

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

**FIRST APPEAL NO.1196 OF 2017
(L.A.R.No.300/2008)**

The Executive Engineer,
Irrigation Project, Majbutikaran
Divn, Omerga, Dist. Osmanabad

**= Appellant
(Orig.R.NO.3)**

VERSUS

- 1) The State of Maharashtra
Through Collector Osmanabad.
- 2) The Special Land Acquisition
Officer, Krishna Khore Vikas
Mahamangal Office, Osmanabad.
- 3) Chandrakant Kamlakar Deshpande,
Age 48 Years, Occu. Agri.,
R/o Kati, Tq. Tuljapur,
Dist. Osmanabad.

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

WITH

**FIRST APPEAL NO.1197 OF 2017
(L.A.R.No. 292/2008)**

The Executive Engineer,
Irrigation Project, Majbutikaran
Divn, Omerga, Dist. Osmanabad

**= Appellant
(Orig.R.NO.3)**

VERSUS

- 1) The State of Maharashtra
Through Collector Osmanabad.
- 2) The Special Land Acquisition
Officer, Krishna Khore Vikas
Mahamangal Office, Osmanabad.
- 3) Dipatmaj Dilip Deshpande,
Age 24 Years, Occu. Agri. & Service,

R/o Kati, Tq. Tuljapur,
Dist Osmanabad

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

WITH

FIRST APPEAL NO.1198 OF 2017
(L.A.R.No.291/2008)

The Executive Engineer,
Irrigation Project, Majbutikaran
Divn, Omerga, Dist. Osmanabad

= **Appellant**
(Orig.R.NO.3)

VERSUS

- 1) The State of Maharashtra
Through Collector Osmanabad.
- 2) The Special Land Acquisition
Officer, Krishna Khore Vikas
Mahamangal Office, Osmanabad.
- 3) Ravindra Umakant Deshpande,
Age 37 Years, Occu. Agri.,
R/o Kati, Tq. Tuljapur,
Dist. Osmanabad.

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

WITH

FIRST APPEAL NO.1199 OF 2017
(L.A.R.No. 301/2008)

The Executive Engineer,
Irrigation Project, Majbutikaran
Divn, Omerga, Dist. Osmanabad

= **Appellant**
(Orig.R.NO.3)

VERSUS

- 1) The State of Maharashtra
Through Collector Osmanabad.
- 2) The Special Land Acquisition
Officer, Krishna Khore Vikas

Mahamangal Office, Osmanabad.

- 3) Keshav Venkatesh Deshpande,
Age 45 Years, Occu. Agri.,
R/o Kati, Tq. Tuljapur,
Dist. Osmanabad.

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

Shri. Rajale Gulab B, Adv. for Appellant/s;
Shri AM Phule, AGP for Resp.Nos.1 & 2;
Shri. Deshmukh Vivekanand B. Adv. for Resp no 3.

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

ORAL JUDGMENT

1. Since all these appeals arise out of common Judgment and Award passed by 2nd Joint Civil Judge, Junior Division, Osmanabad on 10th April, 2013 in LAR No.300/2008 and three other connected LARs, I have heard the common arguments in these appeals and I deem it appropriate to decide these appeals by a common reasoning.

2. The acquiring body has preferred these appeals against the aforesaid common Judgment and Award. The lands, which are the subject matter of the present appeals, were acquired for construction of canal of Kati Dahiwadi project situated at village Kati, Tq. Tuljlapur, District Osmanabad. A notification under Section 4 of the Land

Acquisition Act, 1894 (herein after referred to as the Act) was published in that regard in the official gazette on 30.11.2000 and Award under Section 11 of the Act came to be passed on 31st March, 2003. The Special Land Acquisition Officer had offered the compensation to the respective claimants at the rate ranging between Rs.390/- per Are to Rs.495/- per Are. Dissatisfied with the compensation so offered, the claimants preferred applications under Section 18 of the Act to Collector Beed, who in turn forwarded all those applications for adjudication to the civil Court, which is hereinafter referred to as the Reference Court. The Reference Court after having considered the evidence brought before it, determined the market value of the seasonally irrigated land @ Rs.1432/- per Are and for perennial irrigated land @ Rs. 1910/- per Are and accordingly enhanced the amount of compensation. Aggrieved by, the acquiring body has preferred the present appeals.

3. Shri Rajale, learned counsel appearing for the acquiring body has assailed the common impugned Judgment and Award on several grounds. The learned counsel submitted that the sale

instance, which has been relied upon by the Reference Court while determining the market value of the acquired lands, since was from different village, it could not have been relied upon by the Reference Court. The learned counsel pointed out that the sale instance, which has been relied upon by the Reference Court was pertaining to the lands situated at village Masala, whereas the subject lands were from village Kati. The learned counsel further submitted that as has been observed by the Reference Court, nothing was brought on record to show that village Masala and village Kati are adjacent villages. The learned counsel further submitted that even the distance between these two villages was also not brought on record. In the circumstances, according to the learned counsel, the said sale instance must have been discarded by the Reference Court and could not have been relied upon for determining the market value of the acquired lands. The learned counsel further submitted that the said sale instance was not liable to be relied upon for one more reason that it was of the year 1996, i.e. of the period prior to four years of issuance of Section 4 notification

in the present matters. The learned counsel further submitted that ordinarily the sale instances within the period of three years, either prior or subsequent to issuance of Section 4 notification, are held to be comparable sale instances. The learned counsel further submitted that the sale instance of the year 1996 thus could not have been relied upon by the Reference Court. The learned counsel further submitted that the Reference Court has further not discussed as to the quality and nature of the land, which was the subject matter of the said sale instances and the quality and nature of the acquired lands. The learned counsel submitted that as against it, the Special Land Acquisition Officer had determined the market value of the acquired lands after having studied the several sale instances of the relevant period and by personally visiting the site of acquired lands. The learned counsel submitted that in such circumstances, there was no reason for the Reference Court to cause interference in the amount of compensation so offered by the Special Land Acquisition Officer. The learned counsel further submitted that the Reference Court has also erred

in awarding the interest under Section 28 of the Act from the date of possession. Relying on the Full Bench Judgment of this Court in the case of The State of Maharashtra Vs. Kailash Shiva Rangari - 2016 (4) ALL MR 513, the learned counsel submitted that the order to that effect is apparently unsustainable and deserves to be set aside. The learned counsel on above grounds prayed for setting aside the common impugned Judgment and Award and further prayed for restoring the Award as was passed by the Special Land Acquisition Officer under Section 11 of the Act.

4. Learned Counsel Shri Deshmukh appearing for original claimants supported the impugned Judgment and Award. The learned counsel pointed out that neither the acquiring body nor the State has adduced any oral or documentary evidence before the Reference Court and in such circumstances, the only evidence which was before the Reference Court for determining the market value of the acquired lands was the evidence of the claimants and the sale instance brought on record by the claimants. The learned counsel taking me through the discussion made by the Reference Court submitted

that the Reference Court has compared the sale instance relied upon by the claimants with the acquired lands and has appropriately reduced the market value, considering the fact that the sale instance was pertaining to the land situated at village Masala and not from village Kati. The learned counsel pointed out that after having considered that the increase could not have been granted at the ordinary rate of 10% per annum since there was no evidence to show that in the said period, the market value was on rise of the lands in the vicinity. The Reference Court has given rise at the rate of only 7.5% per annum. The learned counsel submitted that the Reference Court has, in fact, conservatively increased the market value of the acquired lands and as such, no interference is required in the amount of compensation so enhanced by the Reference Court. The learned counsel further submitted the respondents are not disputing the legal position as settled by the Full Bench of this Court as about grant of interest under Section 34 of the Act from the date of declaration of the Award under Section 11 of the Act, and as such, the impugned Award may be modified to the aforesaid

extent. The learned counsel further submitted that it also needs to be considered that the Reference Court has not awarded any interest under Section 34 of the Act though the claimants were entitled for the said interest. The learned counsel, in the circumstances, prayed for dismissal of the appeals filed by the acquiring body.

5. Learned AGP Shri Phule has supported the arguments advanced by the learned counsel appearing for the acquiring body.

6. I have given due consideration to the submissions made by the learned counsel appearing for the respective parties. I have also perused the common impugned Judgment and Award as well as the evidence on record. After having considered the evidence on record, it is revealed that neither the acquiring body nor the State has adduced any oral evidence in order to substantiate the defences raised by them. The only evidence which was available for consideration of the Reference Court was the testimonies of the respective claimants and the sale instance brought on record by the claimants.

7. The Reference Court in para 19 onwards of

the judgment has discussed the evidence brought on record by the claimants. Perusal of the impugned judgment reveals that Exhibit 25 was the sale instance, which was for consideration for the Reference Court to determine the value of the acquired lands. The land which was subject matter of Exhibit 25 was from village Masala and was purchased by one Vishwanath Bhagwan Nimbalkar for the total consideration of Rs. 1,00,000/- The land was admeasuring 39 Ares. The land was purchased @ Rs. 1,02,560/- per Are, i.e. @ Rs. 2564/- per Are. The further discussion in para 25 and 26 of the impugned Judgment and Award reveals that the Reference Court considering the settled legal position by the judicial pronouncements, has considered the plus and minus factors and accordingly has determined the market value of the acquired lands on the basis of the said sale deed. The discussion made by the Reference Court reveals that the Reference Court has not blindly accepted the price received to the land which was the subject matter of Exhibit-25. It appears that the Reference Court has considered every aspect while determining the market value on the basis of the

said sale instance. I deem it appropriate to reproduce herein below para 25 of the impugned common Judgment and Award , which reads thus, -

"25. In this case comparable sale transaction over which claimants are relied upon is executed on 22/03/1996 and the date of notification is 30/11/2000. It shows that there is a gap of about 4 years between date of notification and execution of the sale transaction. According to me, the transaction is executed prior to three years from the date of notification can afford good guidance to determine the market value. However, that cannot be strict rule. According to me, merely because sale transaction prior to 4 years is relied upon cannot be ground to discard it. However, according to me, benefit of yearly increase cannot be given to the claimant for more than three years. In the case of State of Maharashtra V/s Chandrakant Mangilal Samdadiya and ano. 2013(1)Mh.L.J.397, wherein it is held that, "if the land is acquired from rural area and if no evidence is adduced of any extraordinary

development or extraordinary increase in the price of the land in that area, then the rate of escalation will have to be taken at 7.5% per annum commutatively and not at flat rate". In order to determine the market value on 30/11/2000 the escalation will have to be taken @ 7.5% per annum for period of three years only. The interest @ 7.5% per annum for first year will be Rs.4615/-. Thus, the market value for the first year will be Rs.66151/-(Rs.61536/- + Rs.4615/-). On Rs.66151/- the yearly increase at the rate of 7.5% will be Rs.4961/-. Thus, the market value on second year will be Rs.71,112/-(Rs.66,151 + Rs. 4961) on Rs. 71,112/-, the yearly increase at the rate of 7.5% will be Rs.5,333/-. Hence, market value of the acquired land on third year i.e. on the date of notification will be Rs.76,445/- as rounded Rs.76400/- i.e. Rs.1910/- per R for *bagayat* land. The market rate of the seasonal *bagayat* land is 75% of market rate of *bagayat* land. The market value of the *bagayat* land is Rs.76,400/- per acre. Hence, market value of the seasonal *bagayat* land comes to Rs.57,300/- per acre

i.e. Rs.1432/- per R."

8. After having gone through the discussion made by the Reference Court, it does not appear to me that there is any scope for causing any interference in the finding recorded by the Reference Court. As I noted earlier, that was the only evidence before the Reference Court and that has been appropriately appreciated by the Reference Court. After having considered the discussion made by the Reference Court, it is difficult to accept the contention raised by the acquiring body that the Reference Court has arbitrarily enhanced the market value of the acquired lands. On the contrary, it is revealed that the Reference Court has considered the fact that the land was belonging to some different village and the further fact that the sale instance was of the period prior to 4 years. The Reference Court has also considered that in absence of any material brought on record showing that the market prices were on rise in the relevant period and as such has given increase in the price of the land at the conservative rate of 7.5% per annum and that too only for the period of three years. Considering all these aspects, it

does not appear to me that any case is made out by the acquiring body for causing interference in the market value as has been determined by the Reference Court.

9. However, in so far as the interest awarded under Section 28 of the Act is concerned, the objection raised by the learned counsel for the acquiring body, deserves to be considered. 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.

10. In the common Judgment and Award impugned in the present appeals, the Reference Court has awarded the interest under Section 28 of the Act from the date of possession. 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 Judgment and Award to that extent, therefore, deserves to be set aside.

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

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

ORDER

i. The common Judgment and Award dated 10th April, 2013 in LAR No.300/2008 with connected LARs 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. 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/