

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

First Appeal No. 01529 of 2018

District : Latur

1. The State of Maharashtra,
Through Collector, Latur.
2. The Executive Engineer,
Local Sector, Latur.

.. Appellants
(Original
respondents)

versus

Shantabai w/o. Janardhan Patil,
Age : 35 years,
Occupation : Agriculture,
R/o. Avalkonda,
Taluka Udgir, Dist. Latur.

.. Respondent
(Original
claimant)

With

First Appeal No. 01530 of 2018

District : Latur

1. The State of Maharashtra,
Through Collector, Latur.
2. The Executive Engineer,
Local Sector, Latur.

.. Appellants
(Original
respondents)

versus

Narayan s/o. Namdeo Somwad,
Age : 50 years,
Occupation : Agriculture,
R/o. Avalkonda,
Taluka Udgir, Dist. Latur.

.. Respondent
(Original
claimant)

With

First Appeal No. 01531 of 2018

District : Latur

1. The State of Maharashtra,
Through Collector, Latur.

2. The Executive Engineer,
Local Sector, Latur.

.. Appellants
(Original
respondents)

versus

Maroti s/o. Gangaram Patil,
Age : 38 years,
Occupation : Agriculture,
R/o. Avalkonda,
Taluka Udgir, Dist. Latur.

.. Respondent
(Original
claimant)

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Mr. A.M. Phule, Advocate, for the appellants.

Mr. S.S. Chillarge, Advocate, for the respondents.

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CORAM : SMT. VIBHA KANKANWADI, J.

**Date of reserving
the judgment : 13th June 2019**

**Date of pronouncing
the judgment : 29th July 2019**

JUDGMENT :

01. All these appeals have been filed by the State cum acquiring body to challenge the judgment and award passed by the reference Court i.e. Civil Judge (Senior Division), Ahmedpur, Camp at Udgir, District Latur, in L.A.R. No.46 of 2004, L.A.R.

No.44 of 2004 and L.A.R. No.45 of 2004, respectively, dated 16-02-2008, whereby by common judgment, those references came to be allowed partly.

02. Heard learned Assistant Government Pleader Mr. A.M. Phule for appellants - State and learned Advocate Mr. S.S. Chillarge for respondents - original claimants in respective appeals.

03. All the references were filed by the respondents - claimants under Section 18 of the Land Acquisition Act, 1894, claiming enhancement in the compensation awarded by the Land Acquisition Officer, dated 20th September 2002. The lands belonging to claimants bearing Survey no.160 admeasuring 02 hectares 15 R, Survey no.164 admeasuring 0.40 R and Survey no.154 admeasuring 01 hectare, in respective references were acquired for percolation tank at village Avalkonda, Taluka Udgir, District Latur. The notification under Section 4 of the Land Acquisition Act was published on 30th August 2001. As aforesaid, award under Section 11 of the Land Acquisition Act came to be passed on 20th September 2002. The possession of the lands were already taken on 20th March 1995. The Special Land Acquisition Officer had awarded compensation at the rate of Rs.405/- per R, Rs.463/- per R and

Rs.471/- per R, for the lands to the respective claimants. The claimants had contended that the rate that was given by the Special Land Acquisition Officer was too meager and inadequate. It is stated that their village is situated at a distance of 10 kms from Taluka place. The population of their village is more than 3000. There are various facilities in their village, including good transportation. The village is at a distance of 03 kms from State Highway. The quality of the soil is high, good fertility giving them annual income to the tune of Rs. 15,000/- to Rs. 20,000/-, excluding the cultivation expenses. According to them, minimum market rate on the date of notification under Section 4 of the Act was about Rs. 1,00,000/- per acre.

04. The State had resisted all the references by giving common reply and denied all the averments in the references seeking enhancement. It was denied that all the amenities and facilities are available at the village. The respondent - State had supported the rate given by the Land Acquisition Officer.

05. After the issues were framed, claimants had led evidence, oral as well as documentary, especially sale instance at Exhibit 16. Taking into

consideration the sale instance and the oral evidence on record, learned reference Court has enhanced the rate at Rs. 2,000/- per R. 30 percent solatium under Section 23(2) of the Act, 12 percent increase under Section 23(1-A) of the Act from the date of notification under Section 4 of the Act till date of passing award was granted. Further, the interest at the rate of 9 % per annum has been granted from 20-03-1995 for one year as per Section 28 of the Land Acquisition Act and thereafter interest has been granted at the rate of 15 % per annum till realization of the entire amount. Further, all the claimants were held to be entitled to get interest at the rate of 9 % per annum from 20-03-1995 for one year and thereafter at the rate of 15 % per annum till passing of award i.e. 20th September 2002 as per Section 34 of the Act. This award is challenged in these appeals.

06. Learned Assistant Government Pleader has submitted that on the basis of sale instance, learned reference Court has enhanced the rate. However, that sale instance Exhibit 16 is of village Her and not from Avalkonda. Therefore, the said rate deserves to be set aside. So also, the interest that has been awarded under Section 28 and 34 of the Act is not as per the Full Bench decision of this Court in *State of Maharashtra Vs. Kailash Shiva Rangari*

(AIR 2016 Bombay 141).

07. Per contra, learned Advocate appearing for the respondents fully supported the reasons given by the learned reference Court in all the appeals.

08. From the said points raised in the arguments, it can be seen that the State is challenging the award only on two counts i.e. the rate has been wrongly fixed on the basis of sale instance Exhibit 16 and the interest awarded under Section 28 and 34 of the Act. As regards first point, it is to be noted that though the said sale instance Exhibit 16 is of village Her, yet, in order to support the said sale instance, claimants had examined CW 02 Baburao More at Exhibit 18. The said sale deed was in respect of 21 R land for a consideration of Rs. 50,000/- i.e. at the rate of Rs. 2,380/- per R. It was specifically observed that nothing has been elicited in the contrary in the cross examination of this witness. The State had every opportunity to show that said village Her is not within the vicinity or almost in the same locality of village Avalkonda. When that opportunity has not been availed and there is specific observation by the reference Court, that it is not in dispute that the land mentioned in the sale deed in Exhibit 16 and the acquired lands are

in the same locality and vicinity, then definitely the reference Court was justified in taking note of the said sale instance and fixing the rate of compensation in the present case. Further, it is to be noted that though the claimants had contended that rate should be fixed at Rs. 2,500/- per R, that was not accepted by the reference Court and taking into consideration the sale instance and the land acquired in this case, the rate that has been fixed is Rs. 2,500/- per R. Therefore, that rate does not require any kind of interference by this Court.

09. As regards point no.02 in respect of interest is concerned, definitely this Court is bound by the said pronouncement of the Full Bench of this Court. It is to be noted that the reference Court, in this case, had pronounced its decision in 2008 and the decision of the Full Bench has come in 2016. In view of para no.32(iii) of the decision in *Kailash Rangari's case (supra)*, since the possession in this case was taken prior to the notification under Section 4(1) of the Act, then there was no question of invoking the urgency clause under Section 34 of the Act and the interest under Section 34 would run from the date of passing of the award. Under such circumstance, taking into consideration the decision of the Full Bench, the impugned part of interest deserves to be corrected.

10. Clause 4 of the operative order in the judgment and award passed by the reference Court is modified as follows :-

" Claimants are entitled to interest under Section 28 of the Land Acquisition Act, on the enhanced compensation, solatium and component amounts at the rate of 9 % per annum from the date of award i.e. 20th September 2002 till deposit of enhanced compensation, solatium and component amounts in the Court. If the enhanced compensation and solatium amounts with interest had not been deposited till 20th September 2003, the claimants are entitled to interest at the rate of 15 % per annum from that date i.e. 20th September 2003 till the date of deposit of the entire enhanced compensation amount and solatium amount in the Court."

Clause 5 of the operative order in the judgment and award passed by the reference Court is modified as follows :-

" Claimants are entitled for interest under Section 34 of the Land Acquisition Act, on the compensation awarded by Collector, at the rate of 9 % per annum from the date of award i.e. 20th September 2002 till

20th September 2003 and since the amount was not accepted by the claimants, it shall get interest at the rate of 15 % per annum from 20th September 2003, till actual realization of the entire amount."

11. With the modification to aforesaid extent, the First Appeals stand partly allowed and rest of the challenge in the first appeals stand dismissed.

(Smt. Vibha Kankanwadi)
JUDGE

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