

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

919 FIRST APPEAL NO.3012 OF 2009

Kishanrao s/o. Pundlikrao Patil,
Age: Years, Occu. Agriculture,
R/o. Marajwadi, Tq. Mukhed,
Dist. 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]

WITH

FIRST APPEAL NO.79 OF 2010

Kondiba s/o. Yadavrao Resegave,
Age: 50 Years, Occu. Agriculture,
R/o. Marajwadi, Tq. Mukhed,
Dist. 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]

WITH
FIRST APPEAL NO. 82 OF 2010

- 1] Sharad s/o. Rajendra Hendge,
Age: 28 years, Occup. Agriculture.
- 2] Balaji s/o. Rajendra Hendge,
Age: 30 years, Occup. Agriculture.
- 3] Sow.Daivashala w/o. Ramrao Hendge,
Age: 32 Years, Occup. Agriculture
& Household

All R/o. Marajwadi,
Tq. Mukhed, Dist. Nanded **..APPELLANTS**
[Orig.Claimants]

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]

WITH
FIRST APPEAL NO.439 OF 2010

Hanmantrao s/o. Vithalrao Hendge,
Age: 45 Years, Occup. Agriculture,
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
appellants in all First Appeals.
Mr.S.N.Morampalle, AGP for the respondent –
State in all First Appeals.
Ms.Sunita D. Shelke, Advocate for the
respondent no.3 in all First Appeals

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CORAM : V.L.ACHLIYA,J.
DATE : 05.09.2019

JUDGMENT:

- 1] By these Appeals filed against the
judgments and orders passed by the Reference

Court, the appellants have assailed the reasons and findings recorded by the Reference Court with contention that the Reference Court has not considered the evidence adduced in the case in its proper perspective. It is the contention of the appellants that though the Reference Court has observed that the value of the land acquired is not less than Rs.90,000/- to Rs.1,00,000/- per hector. Still, the Reference Court has awarded compensation @ Rs.63,249/- per hector for dry crop land and Rs.94,873/- per hector for seasonal irrigated land.

2] Since these Appeals are arising out of the land acquired for the same project and the challenge raised is one and the same, the Appeals are heard and decided together by common judgment and order.

3] The Appellant in First Appeal No.3012/2009 has challenged the judgment and order passed in LAR No.223/2007 [Old LAR No.211/2006]. In brief, it is the case of the appellant that his land bearing Survey No.3/A/1, admeasuring 1 Hector 86 R. land situated at village Marajwadi, Taluka Mukhed,

District Nanded was acquired for Lendi Major Project. Out of 1 Hectar 86 R. of land acquired, the land admeasuring 53 R. land was dry crop land and 1 Hectar 33 R. land was seasonal irrigated land. The Notification under Section 4 was issued on 09.07.1998. By the award dated 25.10.2004, the Special Land Acquisition Officer has awarded compensation @ Rs.52,709/- per hectar for dry crop land and Rs.79,064/- per hectar for seasonal irrigated land. Being aggrieved, the appellant-claimant preferred this Appeal claiming enhanced compensation @ Rs.2,25,000/- per hectar.

4] The Appellant in First Appeal No.79/2010 has challenged the judgment and order passed in LAR No.239/2007 [Old LAR No.227/2006]. In brief, it is the case of the appellant that his land bearing Survey No. 54/B, admeasuring 50 R. land situated at village Marajwadi, Taluka Mukhed, District Nanded was acquired for Lendi Major Project. The land was dry crop land. By the award dated 25.10.2004, the Special Land Acquisition Officer has awarded compensation @ Rs.61,878/- per hectar for dry crop land. Being aggrieved, the appellant - claimant has

preferred this Appeal claiming compensation @ Rs.1,50,000/- per hector.

5] The Appellants in First Appeal No.82/2010 have challenged the judgment and order passed in LAR No.218/2007 [Old LAR No.206/2006]. In brief, it is the case of the appellants that their land bearing Survey No.68/A/1, admeasuring 40 R. and 50 R. respectively i.e. total 90 R. land situated at village Marajwadi, Taluka Mukhed, District Nanded was acquired for Lendi Major Project. The land is dry crop land. It is further case of the appellants that there were 7 mango trees and 3 bori trees in the land. The land was acquired by the Notification under Section 4 issued on 09.07.1998. By the award dated 25.10.2004, the Special Land Acquisition Officer has awarded compensation @ Rs.65,546/- per hector for 40 R. land and @ Rs.65,077/- per hector for 50 R. land and both are dry crop lands. Being aggrieved, the appellants – claimants have preferred this Appeal claiming enhanced compensation @ Rs.1,50,000/- per hector, Rs.15,000/- for mango trees and Rs.5,000/- for bori tree.

6] The Appellant in First Appeal No.439/2010 has challenged the judgment and

order passed in LAR No.225/2007 [Old LAR No.213/2006]. In brief it is the case of the appellant in this appeal i.e. land bearing Survey No.72/Pai, admeasuring 1 Hector 64 R. land situated at village Marajwadi, Taluka Mukhed, District Nanded was acquired for Lendi Major Project. Out of 1 Hector 64 R. land, 55 R. land is dry, 1 Hector 07 R. land is seasonal irrigated land and 2 R. land is *potkharaba* land and 1 mango tree. It is further the case of the appellant that there is 1 mango tree in the land. The land was acquired by the Notification under Section 4 issued on 09.07.1998. By the award dated 25.10.2004, the Special Land Acquisition Officer has awarded compensation @ Rs.66,484/- per hector for 55 R. dry land and @ Rs.99,726/- per hector for 1 Hector 7 R. seasonal irrigated land. Being aggrieved, the appellant-claimant has preferred this Appeal claiming enhanced compensation @ Rs.2,25,000/- per hector and Rs.15,000/- for mango tree.

7] Mr.Chincholkar, learned counsel for the appellants tendered the copies of judgment and order dated 21st February, 2019 passed in First Appeal No.834 of 2010 along

with companion appeals decided by this Court [Coram : P.R.Bora, J.] and another judgment and order dated 1st October, 2018 passed by this Court [Coram : P.R.Bora, J.] in First Appeal Nos.988/2012 & 989/2012. He has also tendered copy of the judgment and order dated 26th July, 2019 passed in First Appeal No.987 of 2012 [Coram : Smt. Vibha Kankanwadi, J.]. By referring the judgments and orders passed in group of appeals arising out of acquisition of land for same project and award passed by the Special Land Acquisition Officer, learned counsel submits that the case of the appellants stands *at par* with the appellants whose cases are already decided by this Court. In the companion Appeals arising out of the same acquisition, this Court determined the value of the lands acquired for the Lendi Major Project from village Marajwadi, Taluka Mukhed, District Nanded as under :

- 1] Rs.1,25,000/- per hector for dry crop land.
- 2] Rs.1,87,500/- per hector for semi irrigated land.
- 3] Rs.2,25,000/- per hector for irrigated land.

8] It is submitted that the lands involved in all these Appeals are acquired vide Notification dated 09.07.1998 for one and the same project. Therefore, the compensation deserves to be enhanced as per the judgments and orders passed in companion appeals arising out of the same acquisition. By referring the judgments and orders passed in the Appeals arising out of the same project, learned counsel submits that the compensation be enhanced by Rs.1,25,000/- per hector for dry crop land, Rs.1,87,500/- for semi irrigated land and Rs.2,50,000/- per hector for irrigated land. It is submitted that the lands involved in Appeals already decided by this Court and the lands, which are subject matter of the present Appeals, acquired for same project. So also lands acquired are from same village and they are of same quality and potential. In this background, learned counsel urged to enhance the compensation *at par* with the compensation awarded in Appeals arising from same acquisition proceeding.

9] Mrs.S.D.Shelke, learned counsel appearing for the respondent no.3 the acquiring body and Mr.S.N.Morampalle, learned

AGP representing the respondent nos.1 and 2 in respective appeals not disputed the factual submissions made by learned Advocate representing appellants. Learned counsel for respondent no.3-acquiring body as well as learned AGP submit that the Reference Court has awarded the interest under Section 28 and 34 of the Land Acquisition Act with effect from the date of issuance of the Notification under Section 4 of the Land Acquisition Act. By referring the decision in the case of *State of Maharashtra Vs. Kailash Shiva Rangari* reported in 2016 [4] ALL MR 513 and the decision in the case of the *State of Maharashtra & others Vs. Ramesh Tukaram Meshram & others* reported in 2018 [1] ALL MR 645, it is submitted that this Court has consistently held that the interest under Section 28 and 34 of the Land Acquisition Act can be awarded only from the date of passing of the award under Section 11 of the Land Acquisition Act and not from the date prior to passing of such award. In this background, learned counsel submits that the award passed by the Reference Court deserves to be modified by maintaining the categorization of the land as per the award passed by the Special Land Acquisition Officer.

10] In counter to this submission advanced, learned counsel for the appellants submits that appellants have no objection to determine the market value of the acquired land in tune with the categorization made by the Special Land Acquisition Officer as well as modification of award in tune with judgment and award passed by this Court in Appeal arising out of same acquisition.

11] I have carefully perused the impugned judgments and awards passed by the Reference Court. The lands, which are subject matter of these appeals and group of the appeal decided by this Court, were acquired for one and the same project i.e. Lendi Major Project, by Notification issued under Section 4 of the Land Acquisition Act and published in the Gazette on 09.07.1998. The lands in question are acquired from village Marajwadi, Taluka Mukhed, District Nanded. The award under Section 11 of the Land Acquisition Act was passed on 25.10.2004 by the Special Land Acquisition Officer. Before acquiring the land, the detail survey has made in respect of the lands to be acquired as type of the land, use of the land for cultivation, location etc. It appears that the Special

Land Acquisition Officer has determined the market value of the acquired land on the basis of categorization in the range of Rs.60,000/- to 75,000/- per hector. The Reference Court though observed that the value of the land acquired cannot be less than Rs.90,000/- to Rs.1,00,000/- per hector, however, enhanced the compensation by giving 20% rise over the compensation determined by the Special Land Acquisition Officer.

12] While passing the judgment and order dated 1st October, 2018 in First Appeal Nos.988/2012 and 989/2012 by this Court [Coram : P.R.Bora, J.], the Court has considered the overall facts of the case, evidence adduced in case and reached to the conclusion that the Reference Court has erred in deciding the reference and determining the compensation of the land acquired. On close analysis of the evidence, this Court has determined the compensation to be payable @ Rs.1,25,000/- per hector for dry crop land, Rs.1,87,500/- for seasonal irrigated land and Rs.2,50,000/- for irrigated land. In para nos.6 and 7 the Court has observed as under:

6. The evidence on record shows that the claimants had brought on

record total three sale instances. The learned Reference Court in paragraph No.13 of both the Judgments has discussed the evidence as about the sale instances brought on record by the claimants. From the discussions made by the Reference Court, it appears that it has preferred to rely upon the sale instances dated 21.01.1998 by which the land which was the subject matter of the said sale-deed ad-measuring 81 Are was sold for the consideration of Rs.1,20,000/-. The learned Reference Court has observed that so far as proximity of the time is concerned that was the sale instance of nearest period. The Reference Court, after having considered the said sale instance, has determined the market value of the subject land @ Rs.75,072/- per Hectare for the land, which was subject matter of First Appeal No.988 of 2012 (Land Acquisition Reference No.399 of 2007) and relying on the same sale instance, determined the market value of the lands, which are the subject matter in First Appeal No.989 of 2012 (Land Acquisition Reference No.373 of 2007) @ Rs.1,47,484/- per Hectare for the irrigated land and Rs.73,742/- per Hectare for dry land.

7. It apparently appears that the Reference Court has failed in properly appreciating the sale instanced, which was relied upon by it while determining the market

value of the subject lands. The land, which was the subject matter of the sale deed executed on 21.01.1998 had received price @ Rs.1,48,000/- per Hectare. The market value of the acquired land must have been, therefore, determined by the Reference Court considering some plus and minus factors. Though, the claimants have not brought on record any concrete evidence as about the similarity of the land and the location of the said land at Exh.21, the market value determined by the Reference Court @ Rs.75,072/- per Hectare for dry land, according to me, was not in tune with the evidence on record. Even if it is considered that the aforesaid land was having some special features, perhaps that may be the reason that it has fetched the price of Rs.1,50,000/- per Hectare, in no case, the market value of the lands, which are the subject matter in the present appeals could have been determined by the Reference Court less than Rs.1,25,000/- per Hectare. I, therefore, deem it appropriate to determine the market value of the acquired land in the present matters @ Rs.1,25,000/- per Hectare for dry land and for 13 Are land involved in another Appeal, which is irrigated land @ Rs.2,50,000/- per Hectare. The compensation be enhanced accordingly. The appellants are entitled for the statutory benefits as well as interest as per the provisions of the Act on the enhanced amount of compensation from

the date of declaration of the award under Section 11 of the Act till realization of the amount. Both these appeals are partly allowed in the aforesaid terms.

13] Similar view has been taken by this Court in judgment and order dated 26th July, 2019 passed in First Appeal No.987 of 2012 [Coram : Smt. Vibha Kankanwadi, J.]. In para no.5, the Court has observed as under:

05. Perusal of the record shows that the lands in the appeals relied by appellant and this case are acquired for the same project under same notification under Section 4 of the Act. Common Award under Section 11 of the Act was passed on 25-10-2004 in respect of all the lands acquired under the project. Though SLAO had determined the market value of the acquired land at Rs.63,925/-, it was enhanced to Rs.76,709/- per hector by learned Reference Court. This Court in First Appeal No.988 of 2012 with First Appeal No.989 of 2012 has given the uniform rate for the acquired lands at the rate of Rs.1,25,000/- per hectare for dry land and @ Rs.2,25,000/- per hectare for irrigated land. In view of the fact that, the acquisitions were made for the same project vide same

notification and under the same Award, then present appeal also deserve to be allowed on the similar terms by enhancing the compensation at par with the compensation as was enhanced in First Appeal Nos.988 of 2012 with 989 of 2012 as well as First Appeal No.834 of 2010 and group decided on 21-02-2019. The land in question in this case is 'dry land' i.e. non-irrigated.

14] Thus, on due consideration of the overall facts of the case and the judgments and orders passed by this Court in Appeals arising out of same acquisition, I am of the view that the appellants deserves to be awarded compensation *at par* with the compensation awarded in connected Appeals.

15] The land, which is subject matter in First Appeal No.79/2010, is a dry crop land. In that view the appellant in said Appeal is entitled to seek enhanced compensation @ Rs.1,25,000/- per hector for land admeasuring 50 R. acquired from Survey No.54/B situated at village Marajwadi, Taluka Mukhed, District Nanded.

16] So far as the appellants in First Appeal Nos.3012/2009, 82/2010 and 439/2010

are concerned, the appellants have claimed that the lands acquired are dry crop land as well as semi irrigated land. None of them have claimed that their lands were irrigated land. In that view, the appellants in the said Appeals are entitled for enhanced compensation @ Rs.1,25,000/- per hector for dry crop land and compensation @ Rs.1,87,500/- per hector for semi irrigated land as per the categorization made in the award passed by the Special Land Acquisition Officer.

17] Learned counsel for the appellants submits that the Reference Court has erred in refusing to enhance the compensation towards fruit bearing trees. It is submitted that in the land bearing Survey No.68/A/1 there were 7 mango trees and three bori trees. In view of the evidence adduced in the case, the compensation @ Rs.15,000/- per tree ought to have been awarded by the Special Land Acquisition Officer. Similarly, in land bearing Survey No.72/Pai, there was one mango tree and the compensation of Rs.15,000/- ought to have been awarded by Special Land Acquisition Officer.

18] I have considered the submissions advanced in the light of the reasons recorded by the Reference Court to decline to enhance the compensation on account of fruit bearing trees which are subject matter of acquisition of land in First Appeal No.82/2010 and First Appeal No.439/2010. The reasons and findings recorded by the Reference Court suffers from no perversity so as to call for interference in exercise of the appellate jurisdiction of this Court. The reasons recorded by Reference Court are based upon due appreciation of evidence.

19] Perusal of the judgment and order passed by the Reference Court reflects that while passing the judgment and award in respective references, which are subject matter of these Appeals, the Reference Court has awarded the interest under Section 28 and 34 of the Land Acquisition Act over the enhanced amount of compensation with effect from the date prior to passing of award by the Special Land Acquisition Officer which is contrary to law. The Full Bench of this Court in the case of *State of Maharashtra Vs. Kailash Shiva Rangari [supra]* has considered the issue in respect of award of interest

over the amount of enhanced compensation by the Reference Court under Section 28 and 34 of the Land Acquisition Act. It is held that the interest to be awarded under Section 28 and 34 of the Land Acquisition Act can be awarded only with effect from date of passing of the award under Section 11 of the Land Acquisition Act and not from any date prior to passing of such award. While deciding the connected Appeals arising out of same acquisition, this Court has accepted the contention of the respondent-acquiring body that the interest under Section 28 and 34 of the Land Acquisition Act to be awarded only from the date of passing of the award under Section 11 of the Land Acquisition Act and not from any prior date. In view of the legal position set at rest by this court in the case of ***State of Maharashtra Vs. Kailash Shiva Rangari [supra]***, the contention of the respondents seeking modification deserves to be accepted. Accordingly, Appeals are partly allowed and the following order is passed :

ORDER

1] The impugned judgment and award passed by the Reference Court and challenged in Appeals are modified as under:

- i] The Appeals are partly allowed with no order as to costs.

- ii] The appellants in First Appeal Nos.3012/2009, 79/2010, 82/2010 and 439/2010 are entitled for compensation @ Rs.1,25,000/- per hector for dry crop land, Rs.1,87,500/- for semi irrigated land, as per categorization of the land made by the Special Land Acquisition Officer and referred in the respective awards passed by the Reference Court.

- iii] The appellants are entitled to receive the interest under Section 28 and 34 of the Land Acquisition Act from the date of passing of the award u/s.11 of the Land Acquisition Act i.e. with effect from 25.10.2004 over the enhanced amount of compensation till realisation of amount.

iv] The appellants shall entitle to receive statutory benefits in accordance with law over the enhanced compensation.

v] Decree be drawn up accordingly.

[V.L.ACHLIYA]
JUDGE

DDC