

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1998 OF 2016

- | | | |
|----|--|------------|
| 1. | The State of Maharashtra
Through – The Collector, Beed | APPELLANTS |
| 2. | The Executive Engineer,
B. I. Division, Beed, District – Beed | |

VERSUS

- | | | |
|----|--|-------------|
| 1. | Ajinath Waku Abhimane | RESPONDENTS |
| 2. | Laxmibai Ajinath Abhimane, | |
| | Both Age – Major, Occ – Agriculture
R/o Dongargan, Taluka – Ashti,
District – Beed | |

WITH
FIRST APPEAL NO.1999 OF 2016

- | | | |
|----|--|------------|
| 1. | The State of Maharashtra
Through – The Collector, Beed | APPELLANTS |
| 2. | The Executive Engineer,
B. I. Division, Beed, District – Beed | |

VERSUS

- | | | |
|--|---|------------|
| | Vishnu Suryabhan Anarse | RESPONDENT |
| | Age – Major, Occ – Agriculture
R/o Dongargan, Taluka – Ashti,
District – Beed | |

WITH
FIRST APPEAL NO.2000 OF 2016

- | | | |
|----|--|------------|
| 1. | The State of Maharashtra
Through – The Collector, Beed | APPELLANTS |
| 2. | The Executive Engineer,
B. I. Division, Beed, District – Beed | |
| | VERSUS | |

Mohan Bajirao Abhimane
Age – Major, Occ – Agriculture
R/o Dongargan, Taluka – Ashti,
District – Beed

RESPONDENT

WITH
FIRST APPEAL NO.2001 OF 2016

1. The State of Maharashtra
Through – The Collector, Beed
2. The Executive Engineer,
B. I. Division, Beed, District – Beed

APPELLANTS

VERSUS

Santram Kanhu Anarse
Age – Major, Occ – Agriculture
R/o Dongargan, Taluka – Ashti,
District – Beed

RESPONDENT

WITH
FIRST APPEAL NO.2002 OF 2016

1. The State of Maharashtra
Through – The Collector, Beed
2. The Executive Engineer,
B. I. Division, Beed, District – Beed

APPELLANTS

VERSUS

Namdev Bajirao Abhimane
Age – Major, Occ – Agriculture
R/o Dongargan, Taluka – Ashti,
District – Beed

RESPONDENT

WITH
FIRST APPEAL NO.2003 OF 2016

1. The State of Maharashtra
Through – The Collector, Beed
2. The Executive Engineer,
B. I. Division, Beed, District – Beed

APPELLANTS

VERSUS

- | | | |
|----|-------------------------|-------------|
| 1. | Jagannath Dagadu Shende | RESPONDENTS |
| 2. | Ashok Dagadu Shende | |
| 3. | Sominath Dagadu Shende | |

All Age – Major, Occ – Agriculture
R/o Dongargan, Taluka – Ashti,
District – Beed

WITH
FIRST APPEAL NO.2004 OF 2016

- | | | |
|----|--|------------|
| 1. | The State of Maharashtra
Through – The Collector, Beed | APPELLANTS |
| 2. | The Executive Engineer,
B. I. Division, Beed, District – Beed | |

VERSUS

Rakhmaji Sakharam Shende Age – Major, Occ – Agriculture R/o Dongargan, Taluka – Ashti, District – Beed	RESPONDENT
---	------------

WITH
FIRST APPEAL NO.2005 OF 2016

- | | | |
|----|--|------------|
| 1. | The State of Maharashtra
Through – The Collector, Beed | APPELLANTS |
| 2. | The Executive Engineer,
B. I. Division, Beed, District – Beed | |

VERSUS

Yadav Digamber Abhimane (Died) LRs	RESPONDENTS
1. Smt. Anandibai Yadav Abhimane Age – 75 years, Occ – Agriculture R/o Dongargan, Taluka – Ashti, District – Beed	

2. Ashok Yadav Abhimane
Age – 50 years, Occ and R/o As above
3. Vilas Yadav Abhimane
Age – 45 years, Occ & R/o As above
4. Laxmi Sanjay Jadhav
Age – 41 years, Occ & R/o As above

WITH
FIRST APPEAL NO.2006 OF 2016

1. The State of Maharashtra
Through – The Collector, Beed APPELLANTS
2. The Executive Engineer,
B. I. Division, Beed, District – Beed

VERSUS

Radhabai Govind Pacharne RESPONDENT
Age – Major, Occ – Agriculture
R/o Dongargan, Taluka – Ashti,
District – Beed

WITH
FIRST APPEAL NO.2007 OF 2016

1. The State of Maharashtra
Through – The Collector, Beed APPELLANTS
2. The Executive Engineer,
B. I. Division, Beed, District – Beed

VERSUS

Bhamabai Eshwarlal Waghmare RESPONDENT
Age – Major, Occ – Agriculture
R/o Dongargan, Taluka – Ashti,
District – Beed

WITH
FIRST APPEAL NO.2008 OF 2016

1. The State of Maharashtra
Through – The Collector, Beed APPELLANTS

2. The Executive Engineer,
B. I. Division, Beed, District – Beed

VERSUS

Ramdas Dattoba Karande
Age – Major, Occ – Agriculture
R/o Dongargan, Taluka – Ashti,
District – Beed

RESPONDENT

.....
Mr. A. M. Phule, AGP for the appellants - State
Mr. C. K. Shinde, Advocate for respondent - claimants
.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 12th MARCH, 2018

ORAL JUDGMENT :

1. These first appeals are preferred by the State under section 54 of the Land Acquisition Act, 1894 against common judgment and award by Land Acquisition Reference Court at Beed, enhancing compensation for acquisition of lands granted by the Special Land Acquisition Officer.
2. Compensation granted by Special Land Acquisition Officer for acquisition of lands ranges between Rs.590/- per Are to Rs.650/- per Are in this group of first appeals.
3. The Reference Court has enhanced rate of compensation to Rs.2000/- per Are for acquisition of lands.

4. Learned AGP contends that it cannot be said that with reference to evidence on record, the extent of enhancement awarded by 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 in compensation.

5. Mr. Phule, learned AGP appearing for appellants – the State contends that not only that increase in rate of compensation has been exorbitant, but the land acquisition reference court had also been in error in granting interest under section 34 of the Land Acquisition Act, 1894 from the date of possession. He submits that taking into account two decisions, one by the Full Bench of this court in the case of “*State of Maharashtra V/s Kailash Shiva Rangari*” reported in 2016 (4) ALL MR 513 and the other by learned Single Judge of this court at Nagpur in the case of “*The State of Maharashtra V/s Ramesh Tukaram Meshram*” reported on 2018 (1) ALL MR 645 wherein it is considered that sections 28 and 34 of the Land Acquisition Act are *pari materia*, the date of grant of interest and its operation would be governed by decision of the Full Bench. He, therefore, submits that clauses 3 and 4 of the impugned award passed by the land acquisition reference court has been rendered untenable.

6. On the other hand, Mr. C. K. Shinde, learned advocate appearing for the respondents - claimants contends that as a matter of fact, learned judge of the reference court has been in error in absolutely disregarding Exhibits-21, 22, the two sale instances of adjoining village Kada, Taluka – Ashti, District-Beed. Had those sale instances been taken into account, the claims of land owners as made in the reference petitions ought to have been and could have been allowed. He further submits that while Exhibit-23, a sale instance of 1995 has been taken into account, the same has been given a treatment working out a lower rate of compensation in respect of acquired lands. He submits that in any case, compensation granted under the award impugned in the first appeals is on lower side than is due to the claimants and submits that there is no substance in challenge to computation of valuation of lands.

7. Mr. Shinde goes on to submit that claimants' lands had been taken in possession even before notification under section 4 of the Land Acquisition Act, 1894 had been issued and in the circumstances, the authorities hitherto had been constrained to award interest from the date of possession and the same may not be found fault with.

8. Having regard to aforesaid submissions, one may have to take into account that section 4 notification for acquisition of claimants' land had been issued on 24th July, 2003 and the award had been made by Special Land Acquisition Officer on 31st January, 2008. Sale instance at Exhibit-23 is a sale instance of 11th August, 1995, which is long before notification under section 4 had been issued in respect of acquisition of present lands. The reference court appears to have considered value of lands with reference to sale instance under the circumstances works out to be @ Rs.2000/- per *Are* and while considering acquisition of claimants' land rate of valuation of land should undergo 30% reduction, since sale deed is not in respect of a land which is immediately abutting the acquired lands. The reference court, thereafter considered 10% increase in the rate of value of land, as arrived at would be a reasonable increase and thus has worked out rate of Rs.2380/- per *Are* and reduced the same to Rs.2000/- per *Are*, since the reference court in group of other references *viz.*, Land Acquisition References No. 421 of 2010 and other companion matters had worked out land acquisition rate to be Rs.2000/- per *Are* for seasonally irrigated lands, which had been acquired for construction for village tank No.6 of Dongargan. The reference court, thus, considered that it would

be reasonable to grant compensation @ Rs.2000/- per Are to present claimants as well. The court further, in some of the land acquisition references considered that present set of claimants are not entitled to enhanced compensation in respect of trees, wells and stone bunds.

9. Looking at computation of land acquisition compensation and its rate, as considered by the reference court, it cannot be said to be in any way erroneous or for that matter there is any other contrary evidence available on record which would impeach rate of compensation granted by the reference court. It does not appear that the decision rendered in respect of rate of land acquisition compensation granted by the reference court is liable to be disturbed. The computation appears to have been done reasonably and taking into account evidence, as has been placed on record. As a matter of fact, the two sale instances, Exhibit-21 and Exhibit-22 are of much higher amounts than sale instance at Exhibit-23. In the circumstances, so far as enhancement component involved under award under reference is concerned, the same would not be liable to be disturbed.

10. Full Bench 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. ”*

11. Further, learned Single Judge of this court at Nagpur in the case of “*The State of Maharashtra V/s Ramesh Tukaram Meshram*” reported on 2018 (1) ALL MR 645 has held that sections 28 and 34 of the Land Acquisition Act, 1893 are *pari materia*. They are identical with exception of stage. Section 28 relates to interest on enhancement whereas section 34 deals with interest on award by special land acquisition officer / collector.

12. As such, as far as interest in present matters directed from the date of possession is concerned which is although sought to be justified on behalf of the claimants, yet do not appear to be in a position of any other prevailing position of law in this respect and overcome decision of full bench and the subsequent decision

(supra), the direction and date of award of interest will have to undergo modification, pursuant to full bench judgment (*supra*).

13. In the circumstances, clauses 3 and 4 of the operative order under decision in land acquisition references will have to undergo modification in tune with the full bench judgment and as such, the interest under sections 28 and 34 of the Land Acquisition Act, payable to the claimants would be from the date of award and not as observed by the reference court, from the date of possession.

14. With the modification to aforesaid extent, first appeals stand partly allowed and rest of the challenge in the first appeals stand dismissed.

[SUNIL P. DESHMUKH, J.]