

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3384 OF 2015
WITH
CA/15018/2015 IN FA/3384/2015

- 1) The State of Maharashtra,
Through - The Collector, Jalna.
 - 2) The Special Land Acquisition Officer,
(B & C), Collector Office, Jalna.
 - 3) The Executive Engineer,
Minor Irrigation (Local Sector),
Division, Jalna.
- ...Appellants.
(Ori.Respdts.)

VERSUS

Sayyed Nazir Sayyed Baba,
Age Major, Occupation Agriculturists,
R/o Nandi Tq. Ambad Dist. Jalna.

...Respondent.
(Ori.Claimant)

.....

AGP for Appellants : Mr. A. M. Phule.
Advocate for Respondent : Mr. A.B. Kale.

.....

WITH
FIRST APPEAL NO. 716 OF 2012

Sayyed Nazir Sayyed Baba,
Age 60, Occupation Agriculturists,
R/o Nandi Tq. Ambad Dist. Jalna.

...Appellant.
(Ori.Petitioner)

VERSUS

- 1) The State of Maharashtra,
Through - The Collector, Jalna.
- 2) The Special Land Acquisition Officer,
(B & C), Collector Office, Jalna.
- 3) The Executive Engineer,

Minor Irrigation (Local Sector),
Division, Jalna.
R/o Nandi Tq. Ambad Dist. Jalna.

...Respondent.
(Ori.Respds.)

....
Advocate for Appellant : Mr. A. B. Kale.
AGP for Respondents No.1 to 3 : Mr. A. M .Phule.
....

CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Judgment :
05-08-2019.**

**Date of Pronouncing The Judgment :
10-10-2019.**

JUDGMENT :

1. Present appeals are arising out of Judgment and award passed by Joint Civil Judge, Senior Division, Jalna in LAR No.2548 of 2010 (new) (LAR No.244 of 2007 old), dated 21/12/2011, and therefore, they are proposed to be disposed of by this common Judgment. First Appeal No.3384 of 2015 has been filed by the State Government whereas First Appeal No.716 of 2012 has been filed by original claimant for enhancement in the compensation.

2. The facts giving rise to the appeals are ;

That, the original claimant is the owner of Gut No.64 situated at village Nandi Tq. Ambad Dist. Jalna, admeasuring 2 H 74 R. The land was acquired for percolation tank by the Government. Notification under Section 4(1) of the Land Acquisition Act (Hereinafter referred to as, 'the Act') was published in Gazette on 04-12-2003. Respondent No.2 - the Special Land Acquisition officer,

passed award under Section 11 of the Act on 07-03-2005. Compensation @ Rs.535/- per R was granted.

3. Dissatisfied with the said award, the claimant approached Reference Court by filing reference under Section 18 of the Act. It was contended that, taking into consideration the soil, fertility, cropping pattern and the fact that a well was situated in the acquired land, it ought to have been categorized in irrigated category. It was further contended that, compensation @ Rs.3,000/- per R, and for three mango trees, additional compensation was claimed with statutory benefits.

4. Respondents No.1 and 2 filed written statement and supported the reasons given by respondent No.2 for arriving at the said market value, and it was stated that, the market price of the land, on the date of award, has been rightly assessed.

5. After the issues were framed, claimant has led oral as well as documentary evidence. Taking into consideration the evidence on record, the learned Reference Court has held that, the compensation awarded to the claimant was grossly inadequate and it requires enhancement. Accordingly, enhancement has been granted @ Rs.1650/- per R. This award has been challenged by both the parties. The State is contending that, the said enhancement is excessive whereas the claimant seeks enhancement.

6. Heard learned AGP Mr. A. M. Phule for the State and learned advocate Mr. A. B. Kale for original claimant.

7. It has been vehemently submitted on behalf of the State that, by considering sale deed at Exhibit 17, the learned Reference Court has calculated the amount of compensation. In fact, the said sale deed is of adjacent village. The distance between the land under the sale deed and the acquired land is about four to five furlongs. That sale deed was in respect of the land which was admeasuring 12.5 R which was sold for a consideration of Rs.30,000/- i.e. Rs.2,400/- per R. When it was a small portion that was sold by way of that sale deed, the amount that has been enhanced by the Reference Court is on the higher side. It was further pointed out that, the learned Reference Court has wrongly awarded interest under Section 28 of the Act from the date of notification, when in view of *State of Maharashtra Versus Kailash Shiva Rangari*, reported in 2016 (4) All MR 513 (Full Bench), it would have been from the date of award.

8. Learned advocate for the claimant submitted that, two sale instances were produced before the Reference Court. Out of that, only one sale deed at Exhibit 17 has been considered. The second sale instance was in respect of 22 R land and it was sold for a consideration of Rs.45,000/-. Both the sale deeds were admittedly of the period prior to Section 4 Notification under this case. While rejecting the said sale instance, the learned Trial Court says that, it is

in respect of small pockets. That was the sale instance available, and therefore, it ought to have been considered in proper perspective. Secondly, interest under Section 34 has not been granted by the learned Reference Court, and therefore, to that extent, the award deserves to be corrected.

9. The first and the foremost fact that is required to be considered is that, as to what can be the category of the acquired land. The learned Trial Court has categorized it in non-irrigated land on the strength of E-Statement. It was stated that, though the 7/12 extract shows entry regarding well yet the cropping pattern does not say that, irrigated crops were taken. The learned Reference Court appears to be correct on that aspect. 7/12 extract at Exhibit 21 gives the entry regarding the crops as well as well. Note of the said 7/12 extract has been taken by the Reference Court. We are more concern with the entries regarding crops prior to the notification under Section 4 of the Act. For the year 2003-2004, crops like Cotton, Toor and Wheat were taken. However, it is to be noted that, the possession of the acquired land was taken by private negotiation on 16-07-2001 itself. When the possession was taken by the Government, where was the question of taking any crop in the suit land by the claimant. Claimant has not produced 7/12 extract of the year prior to the date of possession. Under such circumstance, it has been rightly observed by the learned Reference Court that, though 7/12 extract shows existence of well yet the cropping pattern does

not show that, the water from the well was utilized to take irrigated crop. The learned Reference Court has rightly categorized the land as 'non-irrigated'.

10. Now turning towards the sale instance, the sale deeds have been produced at Exhibits 17 and 24. The land sold under Exhibit 17 was admeasuring 12.5 R and it was sold for Rs.30,000/- i.e. Rs.2,400/- per R from village Dhangar Pimpalgaon on 05-08-2000. The said village is adjacent village and it has come on record that, the distances between two villages is about four to five furlongs. The said land which was involved in Exhibit 17 was semi irrigated. This sale deed has been considered by the Reference Court. The claimant intends to rely and it is submitted that the sale instance at Exhibit 24 ought to have been considered. It is to be noted that, the said sale deed is in respect of 0.22 R and it was sold for consideration of Rs.45,000/- i.e. Rs.2,045/- per R on 08-07-1998. It has been observed by the Reference Court that, in the village Dhangar Pimpri of which that sale instance Exhibit 24 is, acquisition process was in progress, and therefore, there would have been unusual increase in the price. The said reason given by the Reference Court for discarding Exhibit 24 appears to be correct. Now as regards the small pockets are concerned, note can be taken of the decision in, *Land Acquisition Officer, Kammarapally Village, Nizamabad District, A.P. Versus Nookala Rajamallu And Others*, reported in (2003) 12 *Supreme Court Cases* 334. In this case, the Hon'ble Supreme Court

has held that,

“It is advisable to apply some deduction on account of exemplars of plots of small size relied upon by way of evidence by the parties.”

Therefore, merely because Exhibit 17 is in respect of a small pocket or plot, it cannot be stated that, it is not comparable. The learned Reference Court has taken note of the size of the said land of the sale instance and then has made appropriate deduction in view of the aforesaid authority. It will not be out of place to mention here that, even 10 % appropriation per year has also been calculated to arrive at the just figure of the market price. The reason given for discarding the sale deed at exhibit 24, as a sale instance for computation of compensation in this case is concerned, they have been rightly given as the acquisition process was going in the village where the said land under sale instance was situated. Another factor also to be noted is that, the sale deed at Exhibit 24 had taken place on 08-07-1998 whereas the sale deed at Exhibit 17 was executed on 05-08-2000. Therefore, whatever was just prior to the notification under Section 4 of this matter, was rightly considered by the Reference Court.

11. Now as regards the interest under Section 28 of the Act is concerned, the learned AGP for appellants/ State submits that, rate of interest under Section 28 has been wrongly given from the date of possession, when as per the decision of the Full Bench In, *State of*

Maharashtra Vs. Kailash Shiva Rangari, reported in *AIR 2016 Bombay 141*, it should be from the date of award. There is substance in the submissions made by appellants/ State. The decision given by Full Bench deserves to be followed, though it has come later in point of time, than the award was passed, in these appeals. Yet, since the appeals are the continuation, the said decision have to be made applicable.

12. In the same decision of *Kailas Shiva Rangari (Supra)* it has been held that,

“We express our full agreement with the view taken by the Division Bench of this Court in case of, *Lalitkumar Himmatlal Shah v. State of Maharashtra and others*, reported in 2012(4) Mh.L.J. 742, cited supra, that in a case where possession is taken prior to issuance of notification under Section 4 (1) of the said Act, the interest under Section 34 shall start running from the date of the award only.”

Further it has been held that,

“In view of the 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 land-owner 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.”

The learned Trial Court had relied on the decision of this Court in, *Godawari Marathwada Irrigation Development Corporation, Aurangabad Versus State of Maharashtra And Others, First Appeal No.1226 of 2011 to 1237 of 2011, dated 19-07-2011*, for not allowing the interest under Section 34 of the Act. In *Dr. Shamlal Narula Versus Commissioner of Income Tax, Pubjab, Jammu and Kashimr, Himachal Pradesh and Patiyala*, reported in *AIR 1964, Supreme Court 1878*, the Hon’ble Apex Court has observed that,

“The statutory interest payable under Section 34 is not compensation paid to the owner for depriving him of the right to possession of the land acquired, but that given to him for the deprivation of the use of the money representing the compensation for the land acquired.”

Here in this case, the possession has been taken by private negotiation on 16-07-2001 and the Notification under Section 4 was published on 04-12-2003. Therefore, in view of the aforesaid pronouncements, the claimant is entitled to get interest under Section 34 of the Act and it should be from the date of the award only. Under such circumstance, both the appeals are required to be partly allowed. Hence, following order is passed.

ORDER

(1) First Appeal No.3384 of 2015 and First Appeal No.716 of 2012 are hereby partly allowed.

(2) The prayer in both the appeals to reduce the compensation and to enhance the compensation made by respective appellants are hereby rejected.

(3) The Judgment and award passed in LAR No.2548 of 2010 (new) (LAR No.244 of 2007 old) dated 21-12-2011, by Joint civil Judge, Senior Division, Jalna is hereby modified to the extent of interest under Section 28 of the Land Acquisition Act and instead of granting the said interest from the date of the notification i.e. 04-12-2003, it is awarded from the date of award i.e. 07-03-2005 under Section 11 of the Act.

(4) The claimant is entitled to get interest under Section 34 of the Act from the date of the award till acceptance of compensation amount by claimant.

(5) Award is modified accordingly.

(6) No order as to costs.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.