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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.3603 OF 2017

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| 1. | The State of Maharashtra | APPELLANTS |
| 2. | The Executive Engineer,
M.I.L.S. Division, Beed | |

VERSUS

- | | | |
|----|-----------------------|-------------|
| 1. | Paraji Dadaba Surnar | RESPONDENTS |
| 2. | Mahadeo Dadaba Surnar | |

Both Age – Major, Occ – Agriculture
R/o Dadegaon, Ashti, District - Beed

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Mr. S. P. Deshmukh, AGP for the appellants – State
Miss G.R.Jagtap h/f for Mr.C.K.Shinde, Advocate for respondents
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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 5th MARCH, 2018

ORAL JUDGMENT:

1. This first appeal by the State and acquiring body is taken up for final disposal by consent of learned advocates for the parties.
2. Learned advocates refer to that they have gone through the record and proceedings.
3. The appellants are aggrieved by decision of land

acquisition reference court (Ad Hoc District Judge-1, Beed) dated 30th January, 2010 rendered commonly in land acquisition reference bearing No. 512 and companion land acquisition references bearing No. 509 of 2006, 510 of 2006, 511 of 2006 and 513 of 2006, enhancing rate of land acquisition compensation to Rs.900/- per *Are* from that of Rs.436/- per *Are* granted by the special land acquisition officer for the acquired lands of the claimants.

4. The appellants have acquired land of the claimants – respondents for construction of village Tank No. 1 Dadegaon (Surnarwadi) project. Area of acquisition of claimants' lands in present first appeal is 65 *Are* for said project.

5. Being not satisfied by the rate of compensation granted by the special land acquisition officer under his award, the respondent – claimants had approached land acquisition reference court claiming enhancement in the rate of compensation in the region of Rs.1,250/- per *Are*. The land acquisition reference court, under a common judgment and award in a group of land acquisition references bearing No. 512 of 2006, 509 of 2006, 510 of 2006, 511 of 2006 and 513 of 2006 enhanced the rate of compensation to Rs.900/- per *Are* under its

judgment and award dated 30th January, 2010.

6. Learned AGP appearing on behalf of the appellants submits that the challenge in the first appeal is posed to enhancement of compensation on various counts.

7. Learned AGP contends that it cannot be said that with reference to the evidence on record, the extent of compensation awarded by the reference court is sustainable. It is submitted that compensation as granted by reference court is excessive and exorbitant. Evidence on record is insufficient to bear enhancement for compensation. It is contended that the acquired lands were dry lands and have been properly evaluated by the special land acquisition officer and claimants have been accordingly paid compensation. Determination of price of land by the special land acquisition officer had been according to the prevailing market price in the locality. The special land acquisition officer had inspected the properties and its locations and after taking stock of the situation had granted compensation under the award.

8. It is submitted that the rate at which compensation has been granted by the reference court is on very higher side. Learned AGP submits that sale instances at Exhibits – 20 and 21

relied upon on behalf of the claimants are of the year 1999 and 1995 i.e. prior to the date of notification under section 4 of the Land Acquisition Act, showing market value of the land in the region of Rs.1190/- to Rs.1330/- per *Are* would not be said to be really indicator of the market value of the acquired land, which is larger area than the areas under the sale instances. He submits that if the sale instances are ignored, value of the acquired lands, as determined by the special land acquisition officer would have to be considered reasonable and proper. There is no other reliable material placed on record by the claimants. He thus urges to consider that the claimants are not entitled to compensation @ Rs.900/- per *Are*. There is no credible material supporting the same and the rate be brought down to realistic value.

9. On the other hand, learned advocate for the respondent – claimants submits that the acquired lands were of high quality and fertility and had a great potential and was irrigated land. The respondent – claimants were taking double crops and the land in the market would have fetched value much more than the demand made by the claimants in the acquisition proceedings. It is further submitted that as referred to above, the claimants in fact, are entitled to a rate more than Rs.1250/-

per *Are* claimed by them, going by the prevailing market price at the time of acquisition of the land. Learned advocate goes on to contend that evidence had been produced showing that the land was irrigated through well water. The claimants had also produced award at Exhibit-27 and E-statement at Exhibit-28. It is being submitted that taking into account sale instances produced on record, the land value that ought to have been paid to the claimants - respondents should have been at least @ Rs.1250/- per *Are*, rather, it ought to have been Rs.1330/- per *Are*. The land of the claimants is situated closer to developed area. It is, therefore, contended that market value of the acquired land was Rs.1,00,000/- per Acre for irrigated land and Rs.80,000/- per Acre for seasonally irrigated land.

10. There is no particular dispute on that notification for acquisition of the land of the claimants under section 4 of the Land Acquisition Act, had been published on 20th January, 2000. The special land acquisition officer had declared award on 4th February, 2003 and possession had also been taken over on the very day. Under the award, the special land acquisition officer had granted rate of compensation @ Rs.436/- per *Are* to the acquired land of the claimants.

11. The reference court has considered that claimants have stated in their evidence that their land was of high quality and fertility having great potential, had double yielding capacity and they were taking crops like sugarcane. Sale deeds at Exhibits-20 and 21 placed on record by the claimants do show market rate of the acquired land had been in the range between Rs.1190/- and 1330/- per *Are*. Sale deeds, as it would appear, are of 1999 and 1995. As such, consideration that has weighed with the reference court having regard to land prices had then been increasing day by day, the rate for acquisition of land of the claimants at Rs.900/- per *Are* would be appropriate, appears to be quite reasonable, especially in the absence of any contrary evidence being led on behalf of the appellants. The rate has been granted considering the land as dry land.

12. Learned advocate for the appellants although, during the course of submissions, has contended that interest under sections 28 and 34 of the Land Acquisition Act has been made applicable from the date of possession, which in the wake of situation as would be emerging will have to be granted from the date of award, since reference court has considered the date of possession is prior to the date of award, in view of Full Bench judgment of this court in the case of *“State of Maharashtra V/s Kailash*

Shiva Rangari” reported in 2016 (4) ALL MR 513 under paragraphs No. 32 clause (iii) and 33 (a) of said judgment has held as under-

“ 32. (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.*

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. ”*

13. Learned advocate for the respondent – claimants, however, in respect of aforesaid, points out that possession of land is taken over on the same day as that of the award passed by the special land acquisition officer, which is 4th February, 2003. Thus, according to learned advocate for the respondent – claimants, practically, it does not make any difference in the present matter since date of award and date of possession coincide. Thus, going either way, according to statutory provisions or for that matter decision being referred to by learned advocate for the appellants, it is unlikely to have any different result.

14. Learned advocate for the respondent – claimants further submits that under resolutions dated 3rd November, 2016 and 23rd August, 2017, the State Government has decided not to initiate litigation and / or withdraw proceedings in respect of enhancement, if compensation awarded by reference court is less than four times the land rate pursuant to ready reckoner on the date of notification under section 4 of the Land Acquisition Act.

15. Learned advocate for the appellants fairly concedes to the position that granting enhancement in the present matter @ Rs.900/- per Are would not exceed the stipulations under said government resolutions.

16. Having regard to the emerging position from aforesaid, while enhancement in the rate of compensation granted by reference court under its award does not exceed the stipulation of exceeding four times the rate as per ready reckoner on the date of notification under section 4 of the Land Acquisition Act, coupled with the decision of the reference court being resting on the evidence as adduced and while it does not in any way appear to be arbitrary or capricious and much less is perverse, it does not appear that the appeal carries any force.

17. Thus, the appeal fails and is dismissed. In view of dismissal of first appeal, pending civil application does not survive and is disposed of accordingly. The respondent – claimants are allowed to withdraw the amount along with interest accrued thereon.

[SUNIL P. DESHMUKH, J.]

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