

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

FIRST APPEAL NO. 1285 OF 2015

Balasaheb Baliram Avchar,
Age. Major, Occ. Agri.,
R/o. Vidoli, Tq. Mantha.
Dist. Jalna.

...Appellant.

Versus

1. The State of Maharashtra,
Through Collector, Jalna.
2. The Special Land Acquisition
Officer (M.I.D.), Jalna.
3. The Executive Engineer,
Lower Dudhna Project Jalna.

...Respondents.

**WITH
FIRST APPEAL NO. 3811 OF 2016**

Rajaram S/o. Babasaheb Avchar,
Age. 55, Occ. Agri.,
R/o. Vidoli, Tq. Mantha.
Dist. Jalna.

...Appellant.

Versus

1. The State of Maharashtra,
Through Collector, Jalna.
2. The Special Land Acquisition
Officer (M.I.W.), Jalna.
3. The Executive Engineer,
Nimna Dudhna Project Selu,
Tq. Selu, Dist. Jalna.

...Respondents.

Advocate for Appellants : Mr. A.B. Kale.
AGP for Respondent Nos. 1 & 2 : Mr. A.M. Phule.
Advocate for Respondent No. 3 : Ms. S.D. Shelke.

CORAM : MANGESH S. PATIL, J.
Reserved on : 03.12.2019
Pronounced on : 18.12.2019

JUDGMENT :

These are the appeals by the original claimants being aggrieved and dissatisfied by the judgments and awards passed by the Reference Court under Section 18 of the Land Acquisition Act, 1894.

2. Since in both these appeals the acquired lands of the appellants are from the same village i.e. village Vidoli, Taluka Mantha, acquired for the same project but under different notifications and particularly when the decision in a reference in LAR No. 18 of 2010, which is under challenge in First Appeal No. 1285 of 2015, has been rendered in view of the decision in the other LAR No. 928 of 2010, which is under challenge in First Appeal No. 3811 of 2016, both the appeals have been heard together and are being disposed of by this common judgment.

3. The Special Land Acquisition Officer awarded rate of Rs. 565/- per Are and Rs. 665/- per Are. The Reference Court by referring to a sale instance in respect of a land sold by an owner from village Revalgaon and by referring to the earlier decision in LAR No. 26 of 2010, granted enhanced compensation by valuing the acquired land at the rate of Rs. 1300/- per Are for the dry land from LAR No. 18 of 2010 and Rs.2600/-

for the irrigated land in LAR No. 928 of 2010.

4. It is pertinent to note that in various First Appeals preferred by the acquiring body viz. First Appeal (Stamp) No. 32186 of 2014 and connected appeals arising from the same project, the same sale instance was relied upon and this Court, by the judgment and order dated 21.07.2015, dismissed those appeals wherein the lands acquired were from village Mangrool. In the matters in hand, the lands are from village Vidoli which is adjacent to village Mangrool and equidistant from village Revalgaon. Learned Advocates for both the sides fairly admit such factual position.

5. The learned Advocate for the appellants submits that the reference Court has not determined the market value by following norms and settled law. It has not taken into consideration the previous decision in LAR No. 26 of 2010.

6. Learned Advocate for the acquiring body and the learned AGP support the judgment. They submit that there is no need to cause any interference. The reference Court has given cogent and plausible reasons. It has specifically mentioned in the judgment passed in LAR No. 928 of 2010 that it was awarding the rate relying upon the earlier decision in LAR No. 26 of 2010. It has meticulously noted in the judgment as to how

the land herein being an irrigated land should have been valued as an irrigated land and not as a dry land. Therefore, there is no infirmity or illegality committed by the reference Court in determining the market value of the lands in both these decisions.

7. Learned Advocate for the acquiring body and the learned AGP however submit that in fact, in view of the decision of the Full Bench in the case of ***State of Maharashtra Vs. Kailash Shiva Rangari***, 2016 (3) **Mh.L.J. 457** and subsequent decision in the case of ***State of Maharashtra Vs. Ramesh Tukaram Meshram and Others***, 2018 (3) **Mh.L.J. 616**, the reference Court ought not to have awarded interest under Sections 28 and 34 from the date of possession/notification under Section 4, but from the date of the award. Though the State or the acquiring body have not preferred any appeal, this Court under Order XLI Rule 33 of Code of Civil Procedure, is empowered to rectify such illegality.

8. Learned Advocate for the appellants fairly concedes that in view of the decision of the Full Bench in the case of ***Kailash Shiva Rangari*** and the subsequent decision in the case of ***Ramesh Tukaram Meshram and Others*** (supra) that there is apparent illegality committed by the reference Court in awarding interest under Sections 28 and 34 not from the date of the award which can now be corrected by this Court in view of the provisions of Order XLI Rule 33 of C.P.C.

9. The learned advocates submit that simultaneously, one cannot forget the fact that the appellants having lost possession through negotiations, are entitled to claim rental compensation and that aspect needs to be considered.

10. So far as the challenge to the impugned judgments and awards to the extent of valuation of the acquired lands is concerned, it is apparent that the reference Court has relied upon the earlier decision in LAR No. 26 of 2010 and treat it as a base. The stand of the appellants that the reference Court has ignored the judgment in LAR No. 26 of 2010 is factually incorrect. While deciding LAR No. 18 of 2010 which was first in point of time between these two impugned judgments, it is specifically observed that it was relying upon the judgment in LAR No. 26 of 2010 and on the ground of parity was determining the market value of the dry land at Rs. 1300 per Are and for irrigated land at Rs. 2600/- per Are.

11. As is mentioned herein above, in both these matters, the reference Court has referred to the sale instance to justify the market value determined by it and this Court in First Appeal (Stamp) No. 32186 of 2014 has also referred to and upheld such valuation based on the same sale instance relying upon these matters. It is in view of such state of affairs, in my considered view, the reference Court for plausible reasons and objective material has correctly determined the market value of the

lands acquired. The observations and the conclusions are clearly borne out from the evidence available before it and I find no sufficient and cogent reason but to subscribe and uphold such valuation.

12. It is apparent that the reference Court has awarded interest under Sections 34 and 28 in these matters from the date of possession/notification under Section 4 when it should have been directed to be paid only from the date of award in view of the decision in the case of *Kailash Shiva Rangari and Ramesh Tukaram Meshram and Others (supra)*. Therefore, even if the acquiring body or the State has not preferred appeal impugning that part of the impugned judgments and awards, they can seek to invoke the powers of this Court under Order XLI Rule 33 of C.P.C. to correct the mistake / illegality. Consequently, necessary rectification will have to be made in respect of such direction in the impugned judgment and award, while deciding these appeals.

13. So far as entitlement of the appellants for rental compensation is concerned, there cannot be any dispute that though there is no specific provision contained in the Land Acquisition Act, 1894 entitling land owners to claim any rental compensation, they are entitled to claim such rental compensation by virtue of various circulars issued by the State of Maharashtra dated 1.12.1972, 17.09.1977, 2.4.1979, 24.03.1988 which enable the land owner to claim such rental compensation when

possession of the land is taken by previous negotiations prior to issuance of a formal notification under Section 4 (1) of the Land Acquisition Act, 1894. In such cases, they are entitled to claim 80% of the compensation calculated by the Collector while taking possession. As has been held in the case of *State of Maharashtra and Others Vs. Maimuma Banu and Others*, AIR 2003 SC 3698 and *Executive Engineer, Minor Irrigation Division vs. Dinkar and Others*, Petition for Special Leave to Appeal (C) No. 31222 and 31223 of 2009 decided on 19.11.2014, even in an appropriate case the land owner would be entitled to claim interest on such rental compensation.

14. However, in both these references it has been admitted by the respective appellants in their testimony that the possession was taken subsequent to the issuance of the notification under Section 4 of the Land Acquisition Act and even he was paid 80% of the compensation determined by the Collector. Therefore, the appellants would not be entitled to claim any rental compensation.

15. In view of above, both the First Appeals are dismissed. However, the impugned awards are modified in respect of the direction to pay interest under Sections 28 and 34. The direction in the impugned judgments and awards in respect of the interest under Sections 28 and 34 making it payable from the date of possession is quashed and set aside

and instead it is declared that the appellants would be entitled to claim interest under those provisions from the date of the award.

(MANGESH S. PATIL, J.)

S.P.C.