

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO. 483 OF 2018

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

Versus

1. Dattatrya Uttam Misal
2. Shashikala Uttam Misal (Deceased)
through L.Rs.

2-A) Dattatraya Uttam Misal
Age : Major.
Occu : Agri.

3. Pandharinath Govind Misal
4. Janardhan Govind Misal
5. Kumar Pandharinath Misal
6. Viksas Kumar Misal
7. Vishal Kumar Misal

All Age :- Major, Ocdcu. Agril.,
R/o. Aurangpur/Hatolan,
Tq. Ashti, Dist. Beed.

...Respondents

WITH
FIRST APPEAL NO. 484 OF 2018

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

Versus

Dhondiba Dagdu Rajgude
Age: Major, Occu. Agril.,
R/o. Aurangpur/Hatolan,
Tq. Ashti, Dist. Beed

1.A. Baban Dhondiba Rajgude
Age: Major

1.B. Subhadra w/o Dhondiba Rajgude
Age: Major

Both R/o Targodavhan, Dist. Ahmednagar ...Respondents

...

WITH
FIRST APPEAL NO. 485 OF 2018

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

Versus

Dattatrya Uttam Misal
Age: Major, Occu. Agril.,
R/o. Aurangpur/Hatolam,
Tq. Ashti, Dist. Beed ...Respondent

WITH
FIRST APPEAL NO. 486 OF 2018

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

Versus

Bhagwan Yadu Korde
Age: Major, Occu. Agril.,
R/o Aurangpur/Hatolan,
Tq. Ashti, Dist. Beed.

...Respondent

...

Mr. A. M. Phule, Asstt. Govt. Pleader for appellants
Mr. C. K. Shinde, Advocate for respondents

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[CORAM: SUNIL P. DESHMUKH, J.]

Date: 05th March, 2018

ORAL JUDGMENT :

1. This group of first appeals is preferred by the State and acquiring body, taking exception to the awards in land acquisition references under section 18 of the Land Acquisition Act, 1894 ("The Act") bearing number 459 of 2010 and companion matters passed under a common judgment on 30-06-2011 by the reference court [Joint Civil Judge, Senior Division, Beed] whereunder there has been enhancement in rate of valuation of lands.

2. The notification under section 4(1) of the Act was published on 4th September, 2003 and the award by Special Land Acquisition Officer was passed on 4th February, 2008. Possession of the lands was taken on 15th June, 1995 for construction of village Tank No.3 at Aurangpur/Hatolan, Taluka Ashti, District Beed.

3. Compensation granted by Special Land Acquisition Officer for acquisition of lands ranges between Rs.710/- to Rs.810/- per *Are* in this group of first appeals.

4. Learned Assistant Government pleader Mr. Phule submits that challenge has been posed in these appeals to awards in the references on various counts.

5. Learned Assistant Government Pleader contends that it cannot be said that with evidence as 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.

6. 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 the Land Acquisition Act, 1894 from the date of possession.

7. Learned Assistant Government Pleader invites attention to full bench ruling on the point of interest in the case of *State of Maharashtra vs. Kailas Shiva Rangari*, AIR 2016 Bom 141, laying down that where-ever possession is taken before issuance of notification under section 4 and not pursuant to the provisions of the Land Acquisition Act, 1894, interest pursuant to section 34 is liable to be paid from the date of award.

8. He also draws attention to other decision of learned Single Judge of this court 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.

9. He submits that taking into account two decisions, the clauses 3 and 4 of the impugned award passed by the land acquisition reference court have been rendered untenable.

10. On the other hand, learned counsel Mr. C.K. Shinde appearing on behalf of respondents/claimant submits that the acquired lands were fertile, black cotton soil having greater potential value. Respondents used to take three crops per year in the acquired lands. Special Land Acquisition Officer neither took into consideration the claims made by the respondents, nor had undertaken any inquiry as contemplated under sections 9 and 10 of the Act.

11. He submits, as a matter of fact, in respect of claims made by the claimants, reference court has granted compensation maximum at the rate of Rs. 1800/- per Are which is less than the rate demanded by the claimants. He submits that looking at the surrounding circumstances, pursuant to provisions of the Land Acquisition Act, 1894, claimants are entitled to higher compensation than has been awarded by the reference court. Moreover, sale transactions had been properly taken into account while deciding market price of the acquired lands.

12. Mr. Shinde goes on to submit that possession of acquired lands had been taken long back in 1995 by

applying urgency clause before notification for acquisition of land had been issued and the same would not be disputed. 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.

13. He further submits, it may not be out of place to consider that the State has taken a decision not to initiate proceedings challenging land acquisition awards determining and enhancing rate, not exceeding four/two times rate as per ready reckoner in respect of rural/urban lands, on the date of notification under section 4 of the Land Acquisition Act and in the present cases land acquisition compensation granted by reference court being not in excess of such decision under Government Resolution dated 3rd November, 2016, challenge to rate determined in present group of first appeals is rendered untenable on that count.

14. He, therefore, submits that first appeals hardly carry any substance and decision by reference court does not require interference.

15. Having regard to aforesaid submissions, one may have to take into account that notification under section 4 of the land acquisition Act for acquisition of claimants' land had been issued on 4th September, 2003 and award had been made by Special Land Acquisition Officer on 4th February, 2008. Possession of lands was taken on 15th June, 1995, long before notification under section 4 of the Act had been issued. Sale deed Exhibit-21 had not been considered by the reference court, for it was considered that it was in respect of land situated at a farther distance. Sale instances at Exhibit-20 and 22 have been considered as comparable sale instances, since those relate to land situated only a furlong away from the acquired lands. The sale instances are of the year 2000. The sale instances indicate that price of the land per *Are* had been Rs.2000/-. It appears to have been considered by the reference court that the sale instances carried certain advantages, viz. having a three horse power electric motor and tamarind tree and were relatively of smaller area and had considered it appropriate to deduct 30% amount from the price of those lands and after deducting 30% price had been determined @ Rs.1,400/-

per *Are*. The reference court further has considered that the sale deeds were of the year 2000 and went on adding 10% per annum in the market price of those lands and had considered that the lands would have fetched price around Rs.1810 to 1880 per *Are*. In the circumstances, the court had considered the claimants to be entitled to enhanced compensation for acquired lands @ Rs.1800/- per *Are* as just and fair. The reference court had further found that claimants had also claimed enhancement in compensation in respect of well, stone *bandh* and trees, however, had not been able to have evidence showing compensation granted by the special land acquisition officer in respect of the same is meagre.

16. Although the enhancement so granted by the reference court is purportedly challenged in the present matters, reference court has taken into account that no evidence in rebuttal had been placed on record on behalf of the appellants.

17. 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-20 and Exhibit-22 are of much higher amounts. In the circumstances, so far as enhancement component involved under award under reference is concerned, the same would not be liable to be disturbed.

18. It is not the case, as it would emerge from evidence, that decision in Land Acquisition Reference is in any way not adhering to the record. It appear all relevant aspects for determination of land value have been taken into account.

19. 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. ”*

20. 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.

21. Although learned counsel Mr. C. K. Shinde purports to counter submission in respect of date of award of interest under sections 28 and 24 of Land Acquisition Act, 1894. Yet, as far as interest in present matters directed

from the date of possession is concerned, he does not appear to be in a position to point out any other prevailing position of law in this respect and overcome decision of full bench and the subsequent decision (*supra*). As such, the directions and date of award of interest will have to undergo modification, pursuant to the decision (*supra*) particularly paragraph no. 32 clause (iii) of the same.

22. 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 two judgments in the cases of *State of Maharashtra vs. Kailash Rangari* and *State of Maharashtra vs Ramesh Tukaram Meshram* (*supra*) 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 reference court, from the date of possession.

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

24. Pending civil applications in first appeals stand disposed of. Claimants are allowed to withdraw the amount along with interest accrued thereon.

[SUNIL P. DESHMUKH, J.]

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