

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

First Appeal No. 01236 of 2013

District : Nanded

Smt. Saraswatibai Kashinathappa
Dhayade (Died) through L.Rs. :-

1. Kallapa Kashinathappa Dhayade,
Age : 54 years,
Occupation : Agriculture.
2. Shivraj Kashinathappa Dhyade,
Age : 50 years,
Occupation : Agriculture.
3. Ravindrakumar Kashinathappa
Dhayade,
Age : 46 years,
Occupation : Agriculture.
4. Raju Kashinathappa Dhayade,
Age : 42 years,
Occupation : Agriculture.

All 1 to 4 R/o. Marajwadi,
Taluka Mukhed,
Dist. Nanded.

5. Sangeeta Balaji Mustapure,
Age : 38 years,
Occupation : Agriculture.

.. Appellants.

versus

1. The State of Maharashtra,
Through Collector, Nanded.
2. The Special Land Acquisition
Officer, M.I.W., PT-1,
Nanded.

3. The Executive Engineer,
Minor Irrigation Division,
Jangamwadi, Nanded.

.. Respondents

4. ~~Manoj Kashinathappa Dhayade~~
~~{Died} through L.Rs. :~~

~~4/1. Smt. Pratibha Manoj Dhayade,~~
~~Age : 30 years.~~

.. Respondents
no.4/1 & 4/2
deleted.

~~4/2. Ku. Manasi Manoj Dhayade~~
~~{Minor, under guardianship of~~
~~petitioner no.6/1}.~~

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Mr. G.N. Chincholkar, Advocate, for the appellants.

*Mr. R.B. Bagul, Assistant Government Pleader, for
respondents no.01 and 02.*

Mr. Ram Deshpande, Advocate, for respondent no.03.

*Respondents no.4/1 and 4/2 deleted as per Court's
order dated 08-04-2019.*

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With

First Appeal No. 0798 of 2014

District : Nanded

Ravan s/o. Laxman Vesmode,
Age : 64 years,
Occupation : Agriculture,
R/o. Marajwadi,
Taluka Mukhed,
Dist. Nanded.

.. Appellant
(Original
claimant)

versus

1. The State of Maharashtra,
Through the District Collector,
Nanded.
2. The Special Land Acquisition
Officer,
M.I.W. Krishna Khore, Nanded,
Nanded.
3. The Executive Engineer,
Lendi Project Division,
Kodgire Building, Degloor, .. Respondents
Taluka Degloor, (Original
Dist. Nanded. respondents)

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Mr. G.N. Chincholkar, Advocate, for the appellant.

*Mr. P.M. Kulkarni, Assistant Government Pleader,
for respondents no.01 and 02.*

Mr. B.R. Surwase, Advocate, for respondent no.03.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 24TH JULY 2019

ORAL JUDGMENT :

01. These appeals are arising out of the acquisitions made for construction of Lendi Project from village Marajwadi, Taluka Mukhed, District Nanded. Learned Advocate appearing for the appellants - claimants in these appeals tendered across the bar, copy of common judgment delivered by this Court in First Appeal No. 988 of 2012 and First Appeal No. 989 of 2012, dated 01st October 2018 as well as judgment in First Appeal No. 834 of 2010

with companion appeals, dated 21-02-2019. Learned Advocate submitted that, this Court in the aforesaid judgments has determined the market value of the land acquired from village Marajwadi for the Lendi Project at the rate of Rs. 1,25,000/- per hectare for dry lands, Rs. 1,87,500/- per hectare for semi-irrigated lands and Rs. 2,50,000/- per hectare for irrigated lands. Learned Advocate submitted that, the lands involved in these appeals being acquired for the same project vide the same notification and under the same award, the compensation in these matters also be enhanced at the rate of Rs. 1,25,000/- per hectare for dry land and Rs.1,87,500/- per hectare for semi-irrigated land and Rs. 2,50,000/- per hectare for irrigated land as has been given in the said decided appeals. He submitted that the lands which are involved in the present appeals and the lands which were involved in F.As. No.988 of 2012 and 989 of 2012 as well as F.A. No.834 of 2010 and companion appeals are quite similar in quality and potentiality. Learned Advocate, therefore, submitted that the enhancement in the amount of compensation at par with the compensation enhanced in the decided appeals be granted.

02. Learned Advocates appearing for the Acquiring Body do not dispute the factual

correctness of the facts mentioned by the learned Advocate for the appellants. However, they pointed out that in these reference applications, the reference Court has awarded the interest under Sections 28 and 34 of the Act wrongly from the date of issuance of Section 4 notification and therefore prayed for necessary modification in the impugned judgments and awards to that extent. They further submitted that, so far as categorization of the lands is concerned, it should be in accordance with the categorization made by the SLAO in the award passed under Section 11 of the Act. Learned Advocate for the appellants does not have any objection for determining the market value of the acquired lands in tune with the categorization made by the SLAO of the acquired lands.

03. Learned Assistant Government Pleaders appearing for the State & the SLAO supported the arguments advanced on behalf of the learned Advocates appearing for the acquiring body.

04. On perusal of the impugned judgments and awards, it is revealed that the lands involved in these appeals and the lands which were subject matter of F.As. No.988 of 2012 and 989 of 2012 as well as F.A. No.834 of 2010 and companion appeals were acquired for the same Lendi Project. Though

the SLAO appears to have determined the market value of the acquired lands at different rates ranging between Rs.60,000/- to Rs. 75,000/-, after having considered the evidence on record, this Court in F.As. No.988 of 2012 and 989 of 2012 as well as F.A. No.834 of 2010 and companion appeals has given the uniform rate for the acquired lands at the rate of Rs. 1,25,000/- per hectare for dry land and at the rate of Rs. 2,50,000/- per hectare for irrigated land.

05. In view of the fact that the acquisitions were made for the same project, the present appeals also deserve to be allowed in the similar terms by enhancing the compensation at par with the compensation as was enhanced in F.As. No.988 of 2012 and 989 of 2012 as well as F.A. No.834 of 2010 and companion appeals.

06. While considering the appeals for enhancement in the amount of compensation, the legal infirmity brought to my notice by the learned Advocates appearing for the acquiring body as about the grant of interest on the amount of enhanced compensation by the reference Court under Sections 28 and 34 of the Act from the date of issuance of Section 4 notification cannot be ignored. Learned Advocates appearing for the acquiring body relied

upon the full bench judgment of this Court in *State of Maharashtra Vs. Kailash Shiva Rangari* [2016 (4) ALL MR 513] and the judgment of the learned Single Judge in *The State of Maharashtra & others Vs. Ramesh Tukaram Meshram & others* [2018(1) ALL MR 645]. As per the law laid down in the aforesaid judgments, the 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 judgments and the awards to the aforesaid extent need to be modified.

07. For the reasons stated above, following order is passed :-

(i) The appellants are held entitled for the compensation at the rate of Rs. 1,25,000/- per hectare for non-irrigated lands, Rs. 1,87,500/- per hectare for semi-irrigated lands and Rs. 2,50,000/- per hectare for irrigated lands and consequently to receive the enhanced compensation accordingly. The appellants are also held entitled to receive the statutory benefits on the enhanced amount of compensation.

(ii) The appellants are also held entitled to receive the interest under Sections 28 and 34 of the Act from the date of passing of the award under Section

11 of the Act i.e. from 25-10-2004 on the enhanced amount of compensation as well as on the amount of compensation as was awarded by the reference Court.

(iii) The impugned judgments and awards in so far as they relate to grant of interest under Sections 28 and 34 of the Act from the date of issuance of Section 4 notification or from the date of possession stand set aside.

(iv) The appeals are partly allowed in the aforesaid terms.

(Smt. Vibha Kankanwadi)
JUDGE

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