State of Maharashtra, reported in (2009) 3 All MR 779, and the similar view taken in other matters is no longer a good law.

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 landowner 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, decided by Smt. Vasanti A. Naik and Shri Prasanna B. Varale, JJ., and reported in (2012) 4 Mah LJ 742, lays down a correct position of law and it does not require reconsideration."

6) In this case, there is no clarity as to precise date of award, however, in the decision of the Full Bench, it is clear that interest u/s 34 will have to be awarded from the date of award and not from the date of possession, particularly, since in this case, there is no material on record to indicate that the possession was taken after invoking the urgency clause as stipulated u/s 17 of the Land Acquisition Act. To that extent, therefore, the impugned awards will have to be modified.

7) The appeals are therefore disposed of with the

following order:-

ORDER

(I) All the appeals are partly allowed.

(I) The enhancement of compensation by the Reference Court is not disturbed.

(III) However, interest u/s 34 of the said Act is to be computed from the date of award and not from the date of possession. To that extent, the direction made in the award is set aside.

(IV) On the basis of the aforesaid modification, the compensation amount together with interest thereon will have to be recomputed and held as payable to the respondents/claimants.

(V) The respondents/claimants will be entitled to withdraw the compensation amount, if deposited, on the basis of such recomputation.

(VI) If the compensation amount is not deposited, the appellant to deposit the same within eight weeks from today before the Reference Court on

the basis of such recomputation.

(VII) If the compensation amount is already deposited and is already withdrawn, even, the respondents/claimants to refund the excess amount as per recomputation as aforesaid, within a period of eight weeks from the date of receipt of notice from the appellant together with the copy of this Judgment and Award. If this is not done, the appellants will be entitled to recover such amount by instituting execution proceeding.

(VIII) The appeals are disposed of in the aforesaid terms.

(IX) There shall be no order as to costs.

[M.S.SONAK, J.]