

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

First Appeal No. 0987 of 2012

District : Nanded

Narayan s/o. Madhavrao Wadgaonkar,
Age : 52 years,
Occupation : Agriculture,
R/o. Marajwadi, Taluka Mukhed,
Dist. Nanded.

.. Appellant
(Original
claimant)

versus

1. The State of Maharashtra,
Through the District Collector,
Nanded.

2. The Special Land Acquisition
Officer, M.I.W., Krishna Khore,
Nanded.

3. The Executive Engineer,
Lendi Project Division,
Kodgire Building, Degloor,
Taluka Degloor,
Dist. Nanded.

.. Respondents
(Original
respondents)

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Mr. G.N. Chincholkar, Advocate, for the appellant.

*Mr. S.P. Deshmukh, Assistant Government Pleader,
for respondents no.01 and 02.*

Mr. B.R. Surwase, Advocate, for respondent no.03.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 26TH JULY 2019

JUDGMENT :

01. Present appellant is the original claimant who had filed Land Acquisition Reference No. 397 of 2007 (New) (old No. 385 of 2006) before learned Civil Judge Senior Division, Link Court, Mukhed, District Nanded under Section 18 of the Land Acquisition Act. The said reference came to be decided on 20-01-2012. It was partly allowed. Compensation was given @ Rs.76,709/- per hector.

02. Land Survey No. 64/B/2 admeasuring 1 H 71 R from village Marajwadi, Tal. Mukhed, Dist. Nanded was acquired for submergence area of Lendi Major Project. At the time of hearing of present appeal the learned Advocate appearing for the appellant / claimant tendered across the bar the copy of the common Judgment delivered by this Court in First Appeal No.834 of 2010 with 13 more First Appeals. It was submitted that, this Court in the aforesaid common Judgment has relied on the determination of market value of the lands acquired from village Marajwadi for the Lendi Project arrived at in yet another common judgment of this Court in First Appeal No. 988 of 2012 with First Appeal No. 989 of 2012. In both set of appeals, this Court has determined the market rate at Rs.1,25,000/ per hectare for dry lands, Rs.1,87,500/ per hectare for semi-irrigated lands and Rs.2,50,000/ per hectare for irrigated lands. The learned Advocate for appellant submitted that, the lands

involved in all these appeals including land in present matter, being acquired for the same project vide same notification dt. 09-07-1998 and under the same Award passed by Special Land Acquisition Officer under Section 11 of the Act, the compensation in this matter also needs to be enhanced at the same rate. He also submitted that, the land, in this matter is quite similar in quality and potentiality as that of lands in those decided appeals. He therefore, prayed for the enhancement in the amount of compensation at par with the compensation enhanced in those decided appeals by this Court.

03. Learned Advocate Shri. B. R. Surwase appearing for the Acquiring Body / respondent No. 3 does not dispute the factual correctness of the facts mentioned by Advocate Shri Chincholkar. However, he has pointed out that, in this reference also, the Reference Court has awarded the interest under Sections 28 and 34 of the Act wrongly from the date of issuance of Section 4 notification. It was pointed out that in the judgment in First Appeal No. 834 of 2010, necessary modifications were made in the award passed by the reference Court. He prayed for similar modification in this case also. He also submitted that in the said case, this Court had accepted the categorization made by the SLAO in the Award passed under Section 11 of the Act. The said categorization was accepted by appellant. Hence, it is to be done as

per award. Learned Advocate Shri Chincholkar has no objection for the same.

04. Learned AGP has supported the submissions made by acquiring body.

05. Perusal of the record shows that the lands in the appeals relied by appellant and this case are acquired for the same project under same notification under Section 4 of the Act. Common Award under Section 11 of the Act was passed on 25-10-2004 in respect of all the lands acquired under the project. Though SLAO had determined the market value of the acquired land at Rs.63,925/, it was enhanced to Rs.76,709/- per hector by learned Reference Court. This Court in First Appeal No.988 of 2012 with First Appeal No.989 of 2012 has given the uniform rate for the acquired lands at the rate of Rs.1,25,000/ per hectare for dry land and at the rate of Rs.2,50,000/ per hectare for irrigated land. In view of the fact that, the acquisitions were made for the same project vide same notification and under the same Award, then present appeal also deserve to be allowed on the similar terms by enhancing the compensation at par with the compensation as was enhanced in First Appeal Nos.988 of 2012 with 989 of 2012 as well as First Appeal No. 834 of 2010 and group decided on 21-02-2019. The land in question in this case is 'dry land' i.e. non-irrigated.

06. While considering First Appeal No. 834 of 2010 and others the legal infirmity brought to the notice of the Court has been dealt with and accordingly the award was modified to the extent of interest under Section 28 and 34 of the Act. In this case also there is same legal infirmity. Hence it is required to be corrected similarly 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** and the Judgment of the learned Single Judge in the case of **State of Maharashtra & Ors Vs. Ramesh Tukaram Meshram & Ors, 2018 (1) ALL MR 645**. As per the law laid down in the aforesaid Judgments, the interest under Sections 28 and 34 of the Act can only be granted from the date of passing of the Award under Section 11 of the Act and not from prior date.

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

ORDER

(1) The impugned judgment and award passed by the learned Civil Judge Senior Division, Link Court, Mukhed, Dist. Nanded in L. A. R. No. 397 of 2007 (Old No. 385 of 2006) is hereby set aside and modified as follows:

“(i) Appellant is entitled for the compensation at the rate of Rs.1,25,000/ per

hectare for non-irrigated lands. Appellant is also entitled to receive the statutory benefits on the enhanced amount of compensation.

(ii) Appellant is entitled to receive the interest under Sections 28 and 34 of the Act from the date of passing of the Award under Section 11 of the Act i.e. from 25.10.2004 on the enhanced amount of compensation till realization of entire amount."

(2) Appeal stands partly allowed in the aforesaid terms.

(3) No order as to costs.

(Smt. Vibha Kankanwadi)
JUDGE

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