

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

**970 FIRST APPEAL NO.3681 OF 2018
WITH
CA/81/2018 IN FA/3681/2018**

1. The State of Maharashtra
Through: Collector, Osmanabad.
2. The Special Land Acquisition Officer,
Manjra Project, Osmanabad. ..Appellants
(Original Respondents)

VERSUS

Gautam s/o Manik Jawale
Age: Adult, Occupation: Agriculture,
Resident of: Karajgaon, Taluka: Omerga,
District: Osmanabad. ..Respondent
(Original Claimant)

...
AGP for Appellants : Shri A.M.Phule
Advocate for Respondent : Shri V.V.Ingale
...

CORAM : P.R.BORA, J.

DATE: 18th January, 2019

ORAL JUDGMENT:-

1. The State has preferred the present appeal against the Judgment and award passed by Civil Judge, Senior Division, Omerga in Land Acquisition Reference (LAR) No.781 of 2009 on 05.10.2012.
2. The present respondent had filed the aforesaid LAR

claiming enhancement in the amount of compensation as was awarded to him by the Special Land Acquisition Officer (SLAO) towards acquisition of his land for the purpose of construction of village Rajegaon. The award under Section 11 of the Act in that regard was passed on 03.05.1997. The SLAO had offered the compensation @ Rs.24,000/- per Hectare. Dissatisfied with the amount of compensation so offered, the respondent (hereinafter referred as to the claimant) had preferred the aforesaid LAR, which was adjudicated by the Court of Civil Judge, Senior Division, Omerga (hereinafter referred to as the Reference Court). The Reference Court determined the market value of the subject land @ Rs.34,265 per Acre and accordingly enhanced the amount of compensation. Aggrieved thereby, the State has preferred the present appeal.

3. Shri A.M.Phule, learned AGP has assailed the impugned Judgment on several grounds. The learned AGP submitted that the Reference Court has arbitrarily enhanced the amount of compensation by determining the market value of the acquired land @ Rs.857/- per Are, whereas the SLAO had offered the compensation @ Rs.240/- per Are.

The learned AGP further submitted that the Reference Court has also erred in awarding the interest under Section 28 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) from the date of issuance of Notification under Section 4 of the Act. The learned AGP, therefore, prayed for setting aside the impugned Judgment and award and to restore the award passed by the SLAO.

4. Shri V.V.Ingale, learned Counsel appearing for the respondent submitted that the Reference Court has rightly determined the market value of the acquired land and it therefore does not require any interference. In so far as grant of interest under Section 28 of the Act, the learned Counsel fairly conceded for passing appropriate orders.

5. I have given due consideration to the submissions made by learned AGP for the State and learned Counsel appearing for the respondent. I have perused the impugned Judgment and the evidence on record. Apparently it does not appear to me that the Reference Court has committed any error in determining the market value of the acquired land @ Rs.34,265/-per Acre. The discussion made by the

Reference Court in the impugned Judgment reveals that the Reference Court has relied upon the sale instances pertaining to the lands situated at the same village from where the subject land was acquired and on the basis of the said sale instance, has determined the market value of the subject land @ Rs.34,265/- per Acre. The sale instance, which was relied upon by the Reference Court was executed on 08.12.1994 i.e. prior to one month of the Notification published for acquisition of the subject land under Section 4 of the Act. The land, which was sold vide the said sale instance was from village Chincholi ad-measuring 63 Are. The Reference Court preferred to rely upon the said sale instance by assigning elaborate reasons therefor. After having perused the reasons as are discussed by the Reference Court, it does not appear to me that the Reference Court has committed any error in determining the market value of the acquired land @ Rs.34,265/- per Acre. I, therefore, find no substance in the submissions made by learned AGP that the Reference Court has arbitrarily enhanced the amount of compensation.

6. Even otherwise in view of the Government Resolution

dated 03.11.2016 with Corrigendum dated 23.02.2017 and 13.08.2018, the State could not have prosecuted the present appeal in view of the fact that the market value as was determined by the Reference Court was less than four times of the market value as was offered by the SLAO. I, however, find substance in the another objection raised by learned AGP as about grant of interest under Section 28 of the Act by the Reference Court from the date of issuance of Section 4 Notification.

7. Relying on the Judgment of this Court in the case of ***State of Maharashtra and others Vs. Ramesh Tukaram Meshram and others [2018 (1) All M.R. 645]***, the learned AGP submitted that the interest under Section 28 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. The learned Counsel, therefore, prayed for modification in the impugned award to the aforesaid extent.

8. The Reference Court has awarded the interest under Section 28 of the Act from the date of Notification under Section 4 of the Act. In view of the law laid down by the Full

Bench of this Court in the case of ***State of Maharashtra Vs. Kailash Shiva Rangari [2016 (4) All M.R. 513]*** and the Judgment of learned single Judge of this Court in the case of ***Ramesh Tukaram Meshram and others*** (supra), the order awarding interest under Section 28 of the Act from the date of issuance of Section 4 Notification cannot be sustained.

9. The Hon'ble Full Bench of this Court in the case of ***Kailash Shiva Rangari*** (supra) has ruled that the interest under Section 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. Relying upon the aforesaid Full Bench Judgment, the learned Single Judge of this Court in the case of ***Ramesh Tukaram Meshram*** (supra) has held that the provisions under Sections 28 and 34 of the Act are *pari materia* and therefore, interpretation accorded to Section 34 is also have its equal application while understanding the import of Section 28 of the Act.

10. In view of the law laid down as above, the impugned Judgment and award so far as it relates to grant of interest under Section 28 of the Act from the date of issuance of

Section 4 Notification, deserves to be set aside. In the result, the following order is passed:-

ORDER

- I) The appeal is partly allowed.
- II) The Judgment and award passed in LAR No.781 of 2009 on 05.10.2012, so far as it relates to grant of interest under Section 28 of the Act, 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. 03.05.1997.
- III) Modified award be prepared accordingly.
- IV) Save and except the above, remaining part of the award is maintained as it is.
- V) The appeal stands disposed of in the aforesaid terms.
- VI) Pending Civil Application stands disposed of.

(P.R.BORA)
JUDGE