

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

FIRST APPEAL NO. 2388 OF 2018

The Executive Engineer,
Minor Irrigation Division, Osmanabad,
Through Godavari Marathwada Irrigation
Development Corporation, Aurangabad. ..Appellant

Versus

Gajarbai Sahebrao Nalwade
(Died) through L.Rs.

1. Kamala Janardhan Kalonkhe,
Age: Major, Occu: Household,
R/o.-Ruikhel, Tq.- Shrigonda,
Dist. Ahmednagar.
2. Vijaymala Sahebrao Shelke,
Age: Major, Occu: Household,
R/o. Tandali, Tq.Shrigonda,
Dist. Ahmednagar.
3. Panchphula Dattatraya Pataiet,
Age: Major, Occu: Household,
R/o. Vaida, Tq. Kaij,
Dist. Beed.
4. Satyashila Dinkar Baraskar,
Age: Major, Occu: Household,
R/o. Pimpri, Tq. Paranda,
Dist. Osmanabad.
5. Shobha Rajendra Baraskar,
Age: Major, Occu: Household,
R/o. Pimpri, Tq. Paranda,
Dist. Osmanabad.
6. Mina Machhindra Chaudhari,
Age: Major, Occu: Household,
R/o. Tandulwadi, Tq. Washi,
Dist. Osmanabad.
7. The State of Maharashtra,
Through the Collector,
Osmanabad ..Respondents

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Mr. Sudhir G. Bhalerao, Advocate for Appellant.

Mr. V.V. Ingle, Advocate for Respondent Nos. 1 to 6.

Mr. P.G. Borade, AGP for Respondent/State.

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CORAM : P.R. BORA, J.

DATE : 12th OCTOBER, 2018.

ORAL JUDGMENT:-

. With consent of the learned counsel appearing for the parties, the appeal is taken up for final hearing.

2. The award passed in L.A.R. No. 1286 of 2002 decided by the Joint Civil Judge Senior Division at Osmanabad on 03.10.2012 is challenged by the acquiring body by filing the present appeal mainly on two grounds. The first that the Reference Court has relied upon the sale instance from a different village situated at different Taluka and that the interest under Section 28 and under Section 34 of the Act has been wrongly awarded by the Reference Court from the date of taking possession of the acquired land.

3. Shri Bhalerao, the learned counsel appearing for the acquiring body brought to my notice that relying upon one sale instance at Exhibit-20, the Reference Court has determined the

market value of the acquired land. The learned counsel pointed out that the land which was the subject matter of Exhibit 20 was admittedly of Village Lonighat in Taluka Beed whereas, the acquired lands were from Village Lanjeshwar Taluka Bhoom. The learned counsel further submitted that the Reference Court has also not anywhere discussed as about the comparability of the land involved in the sale instance at Exhibit-20 and the subject lands. In the circumstances, according to the learned counsel, the judgment cannot be sustained.

4. The learned counsel further brought to my notice that the Reference Court has awarded the interest under Section 28 as well as under Section 34 of the Act from the date of possession of the acquired lands. The learned counsel relied upon the judgment of Full Bench of this Court in case of **"The State of Maharashtra Vs. Kailash Shiva Rangari , 2016 (4) Bom.C.R. 1"** and also the judgment of the learned Single Judge of this Court (Coram: Sunil P. Deshmukh, J.) delivered on 05.03.2018 in First Appeal No.483 of 2018. The learned counsel therefore prayed for modification in the impugned award. The learned counsel prayed

that the SLAO had appropriately determined the market value and the award passed by the SLAO needs to be restored.

5. Shri Ingle, the learned counsel appearing for the original claimants submitted that though Village Lonighat may be in Taluka Beed and Lanjeshwar comes in Taluka Bhoom, the distance between these two villages is not more than 1 to 2 kms. The learned counsel submitted that in such circumstances, no fault can be found if the Reference Court has relied upon the sale instance at Exhibit-20. The learned counsel invited my attention to the discussion made by the learned Reference Court in Para-21 of the judgment wherein, the learned Reference Court has categorically observed that the evidence of CW-1 Vijaymala and CW-2 Shahaji that acquired lands were at a distance of hardly 1-2 kms from Lonighat has not been shattered in their cross-examination. The Reference Court has further observed that the lands which were the subject matter of the sale deed at Exhibit-20 appears to be in the vicinity of the acquired lands and hence can be considered for

arriving at a fair and reasonable market value. It does not appear to me that the Reference Court has committed any error in determining the market value on the basis of the said sale instance.

6. Admittedly, no evidence was adduced on behalf of the the State or by the SLAO so as to take any contrary view. I, therefore, do not find any substance in the objection raised on behalf of the acquiring body that the Reference Court has erred in determining the market value on the basis of the sale deed at Exhibit-20. However, there appears substance in the further issue raised by Shri Bhalerao as about the grant of interest under Section 28 and 34 of the Act.

7. The learned AGP Shri Phule brought to my notice the judgment of the Full Bench as well as the judgment delivered by the learned Single Judge of this Court (Coram: S.B. Shukre, J.) in First Appeal No.383 of 2004. In the aforesaid judgments, it has been amply clarified that the interest under Section 34 of the Act as well as under Section 28 of the Act can only be granted from the date of declaration of the award under Section 11 of the

Act and not from any prior date. In view of the law laid down in the aforesaid judgments that the award impugned in the present appeal will have to be modified. In the result, the following order is passed:

ORDER

I) The impugned award in so far as it relates to grant of interest under Section 28 and 34 of the Act from the date of taking possession i.e. 30.06.1995 is quashed and set aside.

ii) Instead, the interest under Section 28 and 34 of the Act is made payable from the date of declaration of the award under Section 11 of the Act i.e. from 27.12.1999.

iii) The impugned award be modified accordingly.

iv) The appeal thus stands partly allowed in the aforesaid terms.

v) The claimants are permitted to withdraw the amount with interest accrued thereon which may be finally determined in the award from the deposited amount by the acquiring body in this Court.

vi) Balance, if any, be refunded to the acquiring body.

(P.R. BORA, J.)