

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

97 FIRST APPEAL NO.92 OF 2006

1. The State of Maharashtra,
Through: The Collector, Nanded.
 2. The Spl. Land Acquisition Officer,
Upper Penganga Project No.1,
Nanded.
 3. The Executive Engineer,
Minor Irrigation Division,
Jangamwadi, Nanded.
- ..Appellants
(Ori. Respondents)

VERSUS

- .
- Sharan Shanti Wardhak Education Society,
Hanegaon, Tq.Degloor, Dist.Nanded.
Through its Secretary,
Shri Virbhadrha s/o. Sangayappa Malge
Age: 47 years, Occu.: Advocate,
R/o. Degloor, Tq. Degloor,
Dist.Nanded.
- ..Respondent
(Ori. Claimant)

...
AGP for Appellant Nos.1 & 2 : Mr. A.M.Phule
Advocate for Respondent : Mr. P.P.Mandlik h/f Mr.A.S.Gandhi
...

CORAM : P.R.BORA, J.

DATE: 21st January, 2019

ORAL JUDGMENT:-

1 The State has preferred the present appeal against the Judgment & award passed by the Additional District Judge at Biloli in LAR No.98/2003 decided on 21.7.2004.

2 The land, which is the subject matter of the present appeal

was acquired for the purpose of Kokalgaon percolation tank at Hanegaon. The Notification under section 4 of the Land Acquisition Act, 1894 (herein after referred to as 'The Act') was published in the Government gazette on 16.12.2000 and the Award under section 11 came to be passed on 5.6.2003. The Special Land Acquisition Officer (SLAO) had offered compensation at the rate of Rs.67,500/- per hector. Dis-satisfied with the amount of compensation so offered, the claimant preferred an application under section 18 of the Act, which was adjudicated by the Additional District Judge at Biloli. (The said Court, is herein after, referred to as the 'Reference Court'.) In the Reference Court, the claimant claimed the market value of the acquired land at Rs.2,50,000/- per hector. The Reference Court, however, on the basis of evidence brought before it, determined market value of the acquired land at Rs.89,500/- per hector and accordingly enhanced the amount of compensation. Aggrieved by the said Judgment & award, the State has preferred the present appeal.

3 The learned AGP Mr. Phule assailed the impugned Judgment on two grounds. First that, the Reference Court has arbitrarily enhanced the amount of compensation and second that, the Reference Court has erred in awarding interest under 34 of the Act from the date of possession.

4 In so far as the first objection is concerned, the same is liable to be turned down at the threshold, in view of the evidence on record. I need not discuss the entire evidence in detail. Suffice it to say that though the land which was involved in the sale instance relied upon by the claimant, had earned the consideration at much higher rate, the Reference Court has moderately enhanced the amount of compensation by determining the market value of the acquired land at Rs.89,500/- per hector. I, therefore, see no reason to cause interference in so far as the market value of the land, as has been determined by the Reference Court is concerned. Even otherwise, in view of the policy adopted by the State vide Government Resolution dated 3.11.2016 with corrigendum dated 23.2.2017 and 13.8.2018, the State could not have prosecuted the instant appeal further, in view of the fact that the market value as has been determined by the Reference Court, is less than four times of the market value as was offered by the SLAO.

5 The second objection raised by the learned AGP, however, deserves to be considered, in view of the Judgment of full bench of this Court in ***State of Maharashtra versus Kailash Shiva Rangari*** (2016 (3) AIR BOM R 742). The Honourable full bench has ruled that 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.

6 Learned counsel appearing for the respondent Mr. P.P.Mandlik h/f Mr.A.S.Gandhi sought to contend that the full bench Judgment in the case of **Kailash Shiva Rangari** (supra) may not apply to the facts of the present case. The learned counsel, placing his reliance on the Judgment of the Honourable Apex Court in the case of **R.L. Jain (D) LRs versus D.D.A. (2004 (4) (SCC 79)** submitted that the Reference Court, in the present matter, has rightly awarded interest under section 34 of the Act from the date of possession.

7 I have given due consideration to the submissions made by the learned AGP and the learned counsel appearing for the respondent i.e. original claimant. Though the learned counsel for the respondent claimant sought to contend that the full bench Judgment in the case of **State of Maharashtra versus Kailash Shiva Rangari** (supra) may not apply to the facts of the present case, I am not impressed by the arguments so made. Perusal of the Judgment delivered by the full bench reveals that all the earlier Judgments on the point are considered by the full bench and thereafter, it is ruled that 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. It need not be stated that the claimant may avail appropriate remedy for rental compensation in accordance with the relevant provisions. I am, therefore, inclined to allow the appeal to the aforesaid extent. Hence, the following order:-

ORDER

(I) The impugned Judgment & award so far as it relates to the grant of interest under section 34 of the Act from the date of possession i.e. 14.4.1987 is set aside. Instead, such an interest is made payable from the date of passing of the award under section 11 of the Act i.e. from 1.12.2001. The impugned award be modified accordingly.

(II) As per the modified award, if any amount is found payable to the original claimant, the same may be remitted from the amount deposited by the appellant in this Court and the balance amount be refunded to the State Government.

(II) The appeal stands partly allowed in the aforesaid terms.

(P.R.BORA)
JUDGE

vbd