

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

FIRST APPEAL NO.841 OF 2016

The State of Maharashtra
through Collector, Osmanabad

= **Appellant**
(Ori. Respondent)

VERSUS

1. Bapu S/o. Digambar Panahale,
Age: Adult, Occu.:Agril.,
R/o. Panhalwadi, Tq. Bhoom,
Dist. Osmanabad

2. The Executive Engineer,
Zilla Parishad, Irrigation,
Osmanabad

= **RESPONDENTS**
(Resp.No.1 Ori. Claimant)
(Resp.No.2 Ori.Resp.)

WITH

FIRST APPEAL NO.842 OF 2016

The State of Maharashtra
through Collector, Osmanabad

= **Appellant**
(Ori. Respondent)

VERSUS

Govind S/o. Hanumant Nirphal (Died)
his L.Rs.

1. Uttreshwar Govind Nirphal,
Age: Adult, Occu.:Agril.,
R/o. Panhalwadi, Tq. Bhoom,
Dist. Osmanabad

2. The Executive Engineer,
Zilla Parishad, Irrigation,
Osmanabad

= **RESPONDENTS**
(Resp.No.1 Ori. Claimant)
(Resp.No.2 Ori.Resp.)

WITH

FIRST APPEAL NO.844 OF 2016

The State of Maharashtra
through Collector, Osmanabad

= **Appellant**
(Ori. Respondent)

VERSUS

1. Vasant S/o. Sitaram Nirphal,
Age: Adult, Occu.:Agril.,
R/o. Panhalwadi, Tq. Bhoom,
Dist. Osmanabad

2. The Executive Engineer,
Zilla Parishad, Irrigation,
Osmanabad

= **RESPONDENTS**
(Resp.No.1 Ori. Claimant)
(Resp.No.2 Ori.Resp.)

WITH

FIRST APPEAL NO.845 OF 2016

The State of Maharashtra
through Collector, Osmanabad

= **Appellant**
(Ori. Respondent)

VERSUS

1. Gorakh S/o. Nivruti Nirphal,
Age: Adult, Occu.:Agril.,
R/o. Panhalwadi, Tq. Bhoom,
Dist. Osmanabad

2. The Executive Engineer,
Zilla Parishad, Irrigation,
Osmanabad

= **RESPONDENTS**
(Resp.No.1 Ori. Claimant)
(Resp.No.2 Ori.Resp.)

WITH

FIRST APPEAL NO.846 OF 2016

The State of Maharashtra
through Collector, Osmanabad

= **Appellant**
(Ori. Respondent)

VERSUS

1. Kalyan S/o. Uttam Panahale,

(3)

Age: Adult, Occu.:Agril.,
R/o. Panhalwadi, Tq. Bhoom,
Dist. Osmanabad

2. The Executive Engineer,
Zilla Parishad, Irrigation,
Osmanabad = **RESPONDENTS**
(Resp.No.1 Ori. Claimant)
(Resp.No.2 Ori.Resp.)

WITH
FIRST APPEAL NO.843 OF 2016

The State of Maharashtra
through Collector, Osmanabad
= **Appellant**
(Ori. Respondent)

VERSUS

1. Namdeo Hanumant Nirphal,
Age: Adult, Occu.:Agril.,
R/o. Panhalwadi, Tq. Bhoom,
Dist. Osmanabad
2. The Executive Engineer,
Zilla Parishad, Irrigation,
Osmanabad = **RESPONDENTS**
(Resp.No.1 Ori. Claimant)
(Resp.No.2 Ori.Resp.)

Mrs. S.S. Raut, AGP for Appellant-State;

Shri. D.A. Madake, Adv. h/f. Shri. A.R. Barate,
Advt. for Respondents

CORAM : P.R.BORA, J.

DATE OF RESERVING JUDGMENT : 21st September, 2018
DATE OF PRONOUNCING JUDGMENT : 22nd October, 2018

JUDGMENT:

1. FA No.843/2016 is not on Board. Taken on
Board.

. These appeals are arising out of common Judgment and Award passed by 2nd Civil Judge, Senior Division, at Osmanabad on 19.11.2010 in LAR No.195/1999 with connected LARs. I have, therefore, heard the common arguments in these appeals and I deem it appropriate to decide these appeals by a common reasoning.

2. The lands, which are involved in the present matters, were acquired for construction of percolation tank at village Panhalwadi, Tq. Bhoom, District Osmanabad. Notification under Section 4 of the Land Acquisition Act, 1894 (herein after referred to as the Act) in that regard was published in the official gazette on 30th September, 1993 and Award under Section 11 of the Act came to be passed on 2nd May, 1997. The lands involved in all these matters were situated at village Panhalwadi. The Special Land Acquisition Officer offered the compensation to the claimants @ Rs.17000/- per hectare, i.e. Rs.170/- per Are. Dissatisfied with the compensation so offered, the claimants preferred Reference Applications under Section 18 of the Act to Collector, Osmanabad, who

in turn forwarded the said applications for adjudication to the civil court. The Civil Court is herein after referred to as the Reference Court. The claimants had claimed the compensation @ Rs. 80,000/- per acre. In order to substantiate the claim so raised by them, the claimants, in addition to their own testimonies, had filed on record three sale instances pertaining to the lands, which according to them, were comparable with the acquired lands. No oral or documentary evidence was adduced on behalf of the State.

3. The learned Reference Court after having assessed the oral and documentary evidence brought on record before it, determined the market value of the acquired lands @ Rs.35,000/- per acre, i.e. @ Rs.875/- per Are and accordingly enhanced the amount of compensation. The Reference Court also held the claimants entitled for the statutory benefits as well as interest on the amount of compensation under the relevant legal provisions in the Land Acquisition Act. Aggrieved by, the State has preferred the present appeals.

4. Smt. SS Raut, learned AGP appearing for the State, assailed the impugned common Judgment and Award on various grounds. The learned AGP submitted that the sale instances, relying on which the Reference Court has determined the market value of the acquired lands and has accordingly enhanced the amount of compensation, were not pertaining to the lands comparable to the lands which are the subject matter in the present appeals. The learned AGP further submitted that the Reference Court also failed in appreciating that the sale instances, relying on which it has determined the market value of the acquired lands, were of the lands situated at village Bawi. The learned AGP further submitted that the Reference Court has also failed in appreciating that the sale instances relied upon were of the small pieces of lands and as such, no reliance could have been placed on the said sale instances for determining the market value of the acquired lands. The learned AGP further submitted that the Reference Court has also erred in awarding the interest under Section 28 as well as 34 of the Act from the date of the notification under Section 4 of the Act. On these grounds, the leaned AGP

prayed for setting aside the Awards impugned in the present appeals. It was the contention of the learned AGP that the Special Land Acquisition Officer had correctly determined the market value of the acquired lands, and as such, the said Award needs to be restored.

5. Learned Counsel appearing for the respondents, i.e. original claimants, supported the impugned Judgment and Award. The learned counsel submitted that the Reference Court has passed a well-reasoned order and no interference is required in the Judgment and Award so passed. The learned counsel submitted that the sale instances, which were brought on record by the claimants are of the comparable lands and the Reference Court has, therefore, rightly relied upon the said sale instances while determining the market value of the acquired lands. The learned counsel, therefore, prayed for dismissal of the appeals.

6. I have given due consideration to the submissions made by learned AGP and learned counsel for the respondents – claimants. I have also

perused the impugned common Judgment and Award and the evidence adduced in these matters.

7. The material on record reveals that the claimants in LAR No.223/1999 had claimed enhanced compensation of Rs.1,95,000/- along with statutory benefits and the interest. The claimants in LAR No. 224/1999 had claimed the enhanced compensation of Rs.3,09,000/-. The claimants in LAR No. 195/1999 had claimed enhanced compensation of Rs. 69,000/-. The claimants in LAR No.196/1999 had claimed the enhanced compensation of Rs. 2,29,000/-. The claimants in LAR No.222/1999 had claimed the enhanced compensation of Rs.26,000/- and claimants in LAR No.122/2002 had claimed the enhanced compensation of Rs.1,98,000/-.

8. The material on record further reveals that in order to prove their respective claims, claimant – Bapu Digambar Panhale (CW 1); Keraba Genba Panahale (CW 2) and Dayanand Sahebrao Pimple (CW 3) testified before the Reference Court. Besides the oral evidence of the aforesaid claimants, certified copies of three sale

instances, respectively at Exh. 23, 24 and 25, were also placed on record. The respondents did not adduce any oral or documentary evidence.

9. According to the claimants, the acquired lands were irrigated and highly fertile lands. Irrigation was claimed on the well-water with the help of electric motor and oil engine. It was also claimed by the claimants that they were taking crops like Jawar, Chilly, Wheat, Sun-flower and sugarcane in the acquired lands. According to the claimants, the market value of the acquired lands was around Rs.60,000/- to Rs.80,000/- per acre. The learned Reference Court has, however, not accepted the contentions of the claimants that the acquired lands were irrigated lands on the well water. The Reference Court has observed that the claimants did not place on record any documentary evidence to prove that the acquired lands were irrigated lands. The learned Reference Court has also observed that the claimants had also not placed on record 7/12 extracts of the said lands to prove that they were taking cash crops in the acquired lands. The Reference Court has also observed that though CW 1

– Bapu Panhale had testified before the court that he sold jaggery in the market, he did not place on record a receipt of sale of jaggery in the market. In the circumstances, the Reference Court recorded a conclusion that the claimants failed in proving that the acquired lands were irrigated lands. The Reference Court, therefore, treated the acquired lands to be non-irrigated lands and accordingly, determined the market value of the said lands on the basis of the evidence brought before it.

10. It was sought to be contended by learned counsel appearing for the claimants that sufficient evidence was placed on record and more particularly when it was brought on record that the acquired lands were containing fruits-bearing trees, the Reference Court must have held the acquired lands to be irrigated lands and accordingly must have determined the market value of the acquired lands. I am, however, not convinced with the submission so made. On perusal of the entire material, it is revealed that no such evidence is placed on record by the claimants on the basis of which, the Reference Court could have drawn inference that the

acquired lands were irrigated lands. I have also perused the copy of Award, which is at Exhibit-20 and E-Statement, which is at Exh. 21. Both these documents clearly show that the acquired lands were non-irrigated lands.

11. As noted herein above, the claimants had relied upon three sale instances respectively at Exhibits-23, 24 and 25. The lands, which were the subject matter of Exhibits-23 and 24 were admittedly of village Bawi; whereas the land involved in sale instance at Exh. 25 was of village Panhalwadi. The Reference Court preferred to rely upon the said sale instance at Exh. 25. In order to prove the said sale instance, witness by name Kerba Panhale (CW 2) was examined by the claimants. Said witness CW 2 testified before the court that he sold the land bearing Gut No.167, admeasuring 50 Ares situated at village Panhalwadi for the consideration of Rs.50,000/- to one Abhiman Panahale. It was also deposed by said Keraba that the land involved in the sale instance at Exh. 25 was at the distance of less than 1 km from the acquired lands. It is the matter of record that

the respondents did not adduce any oral or documentary evidence. Perusal of the impugned judgment reveals that the Reference Court preferred to rely upon the sale instance at Exh. 25 and declined to rely upon the sale instance at Exhibits 23 and 24. The Reference Court did not rely upon the sale instance at Exhibits 23 and 24 for the reason that the lands involved in the sale instances were of village Bawi; whereas the land involved in the sale instance at Exh. 25 was from village Panhalwadi. It was the contention of the learned AGP that the Reference Court grossly erred in relying upon the said sale instance since it was of the period after issuance of Section 4 notification. It was the contention of the learned AGP that since the said sale had taken place about eight months after issuance of Section 4 notification, the price received to the said land was definitely on higher side and the market value of the acquired lands could not have been determined on the basis of the said sale instance.

12. Relying on the judgment in the case of Deputy Collector and Land Acquisition Officer Vs.

Joaquim Francis Fernandes & Ors. - 2010 (5) ALL M.R. 329, the Reference Court has preferred to rely upon the said sale instance, though it was subsequent to Section 4 notification. It does not appear to me that the Reference Court has committed any error in relying upon the said sale instance. It further appears to me that there was no reason for the Reference Court to even reject the instances at Exh. 23 and Exh. 24. Village Bawi, as has come on record, is at the short distance of village Panhalwadi. Exh. 23 is the agreement to sale pertaining to the land at village Bawi, admeasuring 36 Ares and was agreed to be sold at the price of Rs.40,000/-, i.e. @ Rs.44,000/- per acre. The land, which was the subject matter of Exhibit-24, was also from village Bawi, admeasuring 36 Ares and the same was sold, vide registered sale deed executed on 14th December, 1993, at the same price, i.e. @ Rs. 44,000/- per acre. Sale deed at Exh. 23 was of the period prior to issuance of Section 4 notification. No contrary evidence was brought on record by the respondents so as to show that the market value of the acquired lands was less than the price received to the lands in the

aforesaid sale instances. The learned Reference Court, after having taken into account the fact that the land, which was the subject matter of Exh. 25, was having 4 Anna right to fetch well water, has determined the market value of the acquired lands by deducting the said value.

13. After having considered the discussion made by the Reference Court and the evidence available on record, it does not appear to me that the Reference Court has committed any error in determining the market value of the acquired lands @ Rs.35,000/- per acre. The market value so determined by the Reference Court, in no way, can be held to be unreasonable or to have been determined arbitrarily on higher side. Thus, in so far as the objections raised by the State as about the determination of the market value by the Reference Court is concerned, I do not find any substance therein.

14. The another objection was raised by the learned AGP that the Reference Court has committed an error in awarding the statutory benefits and

interest. The learned AGP submitted that there is some ambiguity in the order passed by the Reference Court as about the grant of interest under Section 28 and 34 of the Act. Inviting my attention to clause 8 of the order, learned AGP submitted that it is difficult to understand from clause 8 of the order as to under which section of the Act, the interest has been awarded by the Reference Court. The learned AGP submitted that the ambiguity needs to be removed and specific order needs to be passed as about the interest under Section 28 as well as under Section 34 of the Act.

15. I find substance in the submissions so made by the learned AGP. On perusal of clause 8 of the order, it is really difficult to gather on which amount and from which date the interest has been awarded by the Reference Court. The said clause 8 of the order can be interpreted to mean that it pertains to award of interest under Section 28 of the Act and the same has been awarded by the Reference Court, i.e. from the date of issuance of notification under Section 4 of the Act. The Full Bench of this Court in the Case of The State of

Maharashtra Vs. Kailash Shiva Rangari - 2016 (4)
ALL MR 513 (FB)) has ruled that, the interest under Section 34 of the Act can only be made payable from the date of Award under Section 11 of the Act and not from any prior date. The learned Single Judge of this court (Coram: S.B.Shukre,J.) while deciding the First Appeal No.383/2004, vide judgment delivered on 23rd November, 2017, has held that the 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, and has accordingly set aside the Award impugned in the said appeal wherein the Reference Court has awarded the interest from the date of taking over possession of the land and instead made it applicable from the date of declaration of the Award under Section 11 of the Act. In FA No.483/2018 decided by another learned Single Judge of this Court (Coram: Sunil P.Delshmukh,J.) on 5th March, 2018 with connected appeals, the aforesaid view is affirmed.

16. In so far as the interest awarded @ 12% p.a. on the amount of compensation, though it is

not specifically mentioned by the Reference Court under what provision the same has been awarded, it is discernible that the same is awarded under Section 23(1-A) of the Act. The same has been correctly awarded and no interference is required in the order so passed.

17. After having considered the entire material on record, it thus appears to me that clause 8 of the common Judgment and Award only needs to be modified. The other part of the common Judgment and Award needs no interference and requires to be maintained as it is. Clause 8 of the common Judgment and Award be substituted with the following, -

“8-A. The claimants in all the Reference Applications are also entitled for the amount of *solatium* @ 30% of the market value determined by the Reference Court;

8-B. The claimants are also held entitled to receive the interest on the amount of compensation, as determined by the Reference Court @ 9% p.a. From the

date of declaration of the Award under Section 11 of the Act for next one year and for the further period after expiry of the said period of one year, @ 15% p.a. till realization of the said amount.

18. The First Appeals are partly allowed in the aforesaid terms. Pending Civil Applications, if any, stand disposed of.

(P.R.BORA)
JUDGE

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fldr 15.10.18