

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

**936 FIRST APPEAL NO. 3242/2018
WITH CA/8716/2012 IN FA/3242/2018**

The Godavari Marathwada Irrigation
Development Corporation,
Through the Executive Engineer,
Minor Irrigation Division, Latur,
Tq. and Dist.Latur.

..Appellant
(Ori. Respondent No.2)

Versus

- 1] Bapusaheb s/o Annasaheb Deshpande
Died through it's LR's
- 1-1] Smt.Satyabhama d/o Bapusaheb Deshpande
Age: 52 yrs., Occu.: H.H.
- 1-2] Sou. Jaishree w/o Govindrao Kulkarni
Age: 35 yrs., Occu.: H.H.
- 1-3] Nandkumar s/o. Bapusaheb Deshpande
Age: 33 yrs., Occu.: Agri.

All R/o. Shivani (Kd.)
Tq. & Dist.Latur.

- 2] Balasaheb S/o. Annasaheb Deshpande
Age: 25 yrs., Occu.: Agri.
- 3] The State of Maharashtra,
Through it's Collector, Latur. ..Respondents
(Res.No.1-1 to 1-3 Orig. Claimants)

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**WITH
FIRST APPEAL NO. 3243/2018
WITH CA/8719/2012 IN FA/3243/2018**

The Godavari Marathwada Irrigation
Development Corporation,
Through the Executive Engineer,
Minor Irrigation Division, Latur,
Tq. and Dist.Latur.

..Appellant
(Ori. Respondent No.2)

Versus

- 1] Irappa s/o Bala Panchal
Age: Major, Occu.: Agri.,
R/o. Shivani (Kd.)
Tq. & Dist.Latur.
- 2] The State of Maharashtra,
Through it's Collector, Latur. ..Respondents
(Res.No.1 Orig. Claimant)

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**WITH
FIRST APPEAL NO. 3244/2018
WITH CA/8763/2012 IN FA/3244/2018**

- . The Godavari Marathwada Irrigation
Development Corporation,
Through the Executive Engineer,
Minor Irrigation Division, Latur,
Tq. and Dist.Latur. ..Appellant
(Ori. Respondent No.2)

Versus

- 1] Manisha @ Thakubai d/o Venkat More
Age: Major, Occu.: Agri.,
R/o. C/o. Lalitabai Venkat More,
Shivani (Kd.)
Tq. & Dist.Latur.
- 2] The State of Maharashtra,
Through it's Collector, Latur. ..Respondents
(Res.No.1 Orig. Claimant)

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**WITH
FIRST APPEAL NO. 3245/2018
WITH CA/8766/2012 IN FA/3245/2018**

- . The Godavari Marathwada Irrigation
Development Corporation,
Through the Executive Engineer,
Minor Irrigation Division, Latur,
Tq. and Dist.Latur. ..Appellant
(Ori. Respondent No.2)

Versus

- 1] Yeashwant s/o Ramling Aute
Age: 40 Yrs., Occu.: Agri.,
- 2] Sambaji s/o Ramling Aute
Age: 45 yrs., Occu.: Agri.,
Both R/o Shivani (Kd)
Tq. & Dist.Latur.
- 3] The State of Maharashtra,
Through it's Collector, Latur. ..Respondents
(Res.No.1 to 2 Orig. Claimants)

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**WITH
FIRST APPEAL NO. 3246/2018
WITH CA/8747/2012 IN FA/3246/2018**

- . The Godavari Marathwada Irrigation
Development Corporation,
Through the Executive Engineer,
Minor Irrigation Division, Latur,
Tq. and Dist.Latur. ..Appellant
(Ori. Respondent No.2)

Versus

- 1] Ramchandra Dhondiba Borade
Died Through L.R.'s
- 1-1] Shalubai w/o Ramchandra Borade
Age: 65 yrs., Occu.: H.H.
- 1-2] Prakash s/o Ramchandra Borade
Age: 47 yrs., Occu.: Agri.
- 1-3] Ashok s/o Ramchandra Borade
Age: 44 yrs., Occu.: Agri.
All. R/o Shivani (Kd.),
Tq. & Dist.Latur.
- 1-4] Satish Ramchandra Borade
Age: 40, Occu.: Agri.,
R/o. As above.
- 2] The State of Maharashtra,

Through it's Collector, Latur. ..Respondents
(Res.No.1-1 to 1-3 Orig. Claimants)

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WITH
FIRST APPEAL NO. 3247/2018
WITH CA/8731/2012 IN FA/3247/2018

The Godavari Marathwada Irrigation
Development Corporation,
Through the Executive Engineer,
Minor Irrigation Division, Latur,
Tq. and Dist.Latur. ..Appellant
(Ori. Respondent No.2)

Versus

- 1] Bhagwan S/o Shankar Jadhav
Age: Major, Occu.: Agri.,
R/o.Shivani (Kd.)
Tq. & Dist.Latur.
- 2] The State of Maharashtra,
Through it's Collector, Latur. ..Respondents
(Res.No.1 Orig. Claimant)

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WITH
FIRST APPEAL NO. 3248/2018
WITH CA/8725/2012 IN FA/3248/2018

The Godavari Marathwada Irrigation
Development Corporation,
Through the Executive Engineer,
Minor Irrigation Division, Latur,
Tq. and Dist.Latur. ..Appellant
(Ori. Respondent No.2)

Versus

- 1] Changdeo s/o Tukaram Jadhav
Age: 60 yrs., Occu.: Agri.,
R/o. Shivani (Kd.)
Tq. & Dist.Latur.
- 2] The State of Maharashtra,
Through it's Collector, Latur. ..Respondents
(Res.No.1 Orig. Claimant)

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WITH
FIRST APPEAL NO. 3249/2018
WITH CA/8728/2012 IN FA/3249/2018

The Godavari Marathwada Irrigation
 Development Corporation,
 Through the Executive Engineer,
 Minor Irrigation Division, Latur,
 Tq. and Dist.Latur.

..Appellant
 (Ori. Respondent No.2)

Versus

- 1] Vaijanath S/o Manik Aute
 Age: 60 yrs., Occu.: Agri.,
- 2] Gurunath S/o Manik Aute
 Age: 55 yrs., Occu.: Agri.,
 Both R/o. Shivani (Kd.),
 Tq. & Dist.Latur.
- 3] The State of Maharashtra,
 Through it's Collector, Latur. ..Respondents
 (Res.No.1 & 2 Orig. Claimants)

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WITH
FIRST APPEAL NO. 3250/2018
WITH CA/8722/2012 IN FA/3250/2018

The Godavari Marathwada Irrigation
 Development Corporation,
 Through the Executive Engineer,
 Minor Irrigation Division, Latur,
 Tq. and Dist.Latur.

..Appellant
 (Ori. Respondent No.2)

Versus

- 1] Isaqkhan Nawazkhan Pathan
 Died through it's LR's
- 1-1] Hajrabee w/o Isaqkhan Pathan
 Age: Major, Occu.: Agri.

- 1-2] Aslamkhan s/o Isaqkhan Pathan
Age: Major, Occu.: Agri.,
- 1-3] Shaminaparvin d/o Isaqkhan Pathan
Age: 22 yrs., Occu.: H.H. & Agri.,
- 1-4] Akramkhan s/o Isaqkhan Pathan
Age: Major, Occu.: Agri.,
- 1-5] Ashmanparvin d/o Isaqkhan Pathan
Age: Major, Occu.: Agri.,
- 1-6] Reshmanparvin d/o Isaqkhan Pathan
Age: Major, Occu.: Agri.,
All R/o. Bori, Tq. & Dist.Latur.,
At present Mangululpir, Dist.Washi.
- 2] Hussainkhan Khudabaksh Pathan
Died through it's LR's
- 2-1] Smt.Ashrafbee w/o Hussainkhan Pathan
Age: 65, Occu.: H.H. & Agri.,
- 2-2] Smt.Fatrubee w/o Sherkhan Pathan
Age: 45, Occu.: H.H. & Agri.
- 2-3] Jafarkhan s/o Hussainkhan Pathan
Age: 45 yrs., Occu.: Agri.,
- 2-4] Smt.Shakelabee w/o Ibrahim Shaikh
Age: 45 yrs., Occu.: H.H. & Agri.,
- 2-5] Akelabee Sattarkhan
Age: 45, Occ.: H.H. & Agri.
- 2-6] Smt.Salimabee w/o Rajakhan Pathan
Age: 47, Occu.: H.H. & Agri.
- 2-7] Smt.Fatimibee w/o Husainkhan Pathan
Age: 45, Occu.: H.H. & Agri.,
- 2-8] Ayubkhan s/o Hussenkhan Pathan
Age: 51, Occu.: Agri.,
- 2-9] Yunus s/o Hussenkhan Pathan

Age: 51, Occu.: Agri.
All.: R/o. Bori, Tq. & Dist.Latur.

- 3] Noorkhan s/o Ismailkhan Pathan
Age: 48, Occu.: Agri.,
R/o. Bori, Tq. & Dist.: Latur.
- 4] The State of Maharashtra,
Through it's Collector, Latur. ..Respondents
(Res.No.1-3 Orig. Claimants)

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WITH
FIRST APPEAL NO. 3251/2018
WITH CA/8754/2012 IN FA/3251/2018

- . The Godavari Marathwada Irrigation
Development Corporation,
Through the Executive Engineer,
Minor Irrigation Division, Latur,
Tq. and Dist.Latur. ..Appellant
(Ori. Respondent No.2)

Versus

- 1] Sau.Kamalbai Bapurao Tattapure
Age: 60 yrs., Occu.: H.H. & Agri.,
R/o. Shivani (Kd.)
Tq. & Dist.Latur.
- 2] The State of Maharashtra,
Through it's Collector, Latur. ..Respondents
(Res.No.1 Orig. Claimant)

...
WITH
FIRST APPEAL NO. 3252/2018
WITH CA/8760/2012 IN FA/3252/2018

- . The Godavari Marathwada Irrigation
Development Corporation,
Through the Executive Engineer,
Minor Irrigation Division, Latur,
Tq. and Dist.Latur. ..Appellant
(Ori. Respondent No.2)

Versus

- 1] Vinayak s/o Dattu Jadhav
Age: 60 yrs., Occu.: Agri.,
- 2] Balaji s/o Dattu Jadhav
Age: 65 yrs., Occu.: Agri.,
Both R/o. Shivani (Kd.),
Tq. & Dist.Latur.
- 2] The State of Maharashtra,
Through it's Collector, Latur. ..Respondents
(Res.No.1 & 2 Orig. Claimants)

...

WITH

**FIRST APPEAL NO. 3253/2018
WITH CA/8769/2012 IN FA/3253/2018**

- . The Godavari Marathwada Irrigation
Development Corporation,
Through the Executive Engineer,
Minor Irrigation Division, Latur,
Tq. and Dist.Latur. ..Appellant
(Ori. Respondent No.2)

Versus

- 1] Dnyoba s/o Shrirang More
Age: 40 yrs., Occu.: Agri.,
R/o. Shivani (Kd.)
Tq. & Dist.Latur.
- 2] The State of Maharashtra,
Through it's Collector, Latur. ..Respondents
(Res.No.1 Orig. Claimant)

...

WITH

**FIRST APPEAL NO. 3254/2018
WITH CA/8757/2012 IN FA/3254/2018**

- . The Godavari Marathwada Irrigation
Development Corporation,
Through the Executive Engineer,
Minor Irrigation Division, Latur,
Tq. and Dist.Latur. ..Appellant
(Ori. Respondent No.2)

Versus

- 1] Mohan s/o Govindrao Kulkarni
Died Through LR's
- 1-1] Govind s/o Mohanrao Kulkarni
Age: 30 yrs., Occu.: Agri.,
R/o. Shivani (Kd.)
Tq. & Dist.Latur.
- 2] The State of Maharashtra,
Through it's Collector, Latur. ..Respondents
(Res.No.1-1 Orig. Claimant)

...

**WITH
FIRST APPEAL NO. 3255/2018
WITH CA/8745/2012 IN FA/3255/2018**

- . The Godavari Marathwada Irrigation
Development Corporation,
Through the Executive Engineer,
Minor Irrigation Division, Latur,
Tq. and Dist.Latur. ..Appellant
(Ori. Respondent No.2)

Versus

- 1] Vinayak s/o Vithoba Bhosale
Age: Major, Occu.: Agri.,
R/o. Shivani (Kd.)
Tq. & Dist.Latur.
- 2] The State of Maharashtra,
Through it's Collector, Latur. ..Respondents
(Res.No.1 Orig. Claimant)

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Advocate for Appellant : Shri Anil M. Gaikwad
AGP for Respondent – State : Shri G.O.Wattamwar
Advocate for Respondents - Claimants : Shri G. L. Deshpande
Advocate for Respondent Nos.1-1, 1-3, 3 (in FA/3250/2018) :
Shri M.S.Choudhari
Advocate for Respondent Nos.2-2 to 2-9 (in FA/3250/2018) :
Shri S.S.Manale

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CORAM : P.R.BORA, J.

DATE: 26th October, 2018

ORAL JUDGMENT:-

1. The present appeals are arising out of the common Judgment and award passed by the Court of Civil Judge, Senior Division at Latur on 02.09.2009 in Land Acquisition Reference No.538 of 1998 with connected 13 Land Acquisition References. I have, therefore, heard the common arguments in all these appeals and I deem it appropriate to decide all these appeals by common reasoning.

2. The lands which are involved in these appeals were acquired for the construction of Shivani K.T. Weir. The Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was published in that regard in the official Gazette on 04.07.1994 and the award under Section 11 came to be passed on 24.09.1996. The Special Land Acquisition Officer had offered the compensation ranging between Rs.35,000/- to Rs.53,000/- per Hectare for non-irrigated lands as per the quality and category of the respective lands. For the irrigated lands, the Special Land Acquisition Officer had offered the compensation ranging between Rs.75,000/- to Rs.1,06,000/- per Hectare. Dissatisfied with the

amount of compensation so offered, the claimants had preferred applications under Section 18 of the Act to Collector, Latur, who in turn forwarded all said applications for adjudication to the Civil Court. The Civil Court is herein after referred to as the Reference Court. Before the Reference Court, the claimants had demanded the compensation at the rate of Rs.1,25,000/- per Acre. In order to substantiate their claims, the claimants testified before the Reference Court and also brought on record one sale instance pertaining to the land, which according to them was comparable. No oral or documentary evidence was adduced by the respondents. The Reference Court after having assessed the oral as well as documentary evidence brought on record before it, determined the market value of the non-irrigated lands @ Rs.1,00,000/- per Hectare and accordingly enhanced the amount of compensation. The Reference Court determined the market value of the irrigated lands @ Rs.1,50,000/- per Acre. The Reference Court has also granted statutory benefits and interest as provided under the provisions of the Act. Aggrieved by, the Acquiring Body has preferred the present appeals.

3. Shri A.M.Gaikwad, learned Counsel appearing for the

Acquiring Body assailed the impugned Judgment on various rounds. The learned Counsel submitted that the Reference Court has grossly erred in implicitly relying upon the sole sale instance at Exh.57 brought on record by the claimants. The learned Counsel submitted that the sale instance at Exh.57 in no way can be said to be of comparable land. The learned Counsel submitted that the land, which was subject matter of Exh.57, was fully irrigated land and was sold on 05.06.1991 i.e. prior to three years of issuance of Section 4 Notification for the consideration of Rs.80,000/- i.e. at the rate of Rs.1,29,032/- per Hectare. The learned Counsel submitted that on the basis of said sale instance, the market value of the subject land could not have been determined by the Reference Court. The learned Counsel submitted that on the contrary, the Special Land Acquisition Officer had taken into account the over all circumstances and had physically visited the lands, which were intended to be acquired and thereafter, determined the market value of each of the said land separately by making categories of the said lands. The learned Counsel submitted that the land, which was subject matter at Exh.57, was admittedly the perennial irrigated land sold for Rs.1,29,032/- per Hectare and as such in no case the market value of the acquired lands could have been determined by the Reference

Court more than half of the rate received to the said land i.e. more than Rs.65,000/- per Hectare. By determining the market value of the acquired lands @ Rs.1,00,000/- per Hectare, according to the learned Counsel, the Reference Court thus has given unreasonable hike in the price of the said lands. The learned Counsel submitted that in respect of the irrigated lands also, the value as has been determined by the Reference Court is excessive and arbitrary.

4. The learned Counsel further submitted that the Reference Court has also manifestly erred in awarding interest under Section 34 of the Act from the date of possession of the lands, whereas it could have been granted only from the date of declaration of the award under Section 11 of the Act. For all the above reasons, the learned Counsel prayed for modification in the impugned award and to redetermine the market value on the basis of evidence on record. The learned Counsel submitted that the Special Land Acquisition Officer had properly considered the sale instances and other material on record and award passed by the Special Land Acquisition Officer, therefore, needs to be restored.

5. Shri G.L.Deshpande, learned Counsel appearing for claimants

in all these matters, supported the impugned Judgment and award. The learned Counsel submitted that the Reference Court has passed a well reasoned order and has accurately and appropriately determined the market value of the acquired lands and as such no interference is required in the impugned Judgment and award. In so far as interest part is concerned, the learned Counsel fairly accepted the legal position as settled by the Full Bench of this Court.

6. I have given due consideration to the submissions made by the learned Counsel appearing for the respective parties. I have also perused the impugned Judgment and the evidence on record. The land which was the subject matter of Land Acquisition Reference No.552 of 2998 against which First Appeal No.3248 of 2018 is filed, alone was the irrigated land; all other lands were admittedly non-irrigated lands. The perusal of the impugned Judgment reveals that the Reference Court has relied upon the sale instance at Exh.57. I have noted herein above the particulars of the said sale instance. It was the contention of the learned Counsel for the Acquiring Body that even on the basis of such sale instance, the market value of the non-irrigated acquired lands could not have been determined @ Rs.1,00,000/- per Hectare. I am, however, not convinced with the

submission so made. The Reference Court has not blindly accepted the said sale instance. The discussion made by the Reference Court reveals that the Reference Court has taken into account that the said sale instance was of the period prior to three years of issuance of Section 4 Notification. In the circumstances, the Reference Court has rightly given hike to the price of the said land @ 10% per year and accordingly, determined the prospective price of the said land as on the date of issuance of Section 4 Notification. It is further revealed that the Reference Court was quite conscience of the fact that the land involved in the sale instance at Exh.57 was irrigated land. The Reference Court has therefore, given half of the said rate to the lands, which are non-irrigated lands and has accordingly enhanced the amount of compensation.

7. After having gone through the discussion of the Reference Court and after having considered the evidence on record, it does not appear to me that any mistake has been committed by the Reference Court in determining the market value of the acquired land at the said rate. Sale instance at Exh.57 was the only evidence brought before the Reference Court for determining the market value of the acquired land. The respondents had not adduced oral or

documentary evidence. Considering the evidence on record, the market value of the lands as has been determined by the Reference Court appears to have been correctly determined. I, therefore, see no reason to cause interference in it.

8. However, there appears substance in submission of the learned Counsel appearing for the Acquiring Body that the Reference Court has wrongly awarded the interest under Section 34 of the Act from the date of issuance of Section 4 Notification. The learned Counsel has relied upon the Full Bench Judgment of this Court in the case of *The State of Maharashtra Vs. Kailash Shiva Rangari [2016 (4) All M.R.513]* wherein the Full Bench has ruled that the interest under Section 34 of the Act, can only be awarded from the date of publication of the award under Section 11 of the Act and not from any prior date. As I noted herein above, the learned Counsel appearing for the respondents has fairly conceded the legal position about grant of interest under Section 34 of the Act, from the date of publication of the award under Section 11 of the Act. To that extent, the impugned Judgment and award needs to be modified.

9. Even otherwise, it appears to me that in view of recent policy decision taken by the State of Maharashtra not to file appeals and

not to prosecute the appeals which are already filed, wherein the market value of the acquired lands as has been enhanced by the Reference Court is at the rate less than four times than the compensation offered by the Special Land Acquisition Officer. In view of that also the appeals were in fact not liable to be prosecuted further by the Acquiring Body. For the above reasons, I am not inclined to cause interference in the impugned Judgment save and except the interest awarded under Section 34 of the Act, from the date of issuance of the Notification under Section 4 of the Act. In the result, the following order:-

ORDER

I) The impugned common Judgment and award so far as it relates to grant of interest under Section 34 of the Act from the date of issuance of Section 4 Notification, is quashed and set aside. Instead, it is directed that such an interest shall be payable to the claimants from the date of declaration of award under Section 11 of the Act i.e. from 24.09.1996.

II) The other part of the award is maintained as it is.

III) The appeals thus stand partly allowed in the aforesaid terms.

IV) Pending civil applications stand disposed of.

(P.R.BORA)
JUDGE

SPT