

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

**FIRST APPEAL NO.4484 OF 2016
(L.A.R.No. 211/2001)**

The Executive Engineer,
Minor Irrigation Strengthening
Divn, Omerga, Dist. Osmanabad = **Appellant**
(Orig.R.NO.2)

VERSUS

- 1) The State of Maharashtra
Through Collector Osmanabad
 - 2) Vishwanath S/o Dattu Hagare,
Age Major, Occu. Agri.,
R/o Kati, Tq. Tuljapur,
Dist. Osmanabad
- = **RESPONDENTS**
**(Orig. R. No. 1 &
Orig.Claimant.)**

WITH

**FIRST APPEAL NO.4485 OF 2016
(L.A.R. No.395/2000)**

The Executive Engineer,
Minor Irrigation Strengthening
Divn, Omerga, Dist. Osmanabad. = **Appellant**
(Orig.R.NO.2)

Versus

1. The State of Maharashtra
Through Collector. Osmanabad.
 2. Vandan W/o Bapurao Bhojane,
Age Major, Occu. Agri.,
R/o Kati, Tq. Tuljapur,
Dist. Osmanabad.
- = **RESPONDENTS**
**(Orig. R. No. 1 &
Orig.Claimant.)**

WITH

**FIRST APPEAL NO 4486/2016
(L.A.R. NO. 957/2002)**

The Executive Engineer,
Minor Irrigation Strengthening
Divn, Omerga, Dist. Osmanabad.

**= Appellant
(Orig.R.NO.2)**

Versus

1. The State of Maharashtra
Through Collector.Osmanabad.
2. Ushabai W/o Ambadas Gaikwad,
Age Major, Occu. Agri.,
R/o Kati, Tq. Tuljapur,
Dist. Osmanabad.

**= RESPONDENTS
(Orig. R. No. 1 &
Orig.Claimant.)**

Shri. Rajale Gulab B, Adv. for Appellant;
Shri AM Phule, AGP for Respondent No.1-State;
Shri. Patil Laxmikant C, Adv. for Resp no 2.

**CORAM : P.R.BORA, J.
DATE : 8th January, 2019**

ORAL JUDMENT

1. Since the present appeals are arising out of common Judgment and Award passed by the court of Joint Civil Judge, Senior Division Osmanabad in LAR Nos.395/2000 with LAR No.957/2002 and 211/2001 decided on 27th February, 2013, I have heard the common arguments in these appeals and I deem it appropriate to decide these appeals by a common reasoning.

2. The lands, which are the subject matter of the present appeals, were acquired for Kati Dahiwadi Minor Irrigation Project at village Kati. Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) in that regard was published in the Official Gazette on 7.11.1996 whereas Award under section 11 of the Act came to be passed on 5.11.1999.

3. The Reference Court has offered the compensation ranging between Rs.12,000/- to Rs. 14,000/- per Acre. Dissatisfied with the amount of compensation so offered, the claimants preferred applications under Section 18 of the Act, which were adjudicated by the 5th Joint Civil Judge, Senior Division, Osmanabad, who is hereinafter referred to as the Reference Court. Before the Reference Court the claimants had claimed compensation @ Rs.1,50,000/- per acre. The learned Reference Court after having assessed the oral and documentary evidence brought on record before it, enhanced the amount of compensation @ Rs. 64,000/- per acre and also held the claimants

entitled for the statutory benefits and interest on the enhanced amount of compensation. Aggrieved by, the acquiring body has preferred the present appeals.

4. Shri Rajale, learned counsel appearing for the acquiring body criticized the impugned Judgment mainly on two grounds, I) that the Reference Court has unreasonably enhanced the amount of compensation; and ii) that interest under Section 28 of the Act has been wrongly awarded by the Reference Court from the date of possession.

5. Learned AGP Shri Phule has adopted the arguments advanced on behalf of the acquiring body. Shri L.C.Patil, learned counsel appearing for the claimants, however, supported the impugned Judgment and Award and prayed for dismissal of the appeal.

6. Perusal of the impugned judgment reveals that the Reference Court has relied upon the sale instance at Exh.25 brought on record. The land, which was the subject matter of Exhibit-25 was admeasuring 39 Ares situated at village Masala Kh.

and was sold by registered sale deed executed on 22.3.1996 for the consideration of Rs. 1,00,000/- i.e. at the rate of Rs.1,02,560/- per acre.

7. The discussion made by the Reference Court in para 14 of the impugned judgment reveals that the Reference Court preferred not to rely upon the said sale instance and preferred to rely upon the earlier decision in LAR No. 190/2005 arising out of the same acquisition proceedings. In LAR No. 190/2005, the Reference Court, which decided the said Reference Application, had relied upon the sale deed dated 30.12.1994 pertaining to the land situated at village Sawargaon. The land which was the subject matter of said sale deed was admeasuring 1 acre and was irrigated land. It was sold at the consideration of Rs. 96,000/-. Observing that village Sawargaon was closure to village Kati Khurd than village Masala, the Reference Court preferred to rely upon the sale deed pertaining to the land at village Sawargaon. The discussion made by the Reference Court further reveals that it has not blindly relied upon the said sale instance, but has considered all plus

minus factors while deciding the market value of the subject lands on the basis of the said sale instance. The discussion made by the Reference Court further reveals that having considered the fact that the lands involved in the Reference Application before the Reference Court, were non-irrigated lands, the Reference Court determined the market value of the said lands @ Rs. 64,000/- per acre. It does not appear to me that the Reference Court has committed any error in determining the market value of the subject lands at the aforesaid rate. I, therefore, do not see any reason to cause interference in the market value as has been determined by the Reference Court of the acquired lands.

8. There is, however, substance in the objection raised by the learned counsel appearing for the acquiring body and the learned AGP that the Reference Court has erred in awarding the interest under Section 28 of the Act from the date of issuance of Notification under Section 4 of the Act, i.e. from 7.11.1996.

9. The Full Bench of this Court in the Case

of The State of Maharashtra Vs. Kailash Shiva Rangari (cited supra) has ruled that, the interest under Section 34 of the Act can only be made payable from the date of Award under Section 11 of the Act and not from any prior date. The learned Single Judge of this court (Coram: S.B.Shukre,J.) while deciding the First Appeal No.383/2004, vide the judgment delivered on 23rd November, 2017, has held that the interpretation accorded to Section 34 of the Act by the Full Bench of this Court would also have its equal application while understanding the import of Section 28 of the Act, and has accordingly set aside the Award impugned in the said appeal wherein the Reference Court has awarded the interest from the date of taking over possession of the land and instead made it applicable from the date of declaration of the Award under Section 11 of the Act. In view of the law laid down, vide the judgments referred to herein above, the interest under Section 28 of the Act can only be granted from the date of declaration of the award under Section 11 of the Act and not from any prior date. The impugned common Judgment and Award to that extent,

therefore, deserves to be set aside.

10. During the course of the arguments, it was brought to my notice that the acquiring body has not deposited a single pais towards the compensation, as was enhanced by the Reference Court. The claimants have, therefore, prayed for a direction against the acquiring body for deposit of the said amount. The request so made by the claimants also deserves to be considered.

11. For the reasons stated herein above, following order is passed, -

ORDER

- i. The common Judgment and Award dated 27th February, 2013 in LAR No.395/2000 with LAR No.957/2002 and 211/2001, is set aside to the extent it relates to grant of interest under Section 28 of the Act, from the date of taking possession of the acquired lands.
- ii. Instead, such interest is made payable from the date of declaration of the Award under Section 11 of the Act.

(9)

The modified Award be prepared accordingly.

iii. The appellant shall deposit the amount of compensation as per the modified Award within a period of six months from the date of this order in the Executing Court.

iv. The appeals are thus partly allowed in the aforesaid terms. Pending civil applications if any stand disposed of.

(P.R.BORA)
JUDGE

bdv/