

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

FIRST APPEAL NO.149 OF 2019

The Executive Engineer,
Kukadi Distribution & Construction
Division, Kolwadi, Tq Karjat,
Dist. Ahmednagar.

... Appellant
(Acquiring body)

Versus

1. The State of Maharashtra
2. Rambhau Bhikaji Bhos,
Age Major, Occu. Agri.,
3. Bhaskar Bhikaji Bhos,
Age Major, Occu. Agri.
4. Prataprao Bhikaji Bhos,
Age Major, Occu. Agri.
5. Rahul Balasaheb Bhos,
Age Major, Occu. Agri.
6. Ratnabai Jaising Bhos,
Age Major, Occu. Agri.
7. Balasaheb Raosaheb Bhos,
Age Major, Occu. Agri.
8. Jaising Raosaheb Bhos,
Age Major, Occu. Agri.
9. Kesharbai Balasaheb Bhos,
Age Major, Occu. Agri.

All R/o Tandali Dumla, Tq. Shrigonda,
Dist. Ahmednagar

...Respondents.
(Orig. R. No. 1
& Orig. Claimants)

WITH

FIRST APPEAL NO.151 OF 2019

The Executive Engineer,
Kukadi Distribution & Construction
Division, Kolwadi, Tq Karjat,
Dist. Ahmednagar.

... Appellant
(Acquiring body)

Versus

1. The State of Maharashtra
2. Bapu Maruti Dhawade,
Age : Major, Occu. Agri.
3. Sakharam Mahadu Dhawade
Age Major, Occu. Agri.
4. Manjabapu Mahadu Dhawade
Age Major, Occu. Agri.
5. Tukaram Mahadu Dhawade
Age Major, Occu. Agri.
6. Dada Mahadu Dhawade,
Age Major, Occu. Agri.
7. Sou. Sindubai Rajaram Kadus,
Age Major, Occu. Agri.
8. Shashikala Shrirang Suryawanshi
Age Major, Occu. Agri.

All R/o Tandali Dumla, Tq Shrigonda,
Dist. Ahmednagar

...Respondents
(Orig. R. No. 1 &
Orig. Claimants)

...

WITH**FIRST APPEAL NO.152 OF 2019**

The Executive Engineer,
Kukadi Distribution & Construction
Division, Kolwadi, Tq Karjat,
Dist. Ahmednagar.

... Appellant
(Acquiring Body)

Versus

1. The State of Maharashtra
2. Dadasaheb Digambar Bhos,
Age Major, Occu. Agri.
R/o Tandali Dumla, Tq. Shrigonda,
Dist. Ahmednagar

...Respondents
(Orig. R.No.1 &
Orig. Claimant)

...

WITH**FIRST APPEAL NO.153 OF 2019**

The Executive Engineer,
Kukadi Distribution & Construction
Division, Kolwadi, Tq Karjat,
Dist. Ahmednagar.

... Appellant
(Acquiring Body)

Versus

1. The State of Maharashtra
2. Dilip Deoram Bhos,
Age Major, Occu. Agri.
R/o. Tandali Dumla, Tq. Shrigonda,
Dist. Ahmednagar.

...Respondents.
[Orig. R. No. 1 &
Orig. Claimant]

WITH**FIRST APPEAL NO.154 OF 2019**

The Executive Engineer,
Kukadi Distribution & Construction
Division, Kolwadi, Tq Karjat,
Dist. Ahmednagar.

... Appellant
(Acquiring body)

Versus

1. The State of Maharashtra.
2. Sakharam Rama Bhos,
Age Major, Occu. Agri.
3. Kantilal Sakharam Bhos,
Age Major, Occu. Agri.
4. Dadasaheb Sakharam Bhos,
Age Major, Occu. Agri.

All R/o Tandali Dumla, Tq. Shrigonda,
Dist. Ahmednagar.

... Respondents.
(Orig. R.No. 1 & Orig.
Claimants)

...

WITH**FIRST APPEAL NO.157 OF 2019**

The Executive Engineer,
Kukadi Distribution & Construction
Division, Kolwadi, Tq Karjat,
Dist. Ahmednagar.

... Appellant
(Acquiring body)

Versus

1. The State of Maharashtra.
2. Shashikala Shrirang Suryawanshi,
Age Major, Occu. Agri.

3. Dattatraya Rakhmaji Kadam,
Age Major, Occu. Agri.
4. Assaram Dattatraya Kadam,
Minor, Guardian- Mother
Nanda Dattatraya Kadam,
Age Major, Occu. Household,
5. Sindhubai Rajaram Kadus,
Age Major, Occu. Household,

All R/o. Tandali Dumla, Tq Shrigonda,
Dist. Ahmednagar.

..Respondents.

(Ori.R.No.1 & Orig.
Claimants)

.....

Advocate for Appellant : Shri G.B. Rajale
AGP for Respondent - State : Shri A.M. Phule
Advocate for Respdts – Orig. Claimants : Shri M.R. Sonwane

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CORAM : P.R. BORA, J.

Dated: January 17, 2019

ORAL JUDGMENT :

1. Since all these appeals are arising out of the common Judgment and Award delivered by Civil Judge, Senior Division Shrigonda in LAR No.14/2007 with connected LAR's on 23.03.2010, 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 involved in the present appeals, were acquired for Kukadi Canal from village Tandali Dumala, Tal. Shrigonda, District Ahmednagar. Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') in that regard was published on 03.05.2001 and the Award under Section 11 of the Act came to be passed on 30.09.2003. SLAO had offered the compensation at the rate of Rs.82,800/- per hector for non-irrigated land and at the rate of Rs.1,24,200/- per hector for the seasonally irrigated land. Dissatisfied with the amount of compensation so offered, the claimants filed the applications under Section 18 of the Act, which were adjudicated by the Civil Judge, Senior Division, Shrigonda. The said Court is hereinafter referred to as the 'Reference Court'.

3. In reference applications, the claimants had claimed the compensation at the rate of Rs.2,50,000/- per hector for non-irrigated lands and Rs.5,00,000/- per hector for the irrigated lands. The Reference Court, after having assessed the evidence on record, determined the market value of the non-

irrigated acquired lands at the rate of Rs.1,66,666/- per hector. The Reference Court has held all the lands involved in the present group of appeals to be dry lands and accordingly determined the market value and enhanced the amount of compensation. Aggrieved by, the Acquiring Body has preferred the present appeals.

4. Shri Rajale, learned Counsel appearing for the appellant – Acquiring Body submitted that, in the reference applications the Acquiring Body was not made party in its name and as such, it could not participate in the said reference proceedings. The learned Counsel also brought to my notice that, the present appeals are filed by the Acquiring Body after obtaining leave from this Court. The learned Counsel submitted that, the Reference Court without any cogent and sufficient evidence has enhanced the amount of compensation arbitrarily. The learned Counsel further contended that, the sale instances at Exhs.17 & 18, which have been relied upon by the Reference Court, cannot be said to be of the comparable lands and as such could not have been relied upon by the Reference Court. The

learned Counsel further submitted that, the said sale instances were pertaining to the small pieces of lands and as such also could not have been relied upon by the Reference Court. The learned Counsel submitted that, as against it, the Special Land Acquisition Officer had taken into account many more sale instances of the comparable lands in the vicinity and on the basis of the value received to the lands involved in the said sale instances had determined the market value of the acquired lands at the rate of Rs.82,800/- per hector holding all these lands to be non-irrigated lands. The learned Counsel submitted that, there was no reason for causing any indulgence in the market rate so offered by the SLAO. The learned Counsel submitted that, since the Reference Court has awarded unreasonable hike in the market price, the impugned common Judgment deserves to be set aside and consequently, the Award passed under Section 11 of the Act needs to be reaffirmed. The learned Counsel further submitted that, the Reference Court has also erred in awarding interest under Section 28 and 34 of the Act from the date of possession. The learned Counsel submitted that, in view of the full Bench Judgment of this Court in the case

of **State of Maharashtra Vs. Kailash Shiva Rangari, 2016 (4)**

ALL MR 513 such an interest could have been awarded by the Reference Court only from the date of passing of the Award under Section 11 of the Act and not from any prior date. On all the aforesaid grounds, the learned Counsel prayed for setting aside the impugned Judgment and Award and to restore the Award passed by the SLAO under Section 11 of the Act.

5. Shri Phule, learned AGP appearing for the State supported the arguments advanced by Shri Rajale, learned Counsel appearing for the Acquiring Body and prayed for setting aside the impugned Judgment and Award.

6. Shri Sonawane, learned Counsel appearing for the claimants supported the impugned Judgment and Award. The learned Counsel pointed out that, in addition to their own testimonies, the claimants had relied upon two sale instances. The learned Counsel further pointed out that, the land, which was involved in the sale instance at Exh.17, was admeasuring 60 *Are* and was sold by registered sale-deed executed on

21.04.1999 for the consideration of Rs.1,00,000/- i.e. at the rate of Rs.1,66,666/- per hector. The learned Counsel further pointed out that, the land, which was the subject matter of Exh.18, was admeasuring 40 R and was sold on 21.06.2001 for the consideration of Rs.60,000/- i.e. at the rate of Rs.1,50,000/- per hector. The learned Counsel submitted that, the Reference Court has rightly relied upon the sale instance at Exh.17, wherein the higher price was received to the land. The learned Counsel submitted that, the land, which was the subject matter of Exh.17, was in all respect similar to the lands which are involved in the present matter and as such, the Reference Court has rightly determined the market value of the acquired lands at the rate of Rs.1,66,666/- per hector. It was, therefore, the contention of the learned Counsel that, there is no substance in the appeals filed by the Acquiring Body.

7. The learned Counsel further submitted that, even otherwise, in view of the policy adopted by the Government recently of not to file the appeals and not to prosecute the appeals which are already filed wherein the compensation as has been given by the Reference Court is less than four times of

the compensation determined by the SLAO the present appeals cannot be further prosecuted by the appellant. The learned Counsel submitted that, in the present matter, the Reference Court has enhanced the amount of compensation averagely double of the amount offered by the SLAO and as such, the appeals cannot be prosecuted further by the Acquiring Body and for that reason also, these appeals deserve to be dismissed.

8. I have given due consideration to the submissions made by the learned Counsel appearing for the respective parties. I have perused the impugned Judgment and the other material placed on record. Perusal of the common Judgment and Award reveals that, the Reference Court did rely upon the sale deed at Exh.17. As noted herein above, 60 Are land was sold by registered sale-deed (Exh.17) executed on 21.04.1999 for the consideration of Rs.1,00,000/-. It is not in dispute that, the land, which was the subject matter of Exh.17, was non-irrigated land and from the same village Tandali Dumala. Apparently, there appears no reason to disagree with the market value as has been determined by the Reference Court based on the said sale

instance. It was sought to be contended by learned Counsel Shri Rajale that, when the land, which was the subject matter of Exh.18, which was also from village Dumala, was sold at the rate of Rs.1,50,000/- per hector, that too after issuance of Section 4 notification, the Reference Court must have held the said rate to be the market rate and the said sale deed to be a genuine sale deed. On the aforesaid ground, it was the contention of Shri Rajale that, the Reference Court could not have determined the market value of the acquired land at the rate less than Rs.1,50,000/- per hector. However, when I perused the contents of both the sale deeds at Exhs.17 & 18, it is revealed that, the land, which was the subject matter of Exh.18, was sold by the owner of the said land on the ground that, he was inclined to leave the village and leave the cultivation of the said land permanently and any how was bent upon to sell the said land. Perhaps that may be the reason that, he sold the said land at some lower price than the land which was the subject matter at Exh.18 was sold. It appears to me that, in the circumstances, the Reference Court has rightly relied upon the said sale instance of Exh.17. Even otherwise, as per the law

settled by the Hon'ble Apex Court, the sale instance, in which, the higher price is received, is ordinarily to be applied while determining the amount of compensation. On both these counts, no fault can be found with the conclusions arrived at by the Reference Court. After having considered the entire material on record, it does not appear to me that, the Reference Court has in any way enhanced the amount of compensation arbitrarily or has determined the market value of the acquired lands at excessive rate or without any evidence therefor. I, therefore, see no reason to cause interference in the market value as has been determined by the Reference Court.

9. However, there appears substance in the further argument advanced by Shri Rajale that, the Reference Court has erred in awarding the interest under Section 28 of the Act from the date of possession. To that extent, the Award certainly needs to be modified. The full Bench of this Court in the case of **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 **First Appeal No.383 of 2004** in the case of **The State of Maharashtra & Ors Vs. Ramesh Tukaram Meshram & Ors** has held that, the interpretation as has been made by the Full Bench of this Court of the provision under Section 34 of the Act would squarely apply to Section 28 of the Act and interest under the said Act would also be liable to be paid only from the date of passing of the Award and not from any prior date. The learned another Single Judge of this Court (**Coram: Sunil P. Deshmukh, J.**) while deciding the **First Appeal No.483 of 2018** has affirmed the said interpretation and has held the claimants in the appeals before him entitled for the interest under Section 28 of the Act from the date of passing of the Award under Section 11 of the Act. In view of the law settled as above, the impugned Judgment and Award so far as it relates to grant of interest under section 28 of the Act from the date of possession deserves to be modified. Save and except the said modification, the other part of the Award needs to be maintained as it is.

10. For the reasons stated above, the following order is passed.

ORDER

(i) The impugned Judgment and Award so far as it relates to grant of interest under Section 28 of the Act from the date of possession is set aside, instead such an interest is made payable from the date of declaration of the Award i.e. 30.09.2003 under Section 11 of the Act. The impugned Award be modified accordingly.

(ii) All the First Appeals stand partly allowed in the aforesaid terms.

(iii) The amount deposited by the Acquiring Body in this Court be permitted to be withdrawn by the claimants as per the modified Award with the proportionate interest accrued thereon.

(iv) The balance amount, if any, with the proportionate interest thereon, be refunded to the Acquiring Body.

(v) Pending Civil Application, if any, stands disposed of.

(PR. BORA, J.)