

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2982 OF 2009

Mallikarjun s/o Vishwanath Rakte,
Age : Major, Occu. Agri.,
R/o Marajwadi, Tq. Mukhed,
District Nanded

APPELLANT
(Orig. Claimant)

VERSUS

1. The State of Maharashtra,
through the District Collector,
Nanded
2. The Special Land Acquisition Officer,
M.I.W., Nanded
3. The Executive Engineer,
Vishnupuri Project Division
No.1, Jangamwadi, Nanded

RESPONDENTS
(Orig. Respondents)

Mr. G.N. Chincholkar, Advocate for the appellant
Mr. B.V. Virdhe, A.G.P. for respondent Nos.1 and 2
Smt. Sunita D. Shelke, Advocate for respondent No.3

CORAM : SUNIL K. KOTWAL, J.

DATE : 7th JUNE, 2019

ORAL JUDGMENT :

This appeal is directed against the judgment and award dated 10th August, 2008, passed by the Civil Judge, Senior Division, Kandhar in Land Acquisition Reference (LAR) No.227 of 2007. The appellant is

original claimant and respondent Nos.1 to 3 are original respondents.

2. Heard Shri G.N. Chincholkar, learned counsel for the appellant, Shri B.V. Virdhe, learned A.G.P. for respondent Nos.1 and 2 and Smt. Sunita D. Shelke, learned counsel for respondent No.3.

3. Learned counsel for the appellant tendered across the bar copy of the common judgment delivered by this Court in First Appeal No.988 of 2012 with First Appeal No.989 of 2012. He submits that this Court in the abovesaid common judgment has determined the market value of the lands acquired from village Marajwadi for the Lendi project at the rate of Rs.1,25,000/- per hectare for dry crop land. He submits that the land in the abovesaid appeals and the land, which is subject matter of the appeal in the hand, being acquired for the same project vide the same notification under Section 4 (1) of the Land Acquisition Act (hereinafter referred to as "Act") and under the same award, the compensation in this matter also be enhanced at the rate of Rs.1,25,000/- per hectare, as the acquired land is dry crop land. He submits that the land involved in above referred appeals and in the present appeal are from the

same village having similar potentiality.

4. Learned counsel for respondent No.3 and learned A.G.P. for respondent Nos.1 and 2 do not dispute the correctness of the facts submitted by the learned counsel for the appellant. The only objection raised by the learned counsel and learned AGP for the respondents is that the Reference Court erroneously awarded interest under Sections 28 and 34 of the Act from the date of publication of notification under Section 4 (1) of the Act. They pray for necessary modification in the impugned judgment and award to that extent only. Learned counsel for the respondents have expressed their no objection to modify the award for granting enhancement in the compensation of the acquired land at the rate of Rs.1,25,000/- per hectare.

5. After perusal of the impugned judgment and award, it reveals that the land involved in this appeal and the lands which were subject matter of First Appeal Nos. 988 of 2012 and 989 of 2012 were acquired for one and the same Lendi project vide notification under Section 4(1) of the Act, published in official Gazette on 9th July, 1998 and even the award under Section 11 of the Act in all these matters was passed on one and the

same date i.e. 25th October, 2004. Though the Special Land Acquisition Officer offered compensation at different rates, ranging between Rs.60,000/- to Rs.75,000/- per hectare, after having considered the evidence on record, this Court in First Appeal No. 988 of 2012 with First Appeal No.989 of 2012, has awarded compensation at the rate of Rs.1,25,000/- per hectare for dry crop land.

6. In view of the fact that acquisition was made for the same project under the same notification and under the same award, present first appeal deserves to be partly allowed in similar terms by enhancing the compensation at par with the compensation as was enhanced in First Appeal Nos.988 of 2012 and 989 of 2012.

7. However, as rightly pointed out by learned counsel for respondent No.3 and the learned A.G.P. For respondent Nos.1 and 2, the interest on compensation awarded by the Special Land Acquisition Officer under Section 34 of the Act and on enhanced compensation under Section 28 of the Act, was awarded by the Reference Court from the date of publication of notification under Section 4 (1) of the Act. In view of the law settled by

the Full Bench of this Court in the case of "**State of Maharashtra Vs. Kailash Shiva Rangari**" [2016 (4) ALL MR 513] and the judgment of the learned Single Judge in the case of "**The State of Maharashtra and others Vs. Ramesh Tukaram Meshram and others**" [2018 (1) ALL MR 645], when possession of the acquired land is taken before the date of publication of notification under Section 4 (1) of the Act, interest under Sections 28 and 34 of the Act can only be granted from the date of passing of the award under Section 11 of the Act and not from any prior date. In the circumstances, the impugned judgment and award needs to be modified to abovesaid extent. It follows that this appeal deserves to be partly allowed.

8. In the result, First Appeal No.2982 of 2009 is partly allowed. The impugned award be modified in the following terms :-

"(i) Appellant is held entitled for compensation at the rate of Rs.1,25,000/- per hectare for the land Survey No.58/3, admeasuring 3 hectares 27 R, situated at village Marajwadi, Taluka Mukhed, District Nanded.

(ii) Appellant is also entitled to receive the statutory benefits under Sections 23(1A) and 23(2) of

the Land Acquisition Act, as awarded by the Reference Court.

(iii) Appellant is entitled to receive interest on compensation awarded by the Special Land Acquisition Officer (Collector) at the rate of 9% per annum for the first year and subsequently at the rate of 15% per annum from the date of passing of the award i.e. from 25th October, 2004 under Section 34 of the Land Acquisition Act and interest at the rate of 9% per annum for the first year and at the rate of 15% per annum for the subsequent years on enhanced (excess) compensation amount under Section 28 of the Land Acquisition Act from the date of passing of the award i.e. from 25th October, 2004, together with statutory benefit under Sections 23(1A) and solatium under Section 23(2) of the Land Acquisition Act, till deposit of the entire compensation amount in the Court."

9. The impugned judgment and award, in so far as they relate to grant of interest under Sections 28 and 34 of the Land Acquisition Act from the date of publication of notification under Section 4 (1) of the Land Acquisition Act or from the date of possession of the acquired land, stand set aside."

10. The parties to bear their respective costs of the appeal.

[SUNIL K. KOTWAL]
JUDGE

npj/fa2982-2009