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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.701 OF 2016

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| 1. | The State of Maharashtra
Through The Collector, Beed | APPELLANTS |
| 2. | The Executive Engineer,
M.I.L.S. Division No.3, Beed
District - Beed | |

VERSUS

- | | | |
|----|---|-------------|
| 1. | Eknath s/o Baburao Doke
(Died LRs were already on record) | RESPONDENTS |
| 1. | Bhagwat s/o Eknath Doke
Age – Major, Occ – Agriculture
R/o Matkuli, Taluka-Ashti, District – Beed | |
| 2. | Maojrao s/o Eknath Doke
Age – Major, Occ – Agriculture
R/o Matkuli, Taluka-Ashti, District – Beed | |
| 3. | Kasturbai Eknath Doke
Age – Major, Occ – Agriculture
R/o Matkuli, Taluka-Ashti, District – Beed | |

WITH
FIRST APPEAL NO.702 OF 2016

- | | | |
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| 1. | The State of Maharashtra
Through The Collector, Beed | APPELLANTS |
| 2. | The Executive Engineer,
M.I.L.S. Division No.3, Beed
District - Beed | |

VERSUS

- | | | |
|----|--|-------------|
| 1. | Jivan s.o Nanasaheb Doke
Age – Major, Occ – Agriculture
R/o Matkuli, Taluka-Ashti, District – Beed | RESPONDENTS |
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2. Dattatraya s/o Nanasaheb Doke
Age – Major, Occ – Agriculture
R/o Matkuli, Taluka – Ashti, District - Beed

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Mr. B. V. Virdhe, 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. These two first appeals under section 54 of the Land Acquisition Act, 1894 are preferred by the State and the acquiring body against judgment and award passed by reference court (District Judge-2, Beed) dated 7th January, 2012 in land acquisition references bearing No. 159 of 2010 and 160 of 2010.
2. Learned AGP submits that challenge has been posed in these appeals to enhancement of compensation by the reference court on various counts. He contends, it cannot be said that with reference to the evidence on record, the extent of enhancement 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 in compensation.

3. Lands concerned in respective appeals are 4 Hectare 96 *Are* and 72 *Are* acquired for Matkuli Project at Matkuli. Special Land Acquisition Officer had granted compensation @ Rs.560/- per *Are* for claimant in Land Acquisition Reference No. 159 of 2010 and Rs.460/- per *Are* for the claimant in Land Acquisition Reference No. 160 of 2010 whereas claimants had demanded compensation @ Rs.2500/- per *Are*. In the circumstances, references were preferred by the claimants and the reference court has enhanced the rate of compensation to Rs.2,000/- per *Are*.

4. Learned AGP appearing on behalf of the appellants submits that the rate of compensation granted by the reference court is on very higher side. Evidence may not bear the same. He submits that sale instances at Exhibits-18, 19 and 20 relied on by the claimants would not be indicators of real market value of the acquired lands. 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 submits that the quality, fertility and potential of the acquired lands had been duly considered by the

special land acquisition officer and based thereon he had determined the rate of compensation. He submits that claimants are not entitled to compensation @ Rs.2000/- per *Are*. There is no credible material on record supporting the same and the rate of compensation, as such, will have to be brought down to realistic value. Learned AGP submits that as the date of possession preceded the date of notification under section 4 of the Land Acquisition Act, for acquisition of land interest granted from the date of possession is not sustainable in view of decision of full bench of this court in the case of *State of Maharashtra V/s Kailash Shiva Rangari*” reported in 2016 (4) ALL MR 513.

5. 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 were irrigated lands. 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.2000/- per *Are* claimed by them, going by the prevailing marker price at the time of acquisition of the land. Learned advocate goes on to contend that evidence had been produced showing that the lands

were irrigated through well water.

6. There is no particular dispute about the factual position that date of possession precedes the date of publication of notification under section 4 of the Land Acquisition Act to acquire the claimants' lands. Section 4 notification had been published on 16th February, 2006 and possession had been taken over by the appellants on 16th December, 2003. The award had been passed by the special land acquisition officer on 31st January, 2008 granting compensation @ Rs.560/- and Rs.460/- per *Are* respectively to the claimants. The claimants had claimed compensation of Rs.2,500/- per *Are*, however, the reference court has granted Rs.2000/- per *Are*.

7. Perusal of the judgment and award by the reference court particularly paragraphs No. 4, 5 and 6 thereof, shows that the reference court has considered the three sale instances produced at Exhibits-18, 19 and 20 of the dates prior to the date of notification under section 4 of the Land Acquisition Act, fetching value of at least Rs.2,000/- per *Are*. With reference to such evidence, the reference court had determined rate of land acquisition compensation to be paid to the claimants for their acquired lands would be deservedly Rs.2,000/- per *Are*.

8. In the circumstances, although rate of enhancement is being challenged, there is no material produced in support of such challenge that the land value determined by the reference court based on sale instances of the lands in close proximity with the acquired lands would have fetched value less than the one granted by the reference court. The decision so reached in respect of compensation for acquisition of lands does not appear to be without any basis or for that matter is either arbitrary or capricious in the absence of any material being placed forth indicating that land price around time of acquisition on behalf of the appellants.

9. In the circumstances, it would not be a case wherein meddlesome approach would be required in the first appeals disturbing the land acquisition rate granted to the claimants.

10. However, there does not appear to be any material showing that urgency clause had ever been invoked under the Land Acquisition Act, 1894 prior to the date of publication of notification under section 4 of the Land Acquisition Act to take over possession of acquired lands.

11. It emerges to be a position that possession of the lands

had been taken over prior to the date of notification under section 4 of the Act.

12. 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. ”*

13. 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, 1894 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.

14. 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*).

15. In the circumstances, question of date for computation of interest would be required to be brought in tune with the decision of the Full Bench of this court in the case of “*State of Maharashtra V/s Kailash Shiva Rangari*” (*Supra*) since the land acquisition reference award under clauses 5 and 6 purports to grant interest from the date of possession i.e. 16th December, 2003, the same will have to be modified.

16. Clauses 5 and 6 of the operative order under decision in land acquisition references would 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.

17. Eventually, the appeals partly succeed so far as interest

aspect is concerned, as aforesaid. Pending civil applications do not survive and are disposed of accordingly. The respondent – claimants are allowed to withdraw the amount along with interest computed as above accrued thereon.

[SUNIL P. DESHMUKH, J.]

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