

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

**1060 CIVIL APPLICATION NO.15759 OF 2016
IN FAST/24075/2016**

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| 1. | The Executive Engineer,
Masalga Medium Project
Division, Latur
(Now known as
The Executive Engineer,
Latur Medium Project,
Division Latur)
under Godawari Marathwada Irrigation
Development Corporation, Aurangabad. | ..Applicant
(Ori.Res.No.2) |
| 2 | The State of Maharashtra,
Through its Collector,
Latur. | ..Co-Applicant
(Ori. Resp. No.1) |

VERSUS

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| . | Venkat s/o. Shahajirao Shelke
Age: 59 years, Occu.: Agri.,
R/o. Sone Sangvi, Tq.Nilanga,
Dist.Latur. | ..Respondent |
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...
WITH CA/151/2019 IN FAST/24075/2016

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**WITH
CIVIL APPLICATION NO.15757 OF 2016
IN FAST/24536/2016**

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| 1. | The Executive Engineer,
Masalga Medium Project
Division, Latur
(Now known as
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2 The State of Maharashtra,
Through its Collector,
Latur.

..Co-Applicant
(Ori. Resp. No.1)

VERSUS

. Nilkanth s/o. Shahajirao Shelke
Age: Major, Occu.: Agri.,
R/o. Shivani (Kotal), Tq.Nilanga,
Dist.Latur.

..Respondent

...
WITH CA/152/2019 IN FAST/24536/2016

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Advocate for Applicant : Shri B.A.Shinde
AGP for Co-Applicant – State : Shri P.M.Kulkarni
Advocate for Respondents : Shri Mukund D. Gitte
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CORAM : P.R.BORA, J.

DATE: 15th February, 2019

ORAL JUDGMENT:-

1. Though, the learned Counsel appearing for the claimants has opposed for condoning the delay stating that the reasons as are assigned for condoning the delay of more than three years have not been sufficiently explained, after having considered the contents of the application, I am satisfied that the delay has been sufficiently explained by the Acquiring Body. I am, therefore, inclined to allow these applications. Applications are allowed. Delay caused in filing the appeals is condoned. Appeals be registered in accordance with law. After registration of the appeal, issue notice to the respondents. Shri M.D.Gitte, learned Counsel waives service of notice for the respondents in both the appeals. Service complete.

2. With the consent of the learned Counsel appearing for the parties, the matters are taken up for final disposal at the admission stage.

3. The lands which are the subject matter in the present appeals were acquired for Masalga Medium Project, Tq.Nilanga, District Latur. The lands were acquired from village Sone Sangvi, Tq.Nilanga, Dist.Latur. The Notification under Section 4 was published in that regard in the official Gazette on 17.08.1992 and the awards under Section 11 came to be passed on 10.11.1994. The Special Land Acquisition Officer (SLAO) had offered the compensation @ Rs.410/- per Are for the non-irrigated land and @ Rs.820/- per Are for the irrigated land. The SLAO had offered the compensation to the respective claimants holding their acquired lands to be dry lands. Dissatisfied with the amount of compensation so offered, the claimants preferred the applications under Section 18 of the Act, which were decided by the Court of Civil Judge (Senior Division) at Nilanga (hereinafter referred to as the Reference Court). In the Reference Applications, the claimants had claimed the compensation of their lands @ Rs.4,00,000/- per Acre claiming that those lands were fully irrigated lands. In order to substantiate their claim, the claimants in addition to their own testimony, placed on record two sale instances at Exh.33 and 34. The respondents also placed on record two sale instances, which were at Exh.44 and 45 of the record of the Trial Court. The learned Reference Court after having assessed the oral and documentary evidence brought on record before it, held the acquired

lands to be semi-irrigated lands and determined the market value of the said lands @ Rs.2,145/- per Are and accordingly enhanced the amount of compensation. Aggrieved thereby, the Acquiring Body has preferred the appeal.

4. Shri B.A.Shinde, learned Counsel appearing for the Acquiring Body has assailed the impugned Judgment on two grounds; first that the market value as has been determined by the Reference Court of the acquired lands is at higher side without any evidence therefor and the second that the Reference Court has wrongly awarded the interest under Section 28 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) from the date of issuance of Section 4 Notification. The learned Counsel submitted that the Reference Court has without assigning cogent reasons, has discarded the sale instances placed on record by the Acquiring Body and has wrongly relied upon the sale instance at Exh.34 placed on record by the claimants. The learned Counsel submitted that the sale instance as has been relied upon by the claimants cannot be held to be of comparable lands and as such the market value of the acquired lands could not have been determined on the basis of said sale instance. The learned Counsel submitted that infact the SLAO had considered all the aspects and has determined the market value accurately and no interference was required in the award so passed. The leaned Counsel further submitted that the Reference Court has wrongly awarded the interest on the enhanced amount of compensation from the date of issuance of Section 4 Notification. Referring to the Judgment of Full Bench of this

Court as well as learned single Judge of this Court, the learned Counsel submitted that the order to the aforesaid extent also deserves to be set aside.

5. Shri M.D.Gitte, learned Counsel appearing for the respondents - original claimants supported the impugned Judgment and award. The learned Counsel submitted that though the SLAO had held the acquired lands to be dry lands, ample evidence was produced on record by the claimants in order to prove that the acquired lands were irrigated lands and the crops like sugarcane etc. were being continuously taken in the said lands. The learned Counsel submitted that the sale instance, which was placed on record by the claimants at Exh.34 has been rightly considered by the Reference Court and accordingly the market value as has been determined by the Reference Court does not require any interference. The learned Counsel fairly conceded the legal position in so far as the award of interest under Section 28 of the Act is concerned and submitted for passing appropriate orders in that regard.

6. After having considered the submissions made by learned Counsel appearing for the parties and on perusal of the impugned Judgment, I do not find much substance in the objection raised by the appellant Acquiring Body as about the market value determined by the Reference Court of the acquired lands. The Reference Court has elaborately discussed the evidence and has reached to the conclusion that the acquired lands were seasonally irrigated lands. Considering the discussion made by the Reference Court and evidence on record, it

does not appear that the Reference Court has made any error in holding the lands as semi-irrigated lands. As noted herein above, the Reference Court has relied upon the sale deed at Exh.34. The land, which was subject matter of said sale deed was ad-measuring 1 Hectare and 35 Are and was sold vide sale deed executed on 31.01.1991 for the consideration of Rs.1,95,000/- i.e. Rs.1,444/- per Are. The said land was admittedly dry land. The Reference Court, on the basis of said sale instance, has determined the market value of the acquired lands @ Rs.2,145/- per Are holding the acquired lands to be semi-irrigated lands. 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 said rate. I do not find any substance in objection raised by the appellant.

7. However, so far as grant of interest under Section 28 of the Act is concerned, the impugned Judgment certainly needs to be modified to that extent. The Reference Court has awarded the interest under Section 28 of the Act from the date of issuance of Section 4 Notification. The law in this regard now stands settled by the Judgment of the Full Bench of this Court in the case of **State of Maharashtra Vs. Kailash Shiva Rangari [2016 (4) All MR 513]**. Relying on the aforesaid Judgment of Full Bench, the learned single Judge of this Court in the case of **State and others Vs. Ramesh Tukaram Meshram [2018 (3) Mh.L.J. 616]** has held that the same interpretation as has been made by the Full Bench as regard to grant of interest under Section 34 of the Act, would apply to the interest to be awarded under

Section 28 of the Act. It is thus evident that the Reference Court could not have awarded the interest under Section 28 of the Act, from the date of issuance of Section 4 Notification. Instead, the same was liable to be granted from the date of passing of the award under Section 11 of the Act and not from any prior date. On the aforesaid count, both the appeals require to be allowed. In the result, the following order is passed:-

ORDER

- I) Appeals are partly allowed.
- II) The impugned common Judgment and award passed in Land Acquisition Reference (LAR) Nos.153 of 2002 and 166 of 2005 on 05.05.2012, so far as it relates to grant of interest under Section 28 of the Act from 17.08.1992 i.e. from the date of issuance of Section 4 Notification is set aside. Instead, such an interest is made payable from the date of passing of the award under Section 11 of the Act i.e. 10.11.1994.
- III) The award be modified accordingly.
- IV) From the deposited amount the claimants are permitted to withdraw the amount alongwith interest thereon, which may be found payable in view of the modified award.
- V) The balance amount be refunded to the Acquiring Body alongwith interest accrued thereon.
- VI) Pending civil applications stand disposed of.

(P.R.BORA)
JUDGE