

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

FIRST APPEAL NO.1844 OF 2017

The Executive Engineer,
Minor Irrigation, Ambajogai,
Tq. Ambajogai, Dist. Beed

.. Appellant

Versus

1. Jalindar S/o. Annasaheb Kedar
Age : 57 years, Occu : Agri,
R/o. Sangvi, Tq. Kaij,
Dist. Beed
2. Keshav S/o Yeshwanta Kedar
Age : 72 years, Occu : Agri,
R/o. As above
3. Annasaheb S/o. Yeshwanta Kedar
Age : 77 years, Occu : Agri,
R/o. As above.
4. The State of Maharashtra
Through Collector, Beed
Dist. Beed
5. The Special Land Acquisition Officer
No.1, Ambajogai, Tq. Ambajogai,
Dist. Beed

.. Respondents

.....

WITH

FIRST APPEAL NO.1845 OF 2017

The Executive Engineer,
Minor Irrigation, Ambajogai,
Tq. Ambajogai, Dist. Beed

.. Appellant

Versus

1. Hari S/o Gopal Ovhal
Age : 62 years, Occu : Agri,
R/o. Sarni (Sa), Tq. Kaij,
Dist. Beed
2. The State of Maharashtra
Through Collector, Beed
Dist. Beed
3. The Special Land Acquisition Officer
No.1, Ambajogai, Tq. Ambajogai,
Dist. Beed

.. Respondents

....

WITH

FIRST APPEAL NO.1846 OF 2017

The Executive Engineer,
Minor Irrigation, Ambajogai,
Tq. Ambajogai, Dist. Beed

.. Appellant

Versus

1. Shashikala w/o Nilkanth Gholve
Age :42 years, Occu : Agri,
R/o. Sarni, Tq. Kaij, Dist. Beed
2. Vasant s/o Nilkanth Gholve
Age : 22 years, Occu : Agri,
R/o. As above
3. Chandrakala D/o. Nilkanth Gholve
Age : 28 years, Occu : Agri,
R/o. As above
4. Shakuntala D/o. Nilkanth Gholve
Age : 42 years, Occu : Agri,
R/o. As above

5. Shamal D/o. Nilkanth Gholve
Age : 40 years, Occu : Agri,
R/o. As above
6. Shobha D/o. Nilkanth Gholve
Age : 37 years, Occu : Agri,
R/o. As above
7. The State of Maharashtra
Through Collector, Beed
Dist. Beed
8. The Special Land Acquisition Officer
No.1, Ambajogai, Tq. Ambajogai,
Dist. Beed

.. Respondents

....

WITH

FIRST APPEAL NO.1847 OF 2017

The Executive Engineer,
Minor Irrigation, Ambajogai,
Tq. Ambajogai, Dist. Beed

.. Appellant

Versus

1. Bansi s/o Namdeo Kedar
Age : 69 years, Occu : Agri,
R/o. Sangvi, Tq.Kaij,
Dist. Beed
2. Madhukar s/o Namdeo Kedar
Age : 67 years, Occu : Agri,
R/o. As above.
3. Ramkishan S/o. Raghunath Kedar
Age : 62 years, Occu : Agri,
R/o. As above.
4. The State of Maharashtra

Through Collector, Beed
Dist. Beed

5. The Special Land Acquisition Officer
No.1, Ambajogai, Tq. Ambajogai,
Dist. Beed

.. Respondents

....

WITH

FIRST APPEAL NO.3066 OF 2018

The Executive Engineer
Minor Irrigation, Ambajogai
Tq. Ambajogai, Dist. Beed

.. Appellant

Versus

1. Balasaheb S/o Kalyanrao Deshmukh
Age : 57 years, Occu : Agri,
R/o. Sarni, Tq. Kaij, Dist. Beed
2. Sk. Babulal Sk. Madar
Age : 64 years, Occu : Agri
R/o. As above.
3. Sk. Aminabee w/o. Sk. Shifoddin
Age : 67 years, Occu : Agri,
R/o. As above
4. Niyamatbee W/o. Sk. Umrao
Age : 57 years, Occu : Agri,
R/o. As above.
5. Vijaysinh S/o. Raosaheb Jadhav
Age : 36 years, Occu : Agri,
R/o. As above
6. Abhaysinh s/o. Desai Deshmukh
Age : 28 years, Occu : Agri,
R/o. As above.

7. The State of Maharashtra
Through Collector, Beed
Dist. Beed

8. The Special Land Acquisition Officer
No.1, Ambajogai, Tq. Ambajogai,
Dist. Beed

.. Respondents

.....

In all the matters:

Advocate for Appellants : Shri R.D. Biradar ;
Advocate for Respondents – claimants : Shri S.S. Kulkarni
AGP for Respondents – State & SLAO : Shri A.M. Phule

.....

CORAM : P.R. BORA, J.

Dated: January 17, 2019

ORAL JUDGMENT :

1. Since all these appeals are arising out of the common Judgment and Award passed by Ad-hoc District Judge-2 at Ambajogai on 19.03.2014 in LAR No.62 of 2009 with connected LAR's, I have heard the common arguments in all these appeals and I deem it appropriate to decide these appeals by a common reasoning.

2. The lands, which are the subject matter of the present appeals, were acquired for the construction of Percolation Tank at village Sarni/ Sangavi. Notification under

Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act') in that regard was published in the Official Gazette on 14.04.2005 and the Award under Section 11 of the Act came to be passed on 11.08.2008. The SLAO had offered the compensation to the respective claimants at the rate of Rs.750/- per *Are*. Dissatisfied with the amount of compensation so offered, the claimants preferred the applications under Section 18 of the Act, which were adjudicated by II Ad-hoc District Judge at Ambajogai. The said Court is hereinafter referred to as the Reference Court. Before the Reference Court, the claimants had claimed the compensation at the rate of Rs.5000/- per *Are*. In order to substantiate the claim so raised, the claimants in addition to their own testimonies, had placed on record about 8 sale instances. No oral or documentary evidence was adduced on behalf of the respondents i.e. the State Government or the Acquiring Body. The learned Reference Court, after having assessed the oral and documentary evidence brought on record before it, determined the market value of the acquired lands at the rate of Rs.3500/- per *Are* and accordingly enhanced the amount of compensation. Aggrieved by, the Acquiring Body has

preferred the present appeals.

3. Shri Biradar, learned Counsel appearing for the appellants criticized the impugned Judgment and Award on various grounds. The learned Counsel submitted that, the Reference Court has determined the market value of the acquired lands on the basis of the sale instances pertaining to the small pieces of lands. It was the second objection raised by the learned Counsel that, the sale instances were pertaining to the lands situated at some different villages. The third objection as was raised by the learned Counsel was that, there was no evidence adduced before the Reference Court so as to show that, the lands, which were subject matter of the sale instances, were comparable with the lands which are the subject matter in the present appeals so as to determine their market value on the basis of the said sale instances. The learned Counsel submitted that, the Reference Court has thus erred in relying upon the sale instances, which cannot be said to be of comparable lands and were also not of the same period and of the same village. In the circumstances, according to the learned Counsel, the market

value as was determined by the Reference Court on the basis of the said sale instances cannot be sustained.

4. The learned Counsel further submitted that, the SLAO on the contrary had taken into account all relevant circumstances including the sale instances of the relevant period and has accordingly determined the market value of the acquired lands at the rate of Rs.750/- per *Are*.

5. The learned Counsel submitted that, in absence of any cogent and sufficient evidence, the Reference Court could not have enhanced the amount of compensation. It was further contended by the learned Counsel that, while considering the evidence on record, more particularly in the form of sale instances, the Reference Court has failed in appreciating the settled principles laid down by the judicial pronouncements and has thus erred in determining the market value of the acquired lands at excessive rate of Rs.3500/- per *Are*. The learned Counsel further submitted that, the Reference Court has also manifestly erred in awarding the interest under Sections 28 and

34 of the Act from the date of possession, instead of awarding the same from the date of passing of the Award under Section 11 of the Act. The learned Counsel, on all the aforesaid grounds, prayed for setting aside the impugned Judgment and Award and to restore the Award passed by the SLAO.

6. Learned AGP Shri Phule adopted the arguments advanced by Shri Biradar, learned Counsel appearing for the Acquiring Body and prayed for allowing the appeal by setting aside the impugned common Judgment and Award.

7. Shri Kulkarni, learned Counsel appearing for the respondents i.e. original claimants supported the impugned Judgment and Award. The learned Counsel submitted that, eight sale instances have been brought on record by the claimants in order to support their claim and the Reference Court has appropriately considered the said evidence and has accordingly enhanced the compensation payable to the claimants by determining the market value of the acquired lands at the rate of Rs.3500/- per *Are*. The learned Counsel submitted

that, in fact, the Reference Court has enhanced the amount of compensation very moderately. The learned Counsel, taking me through the evidence in the form of sale instances on record, submitted that all the said sale instances were pertaining to the comparable lands and each of the said land has received the market value at the rate more than Rs.3500/- per *Are*. The learned Counsel submitted that, majority sale instances were of the period 2000 to 2002. Considering the value received to the lands, which were the subject matter of the said sale instances, the Reference Court, in fact, has given increase in the market price received to the said land at the rate of Rs.10% per year and as such, the market value of the lands, which are the subject matter in the present appeals, was in fact liable to be determined at the rate more than Rs.4000/- per *Are*. The learned Counsel submitted that, thus the Reference Court cannot be said to have determined the market value at higher rate or in arbitrary manner.

8. The learned Counsel also pointed out that, the respondents did not adduce any evidence so as to justify the Award passed by the SLAO. The learned Counsel further

submitted that, the objection raised by the Acquiring Body that the Reference Court has relied upon the sale instances pertaining to the small pieces of land also cannot be sustained in view of the fact that, the sale deed at Exh.35 pertains to the land admeasuring 34 *Are* and the said land cannot be said to be a small piece of land. The learned Counsel further submitted that, the another objection raised by the appellant – Acquiring Body that the sale instances were pertaining to the lands situated at different villages also deserves to be turned down in view of the fact that, all these villages i.e. Pimpalgavan, Sarni/Sangvi are adjacent to each other and at a very short distance from each other. The learned Counsel further submitted that, out of the eight sale instances, some sale instances are also of the lands situated at village Sarni/Sangvi as well as village Pimpalgavan. The learned Counsel submitted that, the Reference Court has correctly determined the market value of the acquired lands at the rate of Rs.3500/- per *Are* and no interference is required in the Judgment and Award so passed by the Reference Court.

9. In so far as the interest awarded by the Reference Court under Sections 28 and 34 of the Act, the learned Counsel

was fair enough in submitting that, the grant of interest under the aforesaid provisions would be governed by the full Bench Judgment of this Court in the case of **The State of Maharashtra Vs. Kailash Shiva Rangari, 2016 (4) ALL MR 513** and the Judgment delivered by the learned Single Judge in the case of **The State of Maharashtra & Ors Vs. Ramesh Tukaram Meshram & Ors, 2018 (1) ALL MR 645** and to that extent, he conceded for the modification of the Award.

10. I have given due consideration to the submissions made by the learned Counsel appearing for the parties. I have perused the impugned Judgment and Award. I have also gone through the evidence on record. It is not in dispute that, the lands, which are involved in the present appeals, are all dry lands. It is further not in dispute that, all these lands are from the villages Pimpalgavan, Sarni and Sangvi. It is further not in dispute that, the only evidence, which was available to be considered by the Reference Court, was adduced by the claimants and no oral or documentary evidence was adduced by the respondent- State or by the Acquiring Body. The material on

record reveals that, total eight sale instances were brought on record and relied upon by the claimants. The learned Reference Court in para-15 of the impugned Judgment has provided all necessary particulars as about the said sale instances in a tabular form.

11. After having perused the said composite information as about the sale instances, it is revealed that, in all the eight sale instances, the consideration received to the lands, which were the subject matter of the said sale instances, was at the rate more than Rs.3500/- per *Are*. It is true that, except the sale deed at Exh.35, the remaining 7 sale deeds are of the lands admeasuring 8 *Are*, 7 *Are*, 6 *Are* etc i.e. of the small pieces of land. From the discussion made by the Reference Court, it is quite evident that, the Reference Court was quite conscious about the said fact and as such, while determining the market value of the acquired lands, instead of placing reliance on the said sale instances, the Reference Court has mainly relied upon sale instance at Exh.35, which pertains to the land admeasuring 34 *Are*. The land, which is the subject matter of Exh.35, was purchased by one Govind Dinkar Gholve from Uttareshwar

Gaikwad and Gorakhnath Uttreshwar Gaikwad by a registered sale deed executed on 04.09.2002 for the consideration of Rs.1,25,000/- i.e. at the rate of Rs.3676/- per *Are*.

12. The learned Reference Court in para 27 of the Judgment has provided relevant information as about the acquired lands i.e. area of the acquired land, the description about trees etc in the said land, the compensation awarded by the SLAO and the compensation awarded by the Reference Court. Perusal of the said information reveals that, only in two matters the lands are admeasuring 1 hector 11 *Are* and 1 hector 26 *Are* respectively and in remaining matters, the lands are admeasuring 36 *Are* and 30 *Are* and in the same range. Having regard to the fact as aforesaid, apparently, it does not appear to me that, the Reference Court has committed any error in placing reliance on the sale instance at Exh.35 for determining the value of the acquired lands. It has to be mentioned that, the other sale instances, which have been brought on record by the claimants, demonstrate that the lands involved in the said sale instances were sold at the rate more than Rs.4000/- per *Are*, that too in the period preceding three years of the acquisition of the lands

acquired in the present matter. After having considered the discussion made by the Reference Court, it is noticed that, the Reference Court has not blindly relied upon the sale instances brought on record by the claimants while determining the market value of the acquired lands on the basis of the said sale instances. The Reference Court has considered all plus and minus factors as well as advantageous and disadvantageous attached to the said lands and comparing the same with the acquired lands has determined the market value of the acquired lands at the rate of Rs.3500/- per *Are*. After having considered the evidence on record and appreciation of the said evidence made by the Reference Court, it does not appear to me that, any error has been committed by the Reference Court.

13. It was also sought to be contended by the learned Counsel appearing for the Acquiring Body that, the Reference Court has awarded unreasonable compensation towards trees etc. However, perusal of the Judgment and Award passed by the Reference Court demonstrate that, the Reference Court has not given any rise in the amount of compensation towards trees as was given by the SLAO in the Award passed under Section 11 of

the Act. I further deem it appropriate to mention that, merely because the particular sale instance pertains to a small piece of land, the said also cannot be kept out of consideration only on that ground. No doubt, in such a case, the Reference Court has to do some guess work and considering the plus and minus factors attached to the land involved in the cited sale instance, the Reference Court can very well determine the market value of the acquired land. The objection raised by the appellant that, some of the sale instances were pertaining to the lands situated at different villages, also cannot be a ground to reject the said sale instances. Law now stands settled that, the sale instances pertaining to the lands of the adjacent villages also can be considered, in case, the sale instances of the same village are not available or not brought on record by either of the parties.

14. After having considered the entire evidence on record and the submissions made by the learned Counsel appearing for the parties, it does not appear to me that, the Reference Court has committed any error in determining the market value of the acquired lands at the rate of Rs.3,500/- per

Are. I, therefore, do not see any reason to cause any interference in the finding so recorded by the learned Reference Court.

15. There is, however, substance in the objection raised by Shri Biradar, learned Counsel appearing for the Acquiring Body that, the Reference Court has erred in awarding the interest under Sections 28 & 34 of the Act from the date of possession. In view of the full Bench Judgment of this Court in the case of **The State of Maharashtra Vs. Kailash Shiva Rangari** (cited supra) the compensation 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. The learned Single Judge of this Court while deciding the **First Appeal No.383 of 2004** in case of **The State of Maharashtra & Ors Vs. Ramesh s/o. Tukaram Meshram & Ors** has held that, the interpretation given by the Full Bench of this Court to Section 34 of the Act would equally apply to Section 28 of the Act and interest under Section 28 of the Act would also be payable only from the date of passing of the Award and not from any prior date.

16. As noted herein above, the learned Counsel for the claimants was fair in conceding the law settled in regard to award of interest under Sections 28 and 34 of the Act vide the aforesaid cases. In view of the law laid down in the aforesaid cases, the impugned Award so far as it relates to grant of interest under Sections 28 and 34 of the Act from the date of possession cannot be sustained.

17. For the reasons stated above, the appeals deserve to be partly allowed and hence the following order is passed.

ORDER

(i) The impugned common Judgment and Award so far as it relates to grant of interest under Sections 28 and 34 of the Act from the date of possession is set aside, instead the interest under the aforesaid provisions is made payable to the respective claimants from the date of passing of the Award under Section 11 of the Act.

(ii) Save and except the modification as aforesaid, the other part of the Award is maintained as it is.

- (iii) The Award be modified accordingly.
- (iv) The amount, if any, deposited by the Acquiring Body in this Court in the present appeals is permitted to be withdrawn by the respective claimants with interest accrued thereon according to the modified Award, if already not withdrawn.
- (v) The balance amount, if any, in view of the modified Award be refunded along with the interest accrued thereon to the Acquiring Body.
- (vi) The appeals stand partly allowed in the aforesaid terms.
- (vii) Pending Civil Application, if any, stands disposed of.

(PR. BORA, J.)