

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

FIRST APPEAL NO. 499 OF 2016

The State of Maharashtra, Through Collector, Beed	.. Appellant
versus	
Jaywantrao Govindrao Garud and others	.. Respondents

WITH
FIRST APPEAL NO. 500 OF 2016

The State of Maharashtra, Through The Collector, Beed and another	.. Appellants
versus	
Rohidas Manjabapu Kalbhor	.. Respondents

WITH
FIRST APPEAL NO. 501 OF 2016

The State of Maharashtra, Through The Collector, Beed and another	.. Appellants
versus	
Madhukar Bhikaji Kalbhor	.. Respondent

WITH
FIRST APPEAL NO. 502 OF 2016

The State of Maharashtra and another	.. Appellants
versus	
Tukaram Waman Kalbhor, died, through legal representatives: Rakhmabai Tukaram Kalbhor and ors.	.. Respondents

Mr. A. M. Phule, Assistant Government Pleader for appellants
Miss Gitanjali R. Jagtap, Advocate h/f Mr. C. K. Shinde, Advocate
for respondents

CORAM : SUNIL P. DESHMUKH, J.
DATE : 5th March, 2018

ORAL JUDGMENT :

1. This group of first appeals is preferred by the State and acquiring body, taking exception to the award passed by the reference court (District Judge-2, Beed) in land acquisition reference under section 18 of the Land Acquisition Act, 1894 ("The Act") bearing number 291 of 2010 and companion matters bearing land acquisition references number 288 of 2010, 289 of 2010 and 290 of 2010 decided by common judgment on 18-11-2011 whereunder there has been enhancement in valuation of lands in the range of ₹ 2500 per Are.

2. Learned Assistant Government pleader Mr. Phule, submits that challenge has been posed in these appeals to enhancement under judgment of reference court on various counts.

3. Learned Assistant Govt. Pleader 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.

4. 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 5 and 6 of the impugned award passed by the land acquisition reference court has been rendered untenable.

5. On the other hand, Miss Gitanjali Jagtap, learned advocate holding for learned counsel Mr. C.K. Shinde

appearing on behalf of respondents / claimants submits that the acquired lands were fertile, black soil, good quality and thus having greater potential value. Respondents used to take three crops per year in the acquired lands.

6. She contends that the 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. Possession of the acquired lands had been taken long back in 2005 or thereabout by applying urgency clause before notification dated 01-03-2007 had been issued and that has not been disputed. She contends that, as a matter of fact, reference court has granted compensation at a rate which is less than the rate demanded by claimants. She submits that the surrounding circumstances command even higher compensation than the one that has been awarded by the reference court. Sale transactions had been taken into account while deciding market price of the acquired lands. She, therefore, submits that first appeals hardly carry any substance and decisions by reference courts do not require interference.

7. Learned counsel for respondents submits that under Government Resolutions dated 3rd November, 2016 and

23-08-2017 the State government has decided not to initiate litigation in respect of enhancement, if compensation awarded by reference court is less than four times of the ready reckoner land rate on the date of notification under section 4 of the Act. Learned Assistant Government Pleader fairly concedes to the position that granting enhancement in compensation at the rate of 2500/- per *Are* would not exceed such stipulation.

8. Miss Jagtap 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.

9. While determining rate of compensation to be granted to claimants, the reference court has taken into account that the claimants' witness had stated and claimed market rate to be Rs. 1,00,000/- per acre and same had not been any way shattered in cross-examination. Additionally, in support of oral evidence, the claimants had placed on record various sale instances depicting prices of land ranging between Rs. 2586/- to Rs. 3333/- per *Are*. All these transactions were from the

year 2003 to 2006. All these three sale transactions referred to in the decision are of period prior to the date of notification under Section 4 of the Act in these cases, which is 01-03-2007. The three sale deeds at Exh. 17, 18 and 19, respectively, refer to prices of land at the rate of Rs. 2586/-, 3333/- and Rs. 2250/- per *Are*. The latest one is at Exh. 17 dated 27-12-2006 which is in respect of 58 *Are*. Whereas, second sale instance at Exh. 18 is in respect of 12 *Are* and the third one at Exh. 19 is in respect of 20 *Are*. Exh. 19 is dated 25-06-2003 and Exh. 18 is dated 30-06-2003. The reference court had, thus, considered that the land could fetch value at the rate of Rs. 2500/- and the rates of land were increasing every year and, as such, there has been omission on the part of the Special Land Acquisition Officer in not considering the market rate as would appear from the sale instances placed before him at serial No. 2 and 12 (Exh.17). The reference court has further adverted to that 7/12 extracts of acquired lands show that those were seasonally irrigated and claimants had been taking double crops in a year and the Court has thus, adjudged rate of compensation at the rate of Rs. 2500/- per *Are*. So far as submission that considerations which have weighed with the reference court, same being not proper is not getting any

support of counter evidence. No contrary material has been placed on record by the appellant indicating prices of lands at the rate lower than the one considered by the reference court. Thus, so far the rate at which the lands are valued for payment of compensation does not appear to be in any way arbitrary or perverse.

10. Having regard to aforesaid position and while the State has taken a decision not to initiate proceedings challenging land acquisition awards passed by reference court enhancing compensation not exceeding four times the rate as per ready reckoner on the date of notification under section 4 of the Land Acquisition Act and in the present cases land acquisition compensation granted by reference courts being not in excess of such limitation provided under Government Resolution dated 3rd November, 2016, it appears the challenge to rate of compensation granted in present group of First Appeals may not be compatible with the policy. As such, there does not appear any substance in the appeals so far as rate of compensation granted by the reference court.

11. Learned Assistant Government Pleader submits that interest awarded by the reference court, has been made applicable from the date of possession which, in the wake of

situation as is subsisting is not sustainable in present matters.

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 in 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 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 they do not appear to be in a position, either to point out any other prevailing position of law in this respect or to overcome decision of the full bench and the subsequent decision (supra).

15. It is not in dispute that possession is taken in 1994 much prior to issuance of notification under section 4 of the Land Acquisition Act which is in 2000. As such, so far as grant of interest by the reference court from the date of possession is concerned, in view of decision of full bench of this court and particularly clause (iii) of paragraph no. 32 as well as clause (a) of paragraph no. 33 in the case of *State of Maharashtra vs. Kailash Shiva Rangari* and decision of Bombay high court in *State vs Ramesh Meshram* referred to hereinbefore, in present matters will have to be rectified and modified. The modification in dates of grant of interest as such shall have to be in tune with observations in aforesaid decisions.

16. In the circumstances, clauses 5 and 6 of the operative order under decision in land acquisition references will have to undergo modification in tune with the judgments in the cases of *State of Maharashtra vs. Kailash Shiva Rangari* and *The 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 the reference court, from the date of possession.

17. Interest granted under section 34 of the Land Acquisition Act on the compensation granted by special land acquisition officer will have to be computed from the date of award and not from the date of possession as granted under impugned award of reference court. Thus, interest pursuant to section 34 of the Act will have to be paid at the rate of 9 per cent per annum from the date of award for first year and at the rate of 15 per cent per annum after expiry of first year till realization of amount. So would be the case in respect of enhanced compensation. Interest on the same will be accordingly paid from the date of award for the first year at the rate of 9 per cent per annum from the date of award and thereafter at the rate of 15 per cent per annum till realization of the amount.

18. In view of aforesaid, first appeals partly succeed to the extent of modification of clauses in respect of dates of payment of interest contained in clauses No. 5 and 6 of

reference court decisions impugned in first appeals bearing no. 499, 500, 501 and 502 of 2016.

19. First appeals on rest of the points, are dismissed and are disposed of.

20. Pending civil applications in first appeals stand disposed of. Respondents-claimants are allowed to withdraw the amount along with interest accrued thereon.

SUNIL P. DESHMUKH,
JUDGE

pnd/-