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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.5134 OF 2017

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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

Shahabai w/o Vishnu Sakat Age – Major, Occ – Agriculture R/o Takalsing, Taluka-Ashti, District – Beed	RESPONDENT
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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. This first appeal under section 54 of the Land Acquisition Act, 1894 is preferred by the State and the acquiring body against judgment and award passed by reference court (District Judge-2, Beed) dated 22nd December, 2011 in land acquisition reference bearing No. 279 of 2010.

2. Learned AGP submits that challenge has been posed in this appeal 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. Land concerned in the appeal is 44 *Are* acquired for construction of village tank No. 7 (Add) Takalsing Project at Takalsing by applying urgency clause / private negotiations. Special Land Acquisition Officer had granted compensation to the claimant @ Rs.1000/- per *Are* for the acquired area whereas claimant had demanded compensation @ Rs.2500/- per *Are*. In the circumstances, reference was preferred by the claimant and the reference court has enhanced the rate of compensation to Rs.2,500/- per *Are* as demanded by the claimant.

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-15, 16 and 17 relied on by the claimant 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 potentiality 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 claimant is not entitled to compensation @ Rs.2500/- 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 – claimant submits that the acquired land was of high quality and fertility and had a great potential and was irrigated land. The respondent – claimant was taking double crops. The land in the market would have fetched value much more than the demand made by the claimant in the acquisition proceedings. It is further

submitted that as referred to above, the claimant in fact, is entitled to a rate more than Rs.2500/- per *Are* claimed by her, 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 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 22nd February, 2007 and possession had been taken over by the appellants on 12th February, 2005. The award had been passed by the special land acquisition officer on 24th June, 2008 granting compensation @ Rs.1000/- per *Are*. The claimant had claimed compensation of Rs.2,500/- per *Are*, which has been granted by the reference court.

7. Perusal of the judgment and award by the reference court particularly paragraphs No. 5 and 6 thereof, shows that the reference court has considered the three sale instances produced at Exhibits-15, 16 and 17 of the dates prior to the date of notification under section 4 of the Land Acquisition Act, fetching

value of at least Rs.2,500/- per *Are*. As a matter of fact, the reference court has observed that Exhibit-17 sale deed shows that market value fetched under the sale instance is Rs.2,678/- per *Are*. With reference to such evidence, the reference court had determined rate of land acquisition compensation to be paid to the claimant for her acquired lands would be deservedly Rs.2,500/- 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 claimant.

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 land.

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

14. As such, as far as interest in present matter directed from the date of possession is concerned which is although sought to be justified on behalf of the claimant, yet does 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, 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. 12th February, 2005, 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 appeal partly succeeds so far as interest aspect is concerned, as aforesaid. Pending civil applications do not survive and are disposed of accordingly. The respondent – claimant is allowed to withdraw the amount along with interest computed as above accrued thereon.

[SUNIL P. DESHMUKH, J.]