

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1642 OF 2017

Raosaheb S/o Vasant Gund
Age : 50 years, Occu. : Agri.,
R/o. : Padoli (A),
Tq. & Dist. Osmanabad

.. Appellant
(Orig. Claimant)

Versus

- 1] The State of Maharashtra,
Through Collector, Osmanabad
- 2] The Special Land Acquisition Officer,
(P.T. & M.I.W.) No. 1, Osmanabad
- 3] The Executive Engineer,
(P.T. & M.I.W.) No. 1, Osmanabad

.. Respondents
(Orig. Opponents)

WITH
FIRST APPEAL NO. 1643 OF 2017

Popat S/o Dagadu Garad,
Age : 58 years, Occu. : Agri.,
R/o. : Padoli (A),
Tq. & Dist. Osmanabad

.. Appellant
(Orig. Claimant)

Versus

- 1] The State of Maharashtra,
Through Collector, Osmanabad
- 2] The Special Land Acquisition Officer,
(P.T. & M.I.W.) No. 1, Osmanabad
- 3] The Executive Engineer,
(P.T. & M.I.W.) No. 1, Osmanabad

.. Respondents
(Orig. Opponents)

...
Mr. S.K. Chavan, Advocate h/f. Mr. R.K. Shingnapure, Advocate for appellants in both appeals
Mr. S.P. Deshmukh, AGP for respondent - State
Mr. Ruturaj Patil, Advocate for respondent no.3 in both appeals
...

CORAM : SUNIL P. DESHMUKH, J.
DATE : 14-03-2018

ORAL JUDGMENT :

1. These are appeals under section 54 of Land Acquisition Act, 1894, posing challenge which now stands, on instructions of learned counsel for appellants, confined only to the interest aspect awarded under decision of reference court dated 19-04-2013 in land acquisition references no. 573/08, 568/08, 622/08, 612/08, 620/08, 574/08, 572/08, 571/08, 569/08, 633/08, 570/08, 510/10, 519/10, 509/10 and 139/12.

2. Appellants are claimants in land acquisition proceedings and their lands had been acquired for percolation tank at village Padoli (Akubai), Tq. and District - Osmanabad as shown in paragraph no. 3 of the impugned judgment and order.

3. Notification under section 4 of the Land Acquisition Act, 1894 had been issued on 21-12-2004 and the same culminated into

award by collector / special land acquisition officer dated 29-04-2006. Lands of claimants had been taken in possession after award by special land acquisition officer on 29-04-2006.

4. The rate at which compensation had been purportedly granted by collector / special land acquisition officer had been taken exception to in the references under section 18 of the Land Acquisition Act of 1894 by the claimants and under award dated 19-04-2013 by reference court, the rate of compensation had been enhanced to Rs.3000/- per *Are* from the one that had been granted by the special land acquisition officer.

5. Though learned counsel for appellants incidentally points out the enhancement had not been to the tune with demand made under the references by the claimants, however, on instructions, submits that the claimants have reconciled themselves to the rate at which the compensation has been granted by the reference court.

6. Learned counsel for appellants contends that the interest awarded under the order passed by reference court dated 19-04-2013 is not in tune with the statutory provisions. According to learned counsel, interest is liable to be paid pursuant to section 34 of the Land Acquisition Act, 1894, on the awarded amount by

special land acquisition officer, at the rate of 9% per annum for first year and at the rate of 15% per annum for subsequent years, if the compensation is not paid within the period referred to therein from the date of possession.

7. Learned counsel for appellants submits that clause (v), as appearing under the operative order dated 19-04-2013 passed in the award by reference court, reads, thus,

" v- Compensation received from LAO in respect of acquired lands, be deducted from the amount of enhanced compensation and balance amount be paid to the claimants along with interest @ 9% per annum for the period 21.12.2004 to 20.12.2005 and 15% interest for the period 21.12.2005 to 29.4.2006 in the light of section 34 of the Act."

As such, according to learned counsel, interest on the award amount of the special land acquisition officer is liable to be paid accordingly.

8. He contends, aforesaid order would hardly be said to be in tune with the provisions appearing in section 28 of the Land Acquisition Act, 1894. Appellants are concerned with interest directed to be paid pursuant to provisions in the Land Acquisition Act, 1894 on amounts of compensation. He submits that limiting the same to the date of award, as has been depicted under clause (v) reproduced above, is not compatible with the intention underlying section 28 of the Land Acquisition Act, 1894.

9. Learned counsel Mr. Ruturaj Patil appearing on behalf of the respondent - acquiring body points out that factual position is possession has been taken over after the award has been passed by special land acquisition officer and not before. He submits that may be, so far as the interest to be computed in cases of taking over possession before award has been passed, interest is liable to be paid from the date of award. According to him, parties are not faced with such a situation. Having regard to the provisions as appearing in sections 28 and 34 of the Land Acquisition Act, 1894, interest at the rate of 9% per annum is liable to be paid for the first year from the date of taking possession and for every subsequent year, at the rate of 15% per annum till the amount is paid or deposited.

10. Learned counsel of the acquiring body fairly concedes to that entitlement of the claimants will have to be given treatment pursuant to the provisions under section 28 of the Land Acquisition Act, 1894.

11. Section 28 of the Land Acquisition Act, 1894, reads, thus:-

" 28. Collector may be directed to pay interest on excess compensation. If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award

of the Court may direct that the Collector shall pay interest on such excess at the rate of nine per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court : Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry. "

12. In view of aforesaid, position emerges that the award of interest as appearing in clause (v) of the impugned judgment, will have to be brought in tune with the legislative intent and, as such, interest will have to be paid at the rate of 9% per annum from 29-04-2006 upto 28-04-2007 and at the rate of 15% per annum from 29-04-2007 on the compensation granted by special land acquisition officer and on the enhanced amount granted by the reference court till the amount is paid to the claimants or is deposited by respondents.

13. Clause (v) of the impugned judgment shall stand modified accordingly.

14. It is hoped that the claimants would be paid the compensation amount accordingly in right earnest and preferably within a period of two months from the date of receipt of writ of this order.

15. Both first appeals stand disposed of accordingly.

[SUNIL P. DESHMUKH]
JUDGE

arp/