

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

**966 FIRST APPEAL NO.2546 OF 2011
WITH CA/9279/2017 IN FA/2546/2011**

1. Bansi S/o Dagdu Bhos
Age: 63 years, Occu.: Agriculture
2. Bajirao S/o. Dagdu Bhos
Age: 51 Years, Occu.: Agriculture
Both R/o. Tandali Dumala, Tal.Shrigonda,
Dist.Ahmednagar. ..Appellants/
Ori. Claimants

VERSUS

1. The State of Maharashtra
Through Collector, Ahmednagar. ..Respondent
(Ori.Respondent)
2. The Executive Engineer,
Kukadi Distribution Division,
Kolwadi, Tq.Karjat,
Dist.Ahmednagar. ..Respondent
(Acquiring Body)

**WITH
FIRST APPEAL NO.2547 OF 2011
WITH CA/9277/2017 IN FA/2547/2011**

- . Hajrat Alimiya Pir saheb Vahivatdar
- 1) Bai Chandbhai Shaikh
Age: 69 yrs., Occu.: Household.
 - 2) Mumtaj Daud Sayyad
Age: 40 yrs., Occu.: Household
R/o.Kothul, Tal.Shrigonda,
Dist.Ahmednagar.
 - 3) Mansur Chandbhai Shaikh
Age: 36 yrs., Occu.: Agriculture.
 - 4) Gulab Chandbhai Shaikh
Age: 33 yrs., Occu.: Agrilcuture,
No.1, 3 and 4, R/o.Tandali Dumala,
Tal.Shrigonda, Dist.Ahmednagar. ..Appellants/
Ori. Claimants

VERSUS

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| 1. | The State of Maharashtra
Through Collector, Ahmednagar. | ..Respondent
(Ori.Respondent) |
| 2. | The Executive Engineer,
Kukadi Distribution and Construction
Division, Kolwadi, Tq.Karjat,
Dist.Ahmednagar. | ..Respondent
(Acquiring Body) |

**WITH
FIRST APPEAL NO.2548 OF 2011
WITH CA/9278/2017 IN FA/2548/2011**

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| 1. | Anna S/o. Nana Bhos
Age: 44 years, Occu.: Agriculture. | |
| 2. | Dilip S/o. Nana Bhos
Age: 45 years, Occu.: Agriculture. | |
| 3. | Manda w/o. Dilip Bhos
Age: 43 years, Occu.: House hold. | |
| 4. | Sanjana Anna Bhos
Age: 43 years, Occu.: House hold.
All R/o. Tandali Dumala, Tal.Shrigonda,
Dist.Ahmednagar. | ..Appellants/
Ori. Claimants |

VERSUS

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|----|--|----------------------------------|
| 1. | The State of Maharashtra
Through Collector, Ahmednagar. | ..Respondent
(Ori.Respondent) |
| 2. | The Executive Engineer,
Kukadi Distribution and Construction
Division, Kolwadi, Tq.Karjat,
Dist.Ahmednagar. | ..Respondent
(Acquiring Body) |

...
 Advocate for Appellants - Claimants : Shri M.R.Sonawane
 AGP for Respondent - State : Shri A.M.Phule
 Advocate for Respondent No.2 Acquiring Body :
 Shri Gulab B. Rajale
 ...

**WITH
 FIRST APPEAL NO.150 OF 2019**

. The Executive Engineer,
 Kukadi Distribution & Construction
 Division, Kolwadi, Tq.Karjat,
 Dist.Ahmednagar. ..Appellant
 (Acquiring Body)

VERSUS

1. The State of Maharashtra
2. Anna Nana Bhos
 Age: Major, Occu.: Agri.
3. Dilip Nana Bhos
 Age: Major, Occu.: Agri.
4. Manda Dilip Bhos
 Age: Major, Occu.: Household.
5. Sanjana Anna Bhos
 Age: Major, Occu.: Household.

All R/o Tandali Dumla, Tq.Shrigonda,
 Dist.Ahmednagar. ..Respondents
 (Orig. R.No.1 &
 Orig. Claimants)

**WITH
 FIRST APPEAL NO.155 OF 2019**

. The Executive Engineer,
 Kukadi Distribution & Construction
 Division, Kolwadi, Tq.Karjat,
 Dist.Ahmednagar. ..Appellant
 (Acquiring Body)

VERSUS

1. The State of Maharashtra
2. Banshi Dagdu Bhos
Age: Major, Occu.: Agri.
3. Bajirao Dagdu Bhos
Age: Major, Occu.: Agri.

Both R/o Tandali Dumla, Tq.Shrigonda,
Dist.Ahmednagar.

..Respondents
(Orig. R.No.1 &
Orig. Claimants)

**WITH
FIRST APPEAL NO.156 OF 2019**

- . The Executive Engineer,
Kukadi Distribution & Construction
Division, Kolwadi, Tq.Karjat,
Dist.Ahmednagar.

..Appellants
(Acquiring Body)

VERSUS

1. The State of Maharashtra
2. Hajrat Alimiya Pirsahab
Vahivatdar.
- 2/1 Bai Chandbhai Shaikh
Age: Major, Occu.: Agri.
- 2/2 Mumtaj Daud Sayyad
Age: Major, Occu.: Agri.
- 2/3 Mansur Chandbhai Shaikh
Age: Major, Occu.: Agri.
- 2/4 Gulab Chandbhai Shaikh
Age: Major, Occu.: Agri.

All R/o Tandali Dumla, Tq.Shrigonda,
Dist.Ahmednagar.

..Respondents
(Orig. R.No.1 &
Orig. Claimants)

...
Advocate for Appellant – Acquiring Body : Shri Gulab B. Rajale
AGP for Respondent – State : Shri A.M.Phule
Advocate for Respondents - Claimants : Shri M. R. Sonawane
...

CORAM : P.R.BORA, J.

DATE : 17th January, 2019

JUDGMENT:-

1. All these appeals arise out of the common Judgment and award dated 23.03.2010, passed by the Civil Judge, Senior Division, Shrigonda, in Land Acquisition Reference (LAR) No.14 of 2007 with connected LARS. Three appeals are filed by the original claimants claiming enhancement in the amount of compensation, whereas in the same three matters, the Acquiring Body has preferred appeals for setting aside the impugned common Judgment and award alleging that the compensation awarded in the said matters is excessive and without any evidence therefor. It is also the objection of the State that the interest under Section 28 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') has been wrongly awarded in these matters from the date of possession of the land.

2. In the above circumstances, common arguments were heard in these appeals and I deem it appropriate to decide all

these appeals by a common reasoning.

3. (I) The particulars of the appeals filed by the claimants are as under:

- a) First Appeal No.2546 of 2011 is filed by Bansi Dagdu Bhos and another, and arises out of LAR No.15 of 2007.
- b) First Appeal No.2547 of 2011 is filed by Hajrat Alimiya Pir Saheb and others, and arises out of LAR No.16 of 2007.
- c) First Appeal No.2548 of 2011 is filed by Anna Nana Bhos and others, and arises out of LAR No.20 of 2007.

(II) The Particulars of the appeals filed by the Acquiring Body are as under:

- a) First Appeal No.150 of 2019 – Against the Judgment and award passed in LAR No.20/2007.
- b) First Appeal No.155 of 2019 – Against the Judgment and award passed in LAR No.15/2007.
- c) First Appeal No.156 of 2019 – Against the Judgment and award passed in LAR No.16/2007.

4. The lands involved in these appeals were acquired for the purpose of Kukadi Left Bank Canal. The Notification under Section 4 of the Act, in that regard was published in the official Gazette on 03.05.2001. Possession of the acquired lands was taken prior to that. The award under Section 11 of the Act, came

to be passed on 30.09.2003. The Special Land Acquisition Officer (SLAO) had offered the compensation to the claimants @ Rs.82,800/- per Hectare for jirayat land and Rs.1,24,200/- per Hectare for seasonally irrigated land. Dissatisfied with the amount of compensation so offered by the SLAO, the claimants filed the applications under Section 18 of the Act, which were adjudicated by the learned Civil Judge, Senior Division at Shrigonda. The said Court is hereinafter referred to as the Reference Court. The appellants in First Appeal Nos.2546 of 2011 to 2548 of 2011, are hereinafter referred to as the claimants, whereas the appellant in First Appeal Nos.150 of 2019 with connected appeals is referred as the Acquiring Body.

5. In the Reference Applications, the claimants had claimed compensation @ Rs.2,50,000/- per Hectare for jirayat land and Rs.5,00,000/- per Hectare for the irrigated land. In order to substantiate the claim so raised by them, the claimants in addition to their own testimonies had placed on record two sale instances respectively at Exh.17 and 18. No oral or documentary evidence was adduced either on behalf of the Acquiring Body or on behalf of the State Government. The learned Reference Court, after having assessed the oral and documentary evidence brought before it, held the lands which were the subject matter

in the said Reference Applications, as non-irrigated lands and determined the market value of the said lands @ Rs.1,66,600/- per Hectare. Aggrieved thereby , the claimants as well as the Acquiring Body both have preferred the appeals as noted herein above.

6. Shri Mahesh R. Sonawane, learned Counsel appearing for the claimants assailed the impugned Judgment and award mainly on the ground that though there was undisputed evidence on record showing that the acquired lands were irrigated lands, the Reference Court has erroneously held the said lands to be non-irrigated lands and has determined the amount of compensation at the rate fixed for non-irrigated lands. It was also the contention of the learned Counsel that the Reference Court has failed in appreciating the sale instances brought on record by the claimants. It was more particularly contended by the learned Counsel that the sale instance at Exh.17 was of the year 1999, whereas the subject lands were acquired in the year 2001 and as such the Reference Court must have given the notional increase in the market value @ 15% p.a. while determining the market value of the acquired lands on the basis of aforesaid sale instance. The learned Counsel, therefore, prayed for adequate enhancement in the amount of compensation.

7. As against the argument advanced on behalf of the claimants, Shri G.B.Rajale, learned Counsel appearing for the Acquiring Body submitted that the Reference Court has determined the market value of the acquired lands arbitrarily on higher side. The learned Counsel further submitted that the Reference Court has also erred in awarding the interest under Section 28 of the Act, from the date of possession of the land, whereas the same was liable to be awarded from the date of passing of the award under Section 11 of the Act. The learned Counsel, in the circumstances, prayed for setting aside the impugned Judgment and award and to restore the award passed under Section 11 of the Act, by the SLAO.

8. I have given due consideration to the submissions made by the learned Counsel appearing for the respective parties. I have also perused the impugned common Judgment and award as well as the evidence on record. As noted herein above, the appeals filed by the Acquiring Body are mainly to the extent of award of interest under Section 28 of the Act, by the learned Reference Court, from the date of possession of the land. Relying on the Judgment of Full Bench of this Court in the case of ***State of Maharashtra Vs. Kailash Shiva Rangari [2016 (4) ALL MR 513]***, it has been argued by the learned Counsel Shri Rajale that the interest

under Section 28 of the Act, could not have been awarded by the Reference Court from the date of possession of the land. The learned Counsel submitted that in view of the aforesaid Full Bench Judgment, such an interest can be awarded only from the date of passing of the award under Section 11 of the Act, and not from any prior date.

9. The learned Counsel appearing for the claimants though tried to submit that the Judgment of Full Bench of this Court may not apply in the facts of the present case, there appears no merit in the contention so raised.

10. The Full Bench of this Court has clearly laid down that the interest under Section 28 of the Act, can only be awarded from the date of passing of the award under Section 11 of the Act, and not from any prior date. In view of the law laid down as above, the appeals filed by the Acquiring Body deserve to be allowed to the aforesaid extent. However, at this juncture, it has to be stated that the claimants have also filed the appeals seeking enhancement in the amount of compensation. However, in so far as the award of interest under Section 28 of the Act, is concerned, even if the amount of compensation is enhanced, the interest under Section 28 of the Act, would be payable on the

said amount from the date of passing of the award under Section 11 of the Act.

11. In the appeals filed by the claimants seeking enhancement in the amount of compensation, though it was sought to be contended by Shri Mahesh R. Sonwane that the Tribunal must have given notional increase in the market rate @ 15% p.a. over and above the market rate received to the transaction of sale, which was the subject matter of Exh.17, I am not much convinced with the argument so advanced. It is true that the land which was the subject matter of Exh.17 was sold @ Rs.1,66,666/- per Hectare on 21.04.1999, however, it cannot be ignored that another sale instance, which was also brought on record by the claimants at Exh.18 dated 21.06.2001, the land which was subject matter of said sale instance was sold @ Rs.1,50,000/- per Hectare. In fact, the said sale deed was more proximate in time. In the circumstances, it appears to me that the Reference Court has rightly determined the market value of the non-irrigated land @ Rs.1,66,600/- per Hectare. However, there appears substance in the submission made on behalf of the claimants that some mistake has occurred in holding the acquired lands to be non-irrigated lands while determining the market value of the said lands. In the present appeals, the

claimants have also filed separate civil applications seeking leave to place on record additional evidence in the form of 7/12 extracts of the acquired lands containing the crop statements.

12. Perusal of the impugned Judgment reveals that the Reference Court has declined to accept the contention of the claimants that their acquired lands were irrigated lands. As has been observed by the Reference Court, 7/12 extracts filed by the claimants are in respect to the period after acquisition. It has also been discussed by the Reference Court that the claimants themselves have deposed before the Reference Court that the nature and quality of the acquired lands were as similar to the land, which was subject matter of Exh.17. The Reference Court has further observed that the land, which was subject matter of Exh.17 was admittedly non-irrigated land. For the aforesaid two reasons, the Reference Court has held the acquired lands to be non-irrigated lands.

13. It is, however, difficult to agree with the observations made and the conclusion recorded by the Reference Court. It is true that the 7/12 extracts of the relevant period were not on record of the Reference Court, however, it cannot be lost sight of that in the award passed under Section 11 of the Act itself, the SLAO

had categorized the acquired lands in the category of the semi-irrigated lands. In the award, the Reference Court has elaborately discussed the nature and quality of the acquired lands as well as the crops being taken in the acquired lands. Now, the claimants have also placed on record the crop statements of the relevant period. Considering the said evidence as well as having regard to the fact that the SLAO had held the acquired lands to be semi-irrigated lands, I see no difficulty in holding the acquired lands to be semi-irrigated lands. In the circumstances, the appeals filed by the claimants also deserve to be allowed to the aforesaid extent and consequently the amount of compensation deserves to be enhanced with the statutory benefits. In the foregoing circumstances and for the reasons recorded above, the following order is passed:-

ORDER

- I) The lands involved in the present appeals shall be held to be semi-irrigated lands and their market value be determined @ Rs.2,49,900/- per Hectare. Consequently, the amount of compensation shall be enhanced accordingly.
- II) The claimants are held entitled for the statutory benefits as provided under Sections 23(1A) and 23(2) of the Act, on the enhanced amount of compensation.

III) The claimants are also held entitled to the interest under Sections 28 and 34 of the Act, on the enhanced amount of compensation from the date of passing of the award under Section 11 of the Act i.e. 30.09.2003.

IV) The impugned award so far as it relates to the award of interest under Section 28 of the Act, from the date of possession of lands is set aside. Such an interest shall be made payable from the date of passing of the award under Section 11 of the Act i.e. 30.09.2003.

V) In view of the order as above, the modified award be prepared.

VI) The present appeals stand partly allowed in the aforesaid terms. Pending Civil Applications stand disposed of.

(P.R.BORA)
JUDGE