

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

FIRST APPEAL NO. 820 OF 2018
WITH
CIVIL APPLICATION NO. 11792 OF 2012

The State of Maharashtra
Through : The Collector, Beed

.. Appellant /
Orig. Respondent

versus

1. Uttam Vithoba Khalate,
Age Major, occup. Agril.,
R/o Khalatwadi, Tq. Ashti,
District : Beed

2. Executive Engineer,
M.I.Z.P. Division, Beed

.. Respondent/Resp
no. 1 orig. claimant,
Resp.no. 2 original
Respondent

WITH
FIRST APPEAL NO. 821 OF 2018
WITH
CIVIL APPLICATION NO.11788 OF 2012

The State of Maharashtra
Through: The Collector, Beed

.. Appellant /
Orig. Respondent

versus

1. Ashruba Hiraji Khalate,
Age Major, occup. Agril.,
R/o Khalatwadi, Tq. Ashti,
District : Beed

2. Executive Engineer,
M.I.Z.P. Division, Beed

..Respondent/Resp
no. 1 orig. claimant,
Resp.no. 2 original
Respondent

WITH
FIRST APPEAL NO. 822 OF 2018
WITH
CIVIL APPLICATION NO. 11794 of 2012

The State of Maharashtra .. Appellant /
Through : The Collector, Beed Orig. Respondent

versus

- | | | |
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| <ol style="list-style-type: none"> 1. Shesherao Meghaji Khalate, 2. Shakuntala Asruba Khalate 3. Kesar Shankar Gade, 4. Vishnu Sankar Gade, | <p>All Age-Major, R/of
Khalatwadi, Tq. Ashti,
District : Beed</p> | <p>.. Respondents/
Respondents no.1
to 4 Ori.Claimants/
Respondent no. 5-
Orig. Respondent</p> |
| <ol style="list-style-type: none"> 5. The Executive Engineer,
M.I.Z.P. Division Beed | | |

WITH
FIRST APPEAL NO. 823 OF 2018
WITH
CIVIL APPLICATION NO. 11790 OF 2012

The State of Maharashtra .. Appellant /
Through : The Collector, Beed Orig. Respondent

versus

- | | | |
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| <ol style="list-style-type: none"> 1. Machindra s/o Bapu Khalate,
Age ____years, occup. Agril.,
R/o Khalatwadi, Tq. Ashti,
District : Beed | | |
| <ol style="list-style-type: none"> 2. Executive Engineer,
M.I.Z.P. Division, Beed | | <p>.. Respondents/Resp.
no. 1 orig. claimant,
Resp.no. 2 original
Respondent</p> |

Mr. Shashibhushan P. Deshmukh, Assistant Government Pleader for appellant - State

Ms. Geetanjali R. Jagtap, Advocate holding for Mr. C. K. Shinde, Advocate for respondent no. 1 in first appeals no. 820 of 2018, 821 of 2018 and 823 of 2018, and for respondents no. 1 to 4 in first appeal no. 822 of 2018

CORAM : SUNIL P. DESHMUKH, J.

DATE : 27th March, 2018

ORAL JUDGMENT :

1. Admit.
2. Record and proceeding has already been received.
3. This group of four first appeals by State is taken up for final disposal by consent of parties. Learned counsel for the parties state that they have gone through the record and proceedings.
4. Lands of the respondents - claimants were acquired for construction of village tank at Hatola / Khalatwadi, taluka and district Beed. The highest area acquired in respect of claimants' lands in present group of first appeals is 50 Are.
5. There is no particular dispute in respect of factual

position that possession of lands of claimants had been taken by authorities on 04-03-1994. Notification under section 4 of the Land Acquisition Act, 1894 had been published on 20-07-2000. Award had been passed by Special Land Acquisition Officer on 03-05-2003 granting compensation at ₹ 250 per *Are*. Claimants had received and accepted compensation under protest on 28-12-2004, claiming the same to be too inadequate.

6. Aggrieved by rate at which compensation was granted by Special Land Acquisition Officer, claimants had preferred land acquisition references before reference court claiming compensation at the rate of ₹ 1000/- per *Are*, contending that lands acquired were of high quality, fertility, greater potentiality and were irrigated lands. They were taking double crops and, as such, would have fetched land value at much higher rate than demanded by them in land acquisition references.

7. It had been the case of claimants / respondents in the acquisition proceedings that classification of lands was erroneously made by Special Land Acquisition Officer based on revenue assessment. It is not indicator of utility and

yielding capacity of lands and does not reflect upon quality, fertility and potential of the lands. He had also committed error in grouping acquired lands for determination of compensation on the basis of revenue assessment. It had been claimed by respondents - claimants that apart from lands being of high quality are with facility of irrigation, their location had been very close to developed area having sugar factory, shops, highway, etc. While determining market price, the Special Land Acquisition Officer had not taken into account these relevant aspects and also sale instances. He had been in error in deciding compensation arbitrarily, injudiciously and against principles of natural justice.

8. Appellant-State has opposed the claims, contending that acquired lands were dry lands and had been properly evaluated by Special Land Acquisition Officer and claimants have accordingly received compensation. Determination of price had been as per market prices prevailing then in the locality. The Special Land Acquisition Officer had inspected the properties, their locations and after taking stock of the situation had granted compensation under the award.

9. Reference court has granted enhancement in compensation to the claimant, raising it to Rs.750 per Are along with concomitant benefits under impugned judgment and award. The court had granted interest at the rate of 9 per cent per annum under section 28 of the Land Acquisition Act from the date of possession i.e. 04-03-1994 till 05-03-1995 and thereafter at the rate of 15 per cent per annum on said amount from 06-03-1995 till realization of the entire amount. Interest under section 34 of the Act was granted at the rate of 9 per cent per annum from 04-03-1994 to 28-12-1994.

10. Appellant-State, aggrieved by decision of the land acquisition reference court [Ad-hoc District Judge-1], Beed dated 10-02-2010 rendered commonly in land acquisition reference bearing no. 490 of 2006 and companion references, is before this court under present group of first appeals.

11. Learned Assistant Government Pleader Mr. Shashibhushan P. Deshmukh appearing on behalf of the appellant-State contends that the rate of compensation

granted by the reference court is quite steeper and higher. Evidence may not bear the same. He submits that quality, fertility, potential and other aspects have been considered by the Special Land Acquisition Officer and based thereon, he had determined the compensation. He submits that sale instances at Exhibits - 19 and 20 relied on by claimants - respondents would not be said to be indicators of real market value of acquired lands which are larger areas than the areas under the sale instances. He submits that if the sale instances are ignored, value of the lands acquired, 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 submits, in the circumstances, the claimants are not entitled to compensation at the rate of ₹ 750 per *Are*. There is no material supporting the same. The same will have to be brought down to realistic value.

12. He emphatically submits that grant of interest pursuant to provisions under sections 28 and 34 of the Land Acquisition Act from the date of possession in the present matters is absolutely unsustainable, possession

having been taken in 1994 before notification under section 4 for acquisition had been issued. He submits, it is not the case of claimants that possession had been taken over in exercise of powers under section 17 of the Land Acquisition Act. The claimants, in the scenario, at the most would be entitled to interest pursuant to decision of full bench of this court only from the date of award and not before.

13. In support of aforesaid submission, learned Assistant Government Pleader refers to and places reliance on decision of full bench of this court in the case of *State of Maharashtra vs. Kailash Shiva Rangari*, reported in *MANU/MH/0551/2016 = 2016 (4) ALL MR 513* drawing attention to paragraphs no. 32 and 33 of the same and more particularly clause (iii) of paragraph no. 32 as well as clause (a) of paragraph no. 33, and a decision in the case of *The State of Maharashtra vs. Ramesh s/o Tukaram Meshra*, reported in *2018 (1) All MR 645* which refers to decision in *Kailash Rangari's* case, finding that sections 32 and 28 of the Land Acquisition Act, 1894 are *pari - materia*. Paragraphs no. 32, clause (iii) and 33 (a) in *Kailash Shiva Rangari's* case (*supra*) read thus ;

" 32. *Keeping in view the entire scheme of the Land Acquisition Act and the ratio of the decisions of the Apex Court in the case of R. L. Jain and Lila Ghosh, cited supra, the position of law can be summarized as under :*

(i)

(ii)

(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 land-owner 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 provisions of Section 34 of the said Act shall start operating from the date of possession. "*

14. He submits that, in the circumstances, the directions by reference court under clauses (5) and (6) of operative part of its judgment to pay interest from the date of possession are unsustainable and will have to be brought in tune with decisions of this court (supra).

15. Learned counsel Ms. Jagtap appearing on behalf of respondents - claimants submits that there is no substance in the contention on behalf of the State that the land value determined by reference court is excessive. She submits that reference court, in fact, ought to have granted land value at the rate in the range of ₹ 1250 to ₹ 1300 per *Are* having regard to the evidence on record. Had the reference court taken into account sale instances and value of the lands thereunder, it would appear that the rate at which compensation is granted in present cases is far on lower side and deserves corrective action in the first appeals.

16. She submits that the respondents - claimants have placed on record evidence depicting that the lands were of high quality, fertility, greater potential and irrigated. Ample material had been available on record and thus the reference court had refused to give in to the contention of the appellant - State that the lands were dry land. Coupled with this, the claimants have placed on record a few sale instances at Exhibits - 19 and 20 showing land prices

prevailing during relevant period had been in the range of ₹ 40,000/- to 50,000/- per acre. Lands were situated closer to developed area and in all certainty would have fetched value more than granted by the reference court. She submits that strong and solid evidence particularly in the form of registered sale instances had been placed on record regarding rates then prevailing and in the circumstances the grant of rate ought to have been at least in tune with registered sale instances depicting rate 1000/- per *Are*. The reference court found that the evidence with regard to fertility, quality, potential and yielding capacity of lands give lot of credibility to the claim made by the land owners.

17. Learned counsel submits that reference court also considered that area of land under acquisition while determining value may not be proper consideration and Exhibits - 19 and 20 showing land value between ₹ 1250 to ₹ 1300 per *Are* can be said to be indicator of land value prevailing then and has further observed that there had been no counter evidence rebutting the contentions on behalf of the claimants. The court had also adverted to that though it is claimed that the Special Land Acquisition

Officer had determined compensation on the basis of sale instances from the locality yet, those sale instances had not been produced on record nor any opportunity had been led to the claimants to cross examine witnesses on those sale instances.

18. The evidence as adduced shows that the claim regarding, quality, fertility and yielding capacity of the lands, could not be impeached by any credible material or evidence by the acquiring authorities. There are indeed sale instances of the lands adjacent to the acquired land indicating price ranging between ₹ 1250 to ₹ 1300 per *Are*. Acquired lands appear to be seasonally irrigated lands. In the circumstances, the rates fixed by the land acquisition references court at ₹ 750/- per *Are* does not appear to be arbitrary or unreasonable and same has been fixed with reference to evidence on record. As such, on that count, in the absence of any contrary evidence, it does not appear that the objection to grant of compensation rate by reference court carries any substance.

19. However, so far as grant of interest from the date of possession is concerned, it is not in dispute that possession is taken in 1994 much prior to issuance of notification under section 4 of the Land Acquisition Act which is in 2000. In view of decision of full bench of this court and particularly clause (iii) of paragraph no. 32 as well as clause (a) of paragraph no. 33 in the case of *State of Maharashtra vs. Kailash Shiva Rangari* and decision of Bombay high court in *State vs Ramesh Meshram* referred to hereinbefore, grant of interest by reference court in present matters from the date of possession will have to be rectified and modified. The modification in grant of interest under the provisions as such shall have to be in tune with observations in aforesaid decisions.

20. As such, interest granted under section 34 of the Land Acquisition Act on the compensation granted by special land acquisition officer will have to be computed from the date of award and not from the date of possession as granted under impugned award of reference court. Thus, interest pursuant to section 34 of the Act will have to be paid at the rate of 9 per cent per annum from the date of

award for first year and at the rate of 15 per cent per annum after expiry of first year till realization of amount. So would be the case in respect of enhanced compensation. Interest on the same will be accordingly paid from the date of award for the first year at the rate of 9 per cent per annum from the date of award and thereafter at the rate of 15 per cent per annum till realization of the amount.

21. Clauses 5 and 6 of impugned awards to above extent stand modified. As such, the claimants will be paid concomitant benefits accordingly.

22 With aforesaid, first appeals are partly allowed and are disposed of.

23. Civil applications do not survive and stand accordingly disposed of.

SUNIL P. DESHMUKH,
JUDGE