

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1162 OF 2017

1. The State of Maharashtra,
Through Collector, Latur.
 2. The Special Land Acquisition Officer,
Purna Project, Latur.
 3. The Executive Engineer,
Minor Irrigation, Local Sector Division,
Latur Dist. Latur.
- ...Appellants.
(Ori.Respdts.)

VERSUS

1. Gangadhar s/o Raghunath Rode,
 2. Balaji s/o Raghunath Rode,
Both Age Major, R/o Warvanti,
Tq. Ahmedpur Dist. Latur.
- ...Respondents
(Ori.Claimants)

....

AGP for Appellants : Mr. S. P. Deshmukh.
Respondents served.

....

WITH
FIRST APPEAL NO.1163 OF 2017

1. The State of Maharashtra,
Through Collector, Latur.
 2. The Special Land Acquisition Officer,
Purna Project, Latur.
 3. The Executive Engineer,
Minor Irrigation, Local Sector Division,
Latur Dist. Latur.
- ...Appellants.
(Ori.Respdts.)

VERSUS

1. Raosaheb s/o Dhondiba Rode,

2. Hanumant s/o Dhondiram Rode,
3. Baliram s/o Dhondiram Rode,
4. Uttam s/o Dhondiram Rode,
5. Chandrakant s/o Dhondiram Rode,

All Age Major, R/o Warvanti,
Tq. Ahmedpur Dist. Latur.

...Respondents
(Ori.Claimants)

....

AGP for Appellants : Mr. S. P. Deshmukh.
Respondents served.

....

**WITH
FIRST APPEAL NO.1164 OF 2017**

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

...Appellants.
(Ori.Respdts.)

VERSUS

Shri. Maruti s/o Siddhu Rode(Died)
Through his L.Rs...

1. Shri. Babu s/o Maruti Rode,
Age Major, Occupation Agriculture,
2. Shri Sakharam s/o Maruti Rode,
Age Major, Occupation Agriculture,

Both Age Major, R/o Warvanti,
Tq. Ahmedpur Dist. Latur.

...Respondents
(Ori.Claimants)

....

AGP for Appellants : Mr. S. P. Deshmukh.
Respondents served.

....

CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Judgment :
02-07-2019.**

**Date of Pronouncing The Judgment :
29-07-2019.**

JUDGMENT :

1. Present appeals have been filed by the acquiring body – State challenging the Judgment and common award in LAR No.280 of 2006, dated 08-03-2010, by learned Joint Civil Judge, Senior Division, Ahmedpur Dist. Latur (hereinafter referred to as 'reference Court').

2. The lands which are the subject matter of the appeals were acquired for the purpose of percolation tank at village Warwanti Tq. Ahmedpur Dist. Latur. Notification under Section 4 of the Land Acquisition Act was published on 24-04-2003. The award under Section 11 was passed by the Special Land Acquisition officer on 27-04-2005. The Land Acquisition Officer had granted compensation to the respective claimants @ of Rs.39,800/- to Rs.42,000/- per Hectare. The claimants had filed reference under Section 18 of the Act claiming compensation @ Rs.3,00,000/- per Hectare. After considering the oral as well as documentary evidence, the reference Court has determined the market value @ of Rs.1,40,000/- per Hectare. Now the State has filed the present appeal challenging this enhancement.

3. Heard learned AGP Mr. S. P. Deshmukh for appellant State. Though respondents were served, they remained absent.

4. It is the contention of the appellants acquiring body in these

appeals that the Reference Court has arbitrarily enhanced the amount of compensation without there being any cogent evidence therefor. It is further contended that the sale instances, which are relied upon by the Reference Court while determining the market value of these lands, cannot be held to be the sale instances of the comparable lands. It was further contended that the Special Land Acquisition Officer, in fact, had correctly determined the market value of the acquired lands by visiting each and every land personally and by considering the relevant sale instances, which have occurred in the relevant period and as such, no interference was called for. The learned counsel, therefore, prayed for setting aside the Judgment and award passed by the Reference Court and to restore the award passed by the Special Land Acquisition Officer in the matters.

5. The perusal of the Judgment by the reference Court would show that, the sale instance which was relied by the original claimants (Exhibit 15) was in respect of 99 Are land from the same village for consideration of Rs.1,75,000/-. It has been therefore stated that, the value of the land was around Rs.1,76,768/- per Hectare. Further in cross of the claimants it had come on record that, the said land in the sale instance Exhibit 15 was in the vicinity of the lands which have been acquired in this project. The difference has been rightly made by the learned reference Court that, since the purchaser had also purchased share in the well, the consideration is more, and therefore, it was held that taking into consideration the said sale instance and as per the ready reckoner on the date of sale instance was Rs.1,25,000/-. Thereafter, 10 % increase has been made for one year i.e. since the sale deed was dated 02-01-2002, the price of that land in 2003 would have been around Rs.1,43,750/-. Therefore, the land in the vicinity has been held to

be of value of Rs.1,40,000/-, and therefore, the reasons given for arriving at the conclusion about the market rate of the suit lands on the date of notification appears to be correct and deserves no change.

6. Further now in view of the policy adopted by the Government vide Government Resolution dated 03-11-2016, read with corrigendum dated 23-02-2017, the appeal was not liable to be prosecuted further. The determination of the market value by the reference Court is less than four times of the market value offered by the Special Land Acquisition Officer. In such circumstance considering both these points, the appeal does not require any interference in the market rate, however it can be seen from the Judgment that, interest under Section 23 (1-A) was given by the reference Court and in addition to that in another clause interest is again awarded. However, no section has been mentioned as to under which provisions the said interest has been granted. If it is to be interest under Section 28 or 34 or under both then the decision of Full Bench of this Court in, *State of Maharashtra Versus Kailash Shiva Rangari*, reported in 2016 (4) All MR 513 (Full Bench), is required to be considered. In this case it has been held that,

“The interest payable under Section 34 is not the compensation paid to the owner for depriving him of his right to possession of the land, but this is given to him for deprivation of the use of money representing the compensation of the land acquired. It is payable where possession is taken but the compensation determined under Section 11 or in terms of Clause A of Sub-section (3-A) of Section 17 of the Act, has not been paid or deposited on the date when it became due and payable. It is not payable on account of enhancement of

compensation which is covered by Section 28 of the Said Act.”

Further it has been held that,

“The interest under Section 34 is not overlapping with beneficial provisions under Section 23 (1-A) of the Act.”

Here in this case, the possession of the lands appears to have been taken by private negotiations and it is not under Section 17 of the Act. Therefore, the interest under Section 34 of the Act would start running from the date of passing of the award by Special Land Acquisition Officer i.e. 27-04-2005 and it would be @ of 9 % per annum. Thereafter, after one year i.e. from 27-04-2006 it would be @ of 15 % per annum till the actual realization of the entire amount together with 30 % solatium along with interest. To that extent only the appeals deserve to be partly allowed and accordingly it is so allowed. No order as to costs.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.