

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.1922 OF 2016

The State of Maharashtra

Appellant

Versus

Bhaguji Khendke (deceased),
through legal heirs:

01 Dilip Bhaguji Khendke,
age: major, Occ: Agril.,

02 Balasaheb Bhaguji Khendke,
age: major, Occ: Agril.,
R/o Mandavgan, Tq.Shrigonda,
District Ahmednagar.

Respondents

WITH
FIRST APPEAL NO.1923 OF 2016

The State of Maharashtra

Appellant

Versus

01 Dada s/o Mhapa Borude,
age: major, Occ: Agril.,
R/o Mandavgan, Tq.Shrigonda,
District Ahmednagar.

02 Rajaram s/o Dadu Borude,
age: major, Occ: Agril.,
R/o as above.

03 Keru s/o Dadu Borude,
age: major, Occ: Agril.,
R/o as above.

Respondents

WITH
FIRST APPEAL ST.NO.23454 OF 2015

The State of Maharashtra

Appellants

Versus

01 Kashinath Madhav Borude,
age: major, Occ: Agril.,

02 Laxman Kashinath Borude,
age: major, Occ: Agril.,

03 Balbhim s/o Kashinath Borude,
age: major, Occ: Agril.,

04 Arjun s/o Kashinath Borude,
age: major, Occ: Agril.,

All R/o Mandavgan,
Tq.Shrigonda,
District Ahmednagar.

Respondents.

Mr.B.V.Virdhe, A.G.P. for appellant
Mr.Sachin Salgare, advocate holding for Mr.N.V.Gaware, advocate
for Respondents

CORAM : M.S.SONAK, J.
DATE : 24th January, 2018.

ORAL JUDGMENT :

1 Learned Counsel for the parties point out that F.A.St.No.23454/2015, which is also a part of this group, is, however, not on board today. Therefore, with the consent of learned Counsel for the parties, F.A. St. No.23454/2015, though not on board, is taken on board for disposal along with rest of the First Appeals. Learned Counsel for the parties agree that all these appeals can be disposed of finally by a common judgment and

order since, they arise out of one and the same notification for acquisition.

3 In all these matters, the appellant-State is challenging the impugned judgment and award by which the amount of compensation has been enhanced from Rs.550/- per Are to Rs.2000/- per Are. In addition to this, the Reference Court has enhanced the compensation in respect of trees and awarded Rs.20,000/- and Rs.8000/- respectively for good and medium quality mango trees, Rs.3000/- for bor trees and Rs.7000/- for tamrind trees. The Reference Court has also granted interest under Section 34 of the Land Acquisition Act from the date of possession i.e. from 1992, when, in fact, Section 4 notification was issued on 01.08.1996.

4 Mr.Virdhe, learned A.G.P. submits that the enhancement is based on no material. He submits that there is no material to support this enhancement either for land or trees. He relies on Full Bench of this Court in **State of Maharashtra Vs. Kailash Shiva Rangari**, 2016 (4) ALL MR 513 (F.B.), to submit that interest under Section 34 of the Land Acquisition Act, 1894, has to be awarded only from the date of award and not from the date of possession. The award under Section 11 is made on 30.12.1997. For all these reasons, he submits that the appeals be allowed and the enhancement and interest granted by the Reference Court be quashed and set aside.

5 Mr.Salagare, learned Counsel holding for Mr.N.V.Gaware, advocate for Respondents-claimants, submits that

there is more than ample evidence on record. In fact, the Reference Court has relied upon its earlier award in L.A.R.No.570/2003 in which, compensation at enhanced rate came to be awarded. On the aspect of interest under Section 34, he submits that since the possession was taken in the year 1992, there is no reason to deprive the claimants from the said benefit.

6 The Record and Proceedings were called for and have been perused. From the impugned judgment and award, it does appear that the Reference Court has based the enhancement on the basis of earlier award in L.A.R. No.570/2003, which, again, is an award in relation to very same acquisition. Therefore, it cannot be said that there was no evidence or reason to order enhancement. The compensation awarded towards trees is also well within the bounds. There is no case made out to interfere with the enhancement.

7 Apart from the aforesaid, it is necessary to point out that the enhancement, in the present case, is well within the limits prescribed by the State Government itself in Government Resolution dated 03.11.2016, as amended from time to time. The Government Resolution dated 03.11.2016 records a policy decision of the State Government not to institute appeals or to settle already instituted appeals where compensation awarded by the Reference Court is less than four times the compensation prevalent as per the Ready Reckoner rates on the date of issue of Section 4 Notification. Generally, the compensation awarded by the Special Land Acquisition Officer corresponds to the ready reckoner rates prevalent on the date of issue of Section 4 Notification. In effect,

therefore, the Government Resolution dated 03.11.2016 records policy decision of the State to settle the matters where enhanced compensation is less than four times the rate determined by the SLAO, where such rate broadly corresponds to the ready reckoner rates. This formula applies to the lands located in rural areas. Since, the land, which form subject matter of present appeals, was located in rural area, there is no dispute that it is this formula, which will be applicable to the present appeals.

8 In the present matter, as noted earlier, the SLAO had determined compensation at the rate of Rs.550/- per Are. The Reference Court has determined compensation at the rate of Rs.2000/- per Are. This is well within the limits prescribed under the Government Resolution dated 03.11.2016. Accordingly, these appeals can be disposed of in terms of the State's own policy as set out in Government Resolution dated 03.11.2016. However, since the learned A.G.P. had no written instructions for withdrawal of appeals, the matter was heard on merits and is disposed of.

9 For the aforesaid reasons, there is no case made out for interference with the enhancement in respect of land and trees.

10 So far as aspect of interest under Section 34 is concerned, however, these appeals will have to be partly allowed. The Full Bench of this Court in the case of **Kailash** (*supra*) has held that the claimants can be awarded interest under Section 34 of the said Act from the date of award under Section 11, unless it is shown that possession is taken earlier in accordance with Section

17 of the Act. In this case, Section 17 was never invoked. Therefore, the award of interest from the date of taking of possession, as directed in clause (7) of the operative portion of the impugned award will have to be set aside or rather modified.

11 These appeals are accordingly partly allowed and disposed of by following order:

- (A) The appeals, to the extent they question enhancement of compensation for land and trees, are hereby dismissed.
- (B) The appeals, to the extent they question award of interest under Section 34 of the Act from the date of possession, are hereby partly allowed. Interest under Section 34 of the Act, in all these cases, will have to be determined from the date of award dated 30.12.1997.
- (C) The impugned award stands modified accordingly.

12 There shall be no order as to costs. All pending Civil Applications do not survive and stand disposed of.

M.S.SONAK
JUDGE

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