

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

FIRST APPEAL NO.1011 OF 2010

Godavari Marathwada Irrigation
Development Corporation Aurangabad
Through its Executive Engineer,
Latur Minor Irrigation Division Latur,
Dist. Latur

...Appellant

Versus

1. Janardhan S/o Narayan Patil (Suryawanshi)
Age Major, Occ. Agri.,
R/o Hangarga (Sirsi), Tq. Nilanga,
Dist. Latur.

2. The State of Maharashtra
Through Collector,
Latur, Dist. Latur.

...Respondents

**WITH
FIRST APPEAL NO.1012 OF 2010**

Godavari Marathwada Irrigation
Development Corporation Aurangabad
Through its Executive Engineer,
Latur Minor Irrigation Division Latur,
Dist. Latur

...Appellant

Versus

1. Shivaji Swarup Patil (Suryawanshi)
Age Major, Occ. Agri.,
R/o Hangarga (Sirsi), Tq. Nilanga,
Dist. Latur.

2. The State of Maharashtra
Through Collector,
Latur, Dist. Latur.

...Respondents

**WITH
FIRST APPEAL NO.1014 OF 2010**

Godavari Marathwada Irrigation

Development Corporation Aurangabad
Through its Executive Engineer,
Latur Minor Irrigation Division Latur,
Dist. Latur

...Appellant

Versus

1. Rajendra Narayan Patil (Suryawanshi)
Age Major, Occ. Agri.,
R/o Hangarga (Sirsi), Tq. Nilanga,
Dist. Latur.
2. The State of Maharashtra
Through Collector,
Latur, Dist. Latur.

...Respondents

**WITH
FIRST APPEAL NO.1015 OF 2010**

Godavari Marathwada Irrigation
Development Corporation Aurangabad
Through its Executive Engineer,
Latur Minor Irrigation Division Latur,
Dist. Latur

...Appellant

Versus

1. Gopal Swarup Patil (Suryawanshi)
Age Major, Occ. Agri.,
R/o Hangarga (Sirsi), Tq. Nilanga,
Dist. Latur.
2. The State of Maharashtra
Through Collector,
Latur, Dist. Latur.

...Respondents

**WITH
FIRST APPEAL NO.1016 OF 2010**

Godavari Marathwada Irrigation
Development Corporation Aurangabad
Through its Executive Engineer,
Latur Minor Irrigation Division Latur,
Dist. Latur

...Appellant

Versus

1. Vaijinath S/o Narayan Patil (Suryawanshi)
(Died) Through L.Rs.
- 1/1. Vilas S/o Vaijinath Patil (Suryawanshi)
Age: 50 years, Occ: Agri.,
- 1/2. Balaji S/o Vaijinath Patil (Suryawanshi)
Age: 45 years, Occ: Agri.,
- 1/3. Sanjay S/o Vaijinath Patil (Suryawanshi)
Age: 42 years, Occ: Agri.,
- 1/4. Smt. Kalawati W/o Vaijinath Patil (Suryawanshi)
Age: 69 years, Occ: Household,

R/o Hangarga (Sirsi), Tq. Nilanga,
Dist. Latur.
2. The State of Maharashtra
Through Collector,
Latur, Dist. Latur. ...Respondents

**WITH
FIRST APPEAL NO.1017 OF 2010**

Godavari Marathwada Irrigation
Development Corporation Aurangabad
Through its Executive Engineer,
Latur Minor Irrigation Division Latur,
Dist. Latur ...Appellant

Versus

1. Anita W/o Bhikajirao Deshpande
Age Major, Occ. Agri.,
R/o Hangarga (Sirsi), Tq. Nilanga,
Dist. Latur.
2. The State of Maharashtra
Through Collector,
Latur, Dist. Latur. ...Respondents

**WITH
FIRST APPEAL NO.1018 OF 2010**

(4)

Godavari Marathwada Irrigation
Development Corporation Aurangabad
Through its Executive Engineer,
Latur Minor Irrigation Division Latur,
Dist. Latur

...Appellant

Versus

1. Shivling Ganpati Kumbhar
Age Major, Occ. Agri.,
R/o Hangarga (Sirsi), Tq. Nilanga,
Dist. Latur.
2. The State of Maharashtra
Through Collector,
Latur, Dist. Latur.

...Respondents

**WITH
FIRST APPEAL NO.1019 OF 2010**

Godavari Marathwada Irrigation
Development Corporation Aurangabad
Through its Executive Engineer,
Latur Minor Irrigation Division Latur,
Dist. Latur

...Appellant

Versus

1. Gopal Swarup Patil (Suryawanshi)
Age Major, Occ. Agri.,
2. Shivaji Swarop Patil (Suryawanshi)
Age: Major, Occ: Agri.,

All R/o Hangarga (Sirsi), Tq. Nilanga,
Dist. Latur.
3. The State of Maharashtra
Through Collector,
Latur, Dist. Latur.

...Respondents

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Mr. Bhagwat A. Shinde, Advocate for Appellant.
Mr. S.J. Salgare, AGP for Respondent/State.
Mr. A.B. Kharosekar, Advocate for Respondent(s).

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CORAM : P.R. BORA, J.
DATED : 05th March, 2019.

ORAL JUDGMENT:-

1. Since all these appeals are arising out of the common judgment and award passed by the Court of Civil Judge, Senior Division, Nilanga in L.A.R. No.419/2002, L.A.R. No.147/2002, L.A.R. No.148/2002, L.A.R. No.452/2002, L.A.R. No.396/2002, L.A.R. No.76/2006, L.A.R. No.168/2003 and L.A.R. No.51/2002 decided on 30.04.2008, I have heard common arguments in these appeals and I deem it appropriate to decide all these appeals by a common reasoning.

2. The lands, which are the subject matter in the present appeals were acquired for the purpose of minor irrigation tank at village Hangarga (Sirsi), Tq. Nilanga, Dist. Latur. A notification under Section 4 of the Land Acquisition Act, 1894 (herein after referred to as the Act) in that regard was published in the official gazette on 20.03.1996, whereas Award under Section 11 of the Act came to be passed on 19.02.1998. The Special Land Acquisition Officer had offered the compensation to the respective claimants at the rate of Rs.18,600/- per Acre for dry lands. Dissatisfied with the

amount of compensation so offered, the claimants preferred the Reference Applications under Section 18 of the Act, which were adjudicated by the Court of Civil Judge, Senior Division, Nilanga. The said court is hereinafter referred to as the Reference Court.

3. Before the Reference court, the claimants had claimed the compensation at the rate of Rs.1,40,000/- per Acre. In order to substantiate the claim so raised, the claimants in addition to their own testimonies had placed on record two sale instances at Exh.96 and Exh. 97 respectively and have prayed for enhancement in the amount of compensation. The Respondents did not adduce any oral evidence, however, placed on record the certified copy of sale instance, which is marked as Exh.74. The Reference Court, after having considered the oral and documentary evidence brought on record before it, has held the claimants entitled for the compensation at the rate of Rs.75,000/- per Acre for the dry land and Rs.1,12,000/- per Acre for the seasonally irrigated land, and has accordingly enhanced the amount of compensation. Aggrieved by, the State has preferred the present appeals.

4. Shri Shinde, the learned counsel appearing for

the acquiring body submitted that the Reference Court has wrongly relied upon the sale instances brought on record by the claimants. The learned counsel pointed out that the sale instance relied by the Reference Court at Exh.96 was pertaining to a small piece of land admeasuring 6 R, and in the circumstances, no reliance could have been placed on such sale instance for determining the market value of the acquired lands, which were quite large in size. The learned counsel submitted that the sale instance placed on record by the acquiring body at Exh.74 was liable to be considered by the Reference Court, however, for wrong reasons, the Reference Court had declined to rely upon the said sale instance. The learned counsel further submitted that the Reference Court has also erred in awarding the interest under Section 34 of the Act from the date of taking possession. The learned counsel further submitted that the Reference Court was not having any right or authority to consider or grant the request for grant of rental compensation while awarding the compensation. The learned counsel, therefore, prayed for setting aside the impugned judgment and award and to restore the award passed by the SLAO.

5. Shri Kharosekar, the learned counsel appearing

for the claimants resisted the contentions raised on behalf of the appellant-acquiring body. The learned counsel submitted that, in fact, the compensation as has been enhanced by the Reference Court is very conservatively enhanced and considering the evidence on record, the Reference Court could have enhanced the compensation even more than as has been enhanced by the said Court. The learned counsel submitted that though the acquired lands are irrigated lands and sufficient evidence was placed on record before the Reference Court, the Reference Court has considered the sale instance of the non-irrigated land and has accordingly awarded the compensation. The learned counsel further submitted that the sale instances at Exh.96 and Exh.97 have been correctly relied upon the Reference Court and on the basis of the said sale instances and by working out the plus/minus factors and after giving plus/minus allowances, the Reference Court has rightly determined the market value at the rate of Rs.75,000/- per Acre for dry land and Rs.1,12,000/- for seasonally irrigated land. The learned counsel submitted that in the circumstances, no interference is required to be caused in the judgment and award so passed. The learned counsel submitted that considering the fact that the Reference Court has held the acquired lands to

be seasonally irrigated lands, the interest awarded under Section 34 of the Act though has been awarded from the date of possession, cannot be interfered with. The learned counsel further submitted that the liberty be given to claimants to avail appropriate remedy for claiming the rental compensation. The learned counsel, in the circumstances, prayed for dismissal of the appeals filed by the acquiring body.

6. Shri Salgare, the learned AGP has supported the arguments advanced on behalf of the learned counsel Shri Shinde appearing for the acquiring body and prayed for setting aside the impugned judgment and award and to restore the award passed by the SLAO.

7. I have given due consideration to the submissions made by the learned counsel appearing for the respective parties. I have also perused the impugned Judgment and Award as well as the evidence on record. Perusal of the impugned judgment reveals that the Reference Court has relied upon the sale instances at Exh.96 and Exh.97 and based on the same has assessed the market value of the acquired lands. The land, which was the subject matter in Exh.96 was ad-measuring 6 R situated at village Hangarga

and was sold for the total consideration of Rs.22,000/-. The registered sale deed of the said land was executed on 05.08.1995. The said land was, thus, sold at the rate of Rs.3,666/- per R. The land, which was the subject matter of Exh.97 was sold by the registered sale deed executed on 28.04.1994. The said land in Exh.97 ad-measuring 56 R situated at village Hangarga was sold for total consideration of Rs.81,000/- i.e. at the rate of Rs.1,446/- per R.

8. The discussion made by the Reference Court further reveals that the Reference Court has discarded the sale instance, which was placed on record by the respondent State. The said sale instance was exhibited at Exh.74. After having gone through the discussion made by the Reference Court in that regard, it appears to me that the sale instance at Exh.74 was rightly not considered by the Reference Court. The discussion made by the Reference Court, also shows that the Reference Court has not blindly worked out the market value of the acquired lands on the basis of the aforesaid sale instances, but has compared all plus/minus factors attached to the lands, which were the subject matter of the said sale instances with the acquired lands and has ultimately recorded its conclusion as about the market value of the acquired lands. Considering the fact that the land,

which was the subject matter of Exh. 96 was a small piece of land, the Reference Court has determined the market value of the acquired land at half of the rate of the said land, meaning thereby that the negative allowances have rightly been taken into account by the Reference Court.

9. Considering the sale instance at Exh.97 and having regard to the fact that the land, which was the subject matter of the said sale instance was sold prior to three years of the issuance of Section 4 notification, the market value requires to be notionally increased by giving 10% rise per year and accordingly the price of acquired lands approximately comes to Rs.75,000/- per Acre. The said land was ad-measuring 56 R, as such the said sale deed cannot be said to be a small piece of land and was therefore liable to be relied upon. Considering the discussions made by the Reference Court and having regard to the evidence on record, it does not appear that the Reference Court had committed any error in determining the market value at the rate of Rs.75,000/- per Acre for dry land and Rs.1,12,000/- per Acre for seasonally irrigated land. In the circumstances, I do not see any reason to cause any interference in the market value as has been determined by the Reference Court.

10. In so far as other objection as about the grant of interest under Section 34 of the Act from the date of possession and the grant of rental compensation by the Reference Court, are concerned, there appears substance in the arguments made by the learned counsel appearing for the appellants. It cannot be disputed that the grant of rental compensation was not within the jurisdiction of the Reference Court, and as such, the Reference Court in the Reference Applications could not have awarded the rental compensation. Order to that effect, therefore needs to be set aside. It would however be open for the claimants to avail appropriate remedy for claiming the amount of rental compensation.

11. Similarly, in view of 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 interest under Section 34 of the Act, can only be awarded from the date of passing of the Award under Section 11 of the Act and not from any prior date. In the present case, admittedly, the interest is awarded from the date of issuance of Section 4 notification. The impugned award also needs modification to that extent. In the result the following order is passed:-

ORDER

[i] The impugned common judgment and award so far as it relates to grant of rental compensation and interest awarded under Section 34 of the Act from the date of issuance of Section 4 Notification stands set aside.

[ii] Interest under Section 34 of the Act is made payable from the date of passing of the award under Section 11 of the Act i.e. 19.02.1998.

[iii] Save and except the above, the other part of the award is maintained as it is. The modified Award be prepared accordingly.

[iv] It would be open for the claimants to avail appropriate remedy for claiming the rental compensation.

[v] The claimants are permitted to withdraw the amount deposited by the acquiring body in this Court as per the modified award with the proportionate interest accrued thereon. The balance amount, if any, with the proportionate interest thereon, be refunded to the Acquiring Body.

[vi] The Appeals stand allowed in the aforesaid terms.

[vii] Pending civil applications stand disposed of.

[viii] In all these appeals, the claimants have preferred Cross Objection (Stamp) Nos. 15638/2010, 15649/2010, 15636/2010, 15640/2010, 15642/2010, 15652/2010, 15646/2010, 15654/2010. Advocate Shri Shinde waives notice for the acquiring body and the learned AGP Shri Salgare waives notice for respondent-State in all these cross objections. List all these cross objections for further consideration on 04.04.2019.

(P.R. BORA, J.)

Mujaheed//