

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

**FIRST APPEAL NO. 1581 OF 2004
WITH CROSS OBJECTION (ST) NO. 12350 OF 2005**

The State of Maharashtra, through
The Collector, Osmanabad.

...Appellant

Vs.

1. Laxman S/o Bhau Dambre (died)
Through LR's.
- 1A. Shewantabai W/o Laxman Dambre
Age: Major, Occ: Household,
- 1B. Shakhubai W/o Laxman Dambre
Age: Major, Occ: Household,
- 1C. Vitthabai D/o Laxman Dambre
Age: Major, Occ: Household,
- 1D. Babasaheb S/o Laxman Dambre
Age: Major, Occ: Agri,
All R/o Ieet, Tq. Bhoom,
Dist. Osmanabad.

...Respondents

...

Mr. B. V. Virdhe, AGP for Appellant – State.
Mr. V. D. Salunke, Advocate for Respondents.

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CORAM : B. U. DEBADWAR, J.
RESERVED ON : 20th August, 2020
PRONOUNCED ON : 04th September, 2020

JUDGMENT :

1. The instant appeal and cross objection are directed against the judgment and award dated 26/08/2003 passed by the learned Joint Civil Judge, Senior Division, Osmanabad in Land Acquisition Reference No. 98/1995.

2. Facts giving rise to appeal and cross objection in nut shell are as under :

Respondent – claimant was the exclusive owner in possession of the lands bearing survey No.514/8 ad measuring 2 Hectares 48R and survey No. 514/1 ad measuring 58R both situated at village Ieet, Taluka Bhoom, District Osmanabad. Appellant – State has acquired both the lands for Dokewadi Medium Project of village Ieet. Preliminary notification under Section 4(1) of Land Acquisition Act, 1894 was published on 13/04/1990. Possession of both the lands was also taken in the same year. Special Land Acquisition Officer, after following due process, passed the award on 31/12/1994 thereby determined the compensation at the rate of Rs.15,000/- (Rupees Fifteen Thousand Only) per acre and separately awarded compensation of well, dike and trees located in the acquired land.

3. Respondent – claimant moved the reference application under Section 18 of the Land Acquisition Act, 1894 for enhancement of compensation after accepting the award under protest.

4. Learned Joint Civil Judge, Senior Division, Osmanabad, allowed the reference partly and enhanced the compensation to Rs.30,000/- (Rupees Thirty Thousand Only) per acre with statutory benefits viz. solatium and interest, after recording the evidence and

hearing both the sides.

5. Being aggrieved by the aforesaid judgment and award passed by learned Joint Civil Judge, Senior Division, Osmanabad, appellant – state has preferred the present appeal and respondent – claimant filed cross objection under Order XLI Rule 22 of Code of Civil Procedure, 1908. According to appellant – State, learned Joint Civil Judge, Senior Division, Osmanabad, failed to appreciate evidence on record and law pertaining to determination of compensation and statutory interest in proper perspective and not only wrongly enhanced the compensation but also committed error in awarding statutory interest from the date of possession. Whereas, according to respondent – claimant, though there was sufficient evidence to enhance the compensation as claimed by him, learned Joint Civil Judge, Senior Division, Osmanabad, enhanced the same only to some extent.

6. While taking me through record, Mr. B. V. Virdhe, learned Assistant Government Pleader, vehemently argued that the sale instance relied upon by the learned Joint Civil Judge, Senior Division, Osmanabad for enhancing compensation to Rs.30,000/- (Rupees Thirty Thousand Only) per acre from Rs.15,000/- (Rupees Fifteen Thousand Only) per acre was in respect of small piece of land. Therefore, it was not comparable for determining market price of acquired lands.

However, learned Joint Civil Judge, Senior Division, Osmanabad, relied upon the same and enhanced compensation to Rs.30,000/- (Rupees Thirty Thousand Only) per acre from Rs.15,000/- (Rupees Fifteen Thousand Only) per acre, though there is no cogent evidence as to the distance between land covered by sale instances and the acquired land and also the nature of both lands. Learned Joint Civil Judge, Senior Division, Osmanabad, wrongly held that land covered by sale instance is comparable with the lands acquired and on the basis of said sale instance enhanced the compensation which is neither correct and proper nor legal.

7. Mr. B. V. Virdhe, learned Assistant Government Pleader appearing for appellant – State, contended that enhanced compensation is exorbitant and learned Joint Civil Judge, Senior Division, Osmanabad, has erred in granting interest under Land Acquisition Act, 1894, from the date of possession.

8. Mr. B. V. Virdhe, learned Assistant Government Pleader appearing for appellant – State, invites attention to full bench ruling on the point of interest in case of **State of Maharashtra Vs. Kailash Shiva Rangari [2016 (4) ALL MR 513] (Full Bench)**], laying down that wherever possession is taken before the issuance of notification under Section 4(1) of Land Acquisition Act, 1894, and / or before the award is

passed, interest pursuant to Section 34 is liable to be paid from the date of award.

9. Mr. B. V. Virdhe, learned Assistant Government Pleader appearing for appellant – State, has also drawn attention to one more judgment of learned Single Judge of this Court in the case of **The State of Maharashtra and Others Vs. Ramesh Tukaram Meshram and Others [2018 (1) ALL MR 645]**, wherein it is held that Sections 28 and 34 of the Land Acquisition Act, 1894, are *pari materia* and they are identical with exception of stage. Section 28 relates interest on enhancement whereas Section 34 deals with interest and award by special land acquisition officer / collector.

10. Thus, according to Mr. B. V. Virdhe, learned Assistant Government Pleader appearing for appellant – State, appeal deserves to be allowed.

11. *Per contra*, Mr. V. D. Salunke, learned counsel for respondent – claimant, as far as objections pertaining to appeal and statutory interest awarded by learned Joint Civil Judge, Senior Division, Osmanabad, under impugned judgment and award are concerned, vehemently argued that the enhancement in compensation is not above four times of the compensation awarded by special land acquisition officer, therefore, in view of Government Resolution, dated 03/11/2016

and subsequent corrigendum to the said Government Resolution, dated 23/02/2017 and 13/08/2018, appellant – State ought to have withdrawn the appeal. When State itself has made policy not to prefer appeal against the judgment and award passed by reference court when enhancement is not more than four times of the compensation awarded by special land acquisition officer, the arguments of Assistant Government Pleader about determinations of compensation awarded by Joint Civil Judge, Senior Division, Osmanabad, are not at all sustainable. The appellant – State, in aforesaid circumstances also estopped from seeking modification in compensation and statutory interest determined by learned Joint Civil Judge, Senior Division, Osmanabad.

12. While taking me through the evidence on record in entirety, Mr. V. D. Salunke, learned counsel for respondent – claimant, further argued that acquired land was situated on the bank of Manjara river, having black cotton soil, fetching high income. Two wells were located in the acquired land, out of which one was exclusively owned by respondent – claimant and another was common well. Special land acquisition officer awarded the compensation of both wells. Learned Joint Civil Judge, Senior Division, Osmanabad, failed to appreciate that acquired land was under the irrigation of said wells and therefore, they were bagayat lands. Revenue record clearly reveals that respondent –

claimant used to take bagayati crops like wheat, sunflower, pulses, sugarcane, groundnut, etc. in the acquired land twice in a year. Learned Joint Civil Judge, Senior Division, Osmanabd, also failed to appreciate this very important aspect and wrongly awarded the compensation considering them as jirayat lands.

13. According to learned counsel Mr. V. D. Salunke, learned Joint Civil Judge, Senior Division, Osmanabad, has given unnecessary importance to the fact that in an application for reference acquired lands have not been described as bagayat lands. Since, the acquired lands were bagayat lands, learned Joint Civil Judge, Senior Division, Osmanabad, ought to have determined market price of acquired land at the rate of Rs.60,000/- (Rupees Sixty Thousand Only) per acre which is determined by this Court regarding another land acquired for same project that is Upper Manjara Medium Project Submergence under same notification and award.

14. The contention of learned Assistant Government Pleader that land covered by sale instance relied upon being small piece not comparable with acquired land, is not at all sustainable. To substantiate his submissions, Mr. V. D. Salunke has placed his reliance on two judgments of this Court and one judgment of Hon'ble Apex Court viz. judgment dated 28/08/2019 passed in First Appeal No.1743/2017,

judgment dated 19/11/2014 passed in First Appeal No. 315/1994 and judgment dated 13/12/2019 passed in Civil Appeal No. 9415/2019, respectively and prayed that appeal may be dismissed, cross objection may be allowed and compensation of acquired land may be enhanced to Rs.60,000/- (Rupees Sixty Thousand Only) per acre.

15. It is true that under the Government Resolution dated 23/02/2017 and 13/08/2018 State was not supposed to prefer the appeal against the judgment and award passed by the reference Court, when enhancement is not more than four times of the compensation awarded by special land acquisition officer but in this case respondent – claimant has filed cross objection under Order XLI Rule 22 of Code of Civil Procedure, 1908. Therefore, in any condition, it is necessary to reassess the evidence and look into the objection regarding statutory interest to be awarded.

16. As far as compensation of acquired land determined by learned Joint Civil Judge, Senior Division, Osmanabad, is concerned, it would be necessary to scrutinize the evidence on record, in the light of submissions made at bar by both the sides and the judgments of Hon'ble Supreme Court and this Court relied upon by them.

17. Upon going through the impugned judgment, it appears that learned Joint Civil Judge, Senior Division, Osmanabd, treated the

acquired lands as fertile jirayat lands and awarded compensation at the rate of Rs.30,000/- (Rupees Thirty Thousand Only) per acre. While deciding the nature of the acquired land as fertile jirayat lands in paragraph 10 of the impugned judgment learned Joint Civil Judge, Senior Division, Osmanabad, observed that though the respondent – claimant deposed that acquired lands owned by him were bagayat lands but he has not mentioned the same in his application for reference. Learned Joint Civil Judge, Senior Division, Osmanabad, appears to have discarded the evidence of claimant on the aspect of nature of acquired land i.e. bagayat land, only for the reason that it is not supported by pleadings raised in reference application.

18. Respondent – claimant vide his deposition at Exhibit 18 clearly deposed that one independent well and one common well were located in acquired lands. At the time of acquisition, acquired lands were bagayat lands and crops like wheat, sunflower, sugarcane, groundnut, pulses, etc. were taken in acquired lands. His father used to get income of Rs.25,000/- (Rupees Twenty Five Thousand Only) per acre from acquired lands. Facilities of hospital, school, college, etc. are available in his village.

19. Entries in 7/12 extract of the acquired lands for the year 1989-90 and mutation entry No. 2059 sanctioned on February 1990/91,

copies of which are brought on record by respondent – claimant in appeal, fully supports to the evidence of respondent – claimant on the aspect of nature of acquired land and existence of two wells at acquired land, out of which one was exclusively owned by respondent – claimant and another was a common well.

20. It is pertinent to note that State has awarded separate compensation of various trees, well and taal (dike) situated in acquired land, to the respondent – claimant. Reference of those well, trees and taal (dike) and compensation paid on account of acquisition of the same made in award 'E' Statement at Exhibit 22 and 23. When the appellant – State has awarded separate compensation of well, question of denying the existence of well in acquired land does not arise. The contentions of respondent – claimant that acquired lands were situated at the bank of river is also not seriously disputed by the appellant – State. During cross-examination, respondent – claimant has denied the suggestion that the well situated in acquired land was not a constructed well. He has also denied the suggestion that land covered by sale instance was more fertile than the acquired land.

21. The testimony of respondent – claimant on the aspect of existence of one common well, one independent well, water channel and his taking of crops like wheat, sunflower, sugarcane, groundnut,

pulses, etc. in acquired land went unchallenged. There is no cross examination of the respondent – claimant on the said aspect. The appellant – State has also not adduced any evidence to counter the evidence adduced by respondent – claimant. In such circumstances, it would not be legal and proper to discard the evidence of respondent claimant as to the nature of acquired land only for the reason that specific pleadings on that aspect has not been raised in application for reference. Though specific reference of nature of the acquired land as bagayat lands is not made in the reference application, but all other aspects indicating that the acquired lands were bagayat lands and respondent claimant used to take bagayat crops twice in the year were pleaded therein.

22. Upon going through the index II – Exhibit 20 and testimony of PW2, Mr. Ambadas Wamanrao Deshmukh, it is clear enough that land covered by the sale instance, relied upon by the respondent – claimant, was situated only at the distance of 500 Ft. from the acquired lands owned by the respondent – claimant. The evidence of PW2 Ambadas Deshmukh as to the proximity of acquired lands with the land covered by the sale instance has not been challenged by the appellant – State either through his cross examination or by adducing cogent evidence on record. When acquired lands were similarly situated with land covered

by sale instance, relied upon by the respondent – claimant, and are also in proximity of the same, there would be no reason to discard the sale instance while determining the compensation.

23. It is evident from Index II – Exhibit 20 and evidence of PW2 Ambadas Deshmukh that under the registered sale deed dated 10/03/1989, PW2 Ambadas Wamanrao Deshmukh sold only 8 Gunthas land to one Shivaji Uttamrao Deshmukh for consideration of Rs.12,000/- (Rupees Twelve Thousand Only). Considering the area sold out and the consideration amount referred above, per acre consideration comes to Rs.60,000/- (Rupees Sixty Thousand Only).

24. In the case of **State of Maharashtra and another Vs. Chandrashekhar Tanaji Deshmukh [2009 (6) Mh.L.J. 33]**, Single Bench of this Court at Aurangabad Bench held as under : -

“The perennially irrigated lands wherein the crops are raised through out the year and the seasonally irrigated lands wherein the irrigated crops are taken seasonally cannot be treated on par for the market value thereof. The market value of the former lands are bound to be higher than of the later.”

In the said judgment it is further held that :-

“Entire irrigated land cultivated through regular source of water like well water etc. essentially must receive higher rate of compensation than jirayat land which in turn would receive higher compensation than the pot kharab land. Again, applying certain amount of guess work, we hold that the market value

of jirayat land being the basic factor for determining compensation, market value of bagayat land would be calculated by giving increase of 25 per cent on market value of jirayat land while pot kharab land would be given a decrease of 15 per cent from the market value of jirayat land.”

25. In case of **Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona [1988 AIR(SC) 1652]**, Hon’ble Supreme Court held as under :-

“While determining market value of the land certain factors have to be borne in mind may be determination on the crucial date of publication under Section 4 of Land Acquisition Act, the determination of the value has to be made standing on the base line of valuation in doing so, by the instances method, the Court has to co-relate the market value reflected in the most comparable instances, only genuine instances have to be taken into account and even post notification, instances can be taken into account, and the most important instances regarding proximity from the time angle and from situation angle, the market value of the land under the acquisition has thereafter to be deducted by the landing the price reflected in the instance taken as norms for plus factors and unloading it for minus factors”

26. Admittedly, the acquired lands belonging to respondent were not perennially irrigated lands but they were seasonally irrigated lands. Well water was the source of irrigation. Therefore, in view of ratio laid down in the case of **State of Maharashtra and another Vs.**

Chandrashekhar Tanaji Deshmukh (Supra), acquired land must receive comparatively higher rate of compensation than the jirayat land and lower rate of compensation than perennially irrigated land.

27. As far as sale instance relied upon by the respondent – claimant is concerned, I would like to state that area covered by sale instance at Exhibit 20 is very less as compared to area of acquired lands but acquired lands were situated in very close proximity of the same, therefore, sale instance at Exhibit 20 cannot be rejected outrightly for aforesaid reason.

28. Upon going through the judgment of the Single Bench of this Court at Aurangabad Bench, rendered in First Appeal No. 01743 of 2017 dated 28/08/2019, relied upon by the respondent – claimant, it appears that land bearing survey No. 511/2, situated in village Ieet, Tal. Bhoom, was acquired for the same project for which lands owned by the respondent – claimant were acquired i.e. Upper Manjara Medium Project Submergence. However, the said land was acquired under the different award passed on 31/12/1992 and not under the award dated 31/12/1994. In the reference made by owner of land bearing survey No. 511/2, learned Joint Civil Judge, Senior Division, Osmanabad, had awarded compensation of Rs.60,000/- (Rupees Sixty Thousand Only) per acre and this Court, in the aforesaid appeal, confirmed the same.

Since, preliminary notification under Section 4 of the Land Acquisition Act, 1894 and award under Section 11 of the Land Acquisition Act, 1894 applicable to First Appeal No.01743 of 2017 are different, it cannot be held that facts of the case at hand are similar with that of the case in aforesaid appeal or respondent – claimant of the case at hand are similarly situated with the respondent – claimant in First Appeal No. 01743 of 2017.

29. Since, respondent – claimant are not similarly situated persons with the respondent – claimant in First appeal No. 01743 of 2017, the question of meeting out different treatment to respondent – claimant of this case does not arise.

30. Having regard to the area of land covered by sale instance proved by the respondent – claimant, area of lands under acquisition owned by him, nature of acquired lands, i.e. seasonally irrigated lands, source of irrigation i.e. wells, crops being taken and the ratios laid down by the Hon'ble Supreme Court and this Court in the judgments referred above I have no hesitation to hold that the compensation determined by the reference Court i.e. learned Joint Civil Judge, Senior Division, Osmanabad, is not adequate and just compensation. To make it just and adequate, compensation needs to be raised to Rs.50,000/- (Rupees Fifty Thousand Only) per acre from Rs.30,000/- (Rupees Thirty Thousand

Only) per acre. With this I hold that respondent – claimant is entitled for compensation at the rate of Rs.50,000/- (Rupees Fifty Thousand Only) per acre.

31. Now I turn to the aspects of statutory interest and rent. Clause (T) of award Exhibit 19 demonstrates that possession of the lands under acquisition was taken by the acquiring body by private negotiations, however, date of taking over possession of lands under acquisition does not find place either in clause (T) or anywhere in the award Exhibit 19. Though respondent – claimant has stated that possession of his lands under acquisition was taken in the year 1990, but the date on which possession was taken is not stated. Admittedly, preliminary notification under Section 4(1) of Land Acquisition Act, 1894, was published on 13/04/1990. In the absence of date of taking possession of lands under acquisition, it is difficult to know whether possession of lands under acquisition was taken prior to publication of preliminary notification under Section 4(1) of the Land Acquisition Act, 1894, or after publication of the same. Appellant – State neither denied the year of taking possession of land under acquisition pleaded in the reference application, nor brought on record oral or documentary evidence indicating exact date of taking possession of land under acquisition. Though there is no evidence as to when possession of lands

under acquisition was taken i.e. prior to publication of preliminary notification under Section 4(1) of Land Acquisition Act, 1894 or after publication of the same, but it is clear enough that possession of acquired lands was taken prior to the passing of award i.e. prior to 31/12/1994.

32. Section 16 of Land Acquisition Act, 1894 deals with power to take possession. According to this provision, when the Collector has made an award and under Section 11 he may take the possession of the land, which shall there upon absolutely vests in the Government, free from encumbrances. Whereas, Section 17 of the Land Acquisition Act, 1894, speaks about special powers in case of urgency. According to this provision, in case of urgency, wherever appropriate Government directs the Collector, though no such award has been made, may, on expiration from 15 days from the publication of notice mentioned in Section 9 Sub Section (1), take possession of any land needed for public purpose. Such land shall thereupon vest absolutely in the Government free from encumbrances.

33. Award Exhibit 19 does not state that the possession of lands under acquisition was taken by applying urgency clause contemplated in Section 17.

34. In the case of **State of Maharashtra Vs. Kailash Shiva**

Rangari (Supra), while answering the question of law viz. “if the possession is taken before notification under Section 4(1) of the Land Acquisition Act, 1894, is published and / or after the award is passed, Whether the land owner would be entitled for interest as per Section 34 of the Land Acquisition Act, 1894, from the date of publication of the notification under Section 4(1) of the Land Acquisition Act, 1894, or from the date of passing of award, referred for determination, in paragraph 33 of the judgment?” Full Bench of this Court held as under :

“If the possession is taken before the notification under Section 4(1) of the Land Acquisition Act, 1894, is published and / or before the award is passed, the land owner would be entitled for interest as per Section 34 necessarily from the date of passing of award under Section 11 of the said Act, except in cases where the possession is taken in accordance with Section 17 of the said Act, and in that situation only, the provision of Section 34 of the said Act shall start operating from the date of possession.”

35. In case at hand, though there is no evidence as to whether possession of lands under acquisition was taken before or after notification under Section 4(1) of the Land Acquisition Act, 1894, published but there is clear and cogent evidence establishing that possession of lands under acquisition was taken before award is passed.

36. For application of urgency clause covered by Section 17, it is necessary to take possession of land under acquisition on expiration of

15 days from the date of notice mentioned under Section 9(1), though award under Section 11 has not been made, after complying the conditions mentioned under Sub Section 3-A of the Land Acquisition Act, 1894.

37. Herein in this case, absolutely there is no evidence about taking possession of lands under acquisition by invoking special powers contemplated under Section 17 of the Land Acquisition Act, 1894. Therefore, in view of aforesaid ratio laid down by the Full Bench of this Court, respondent – claimant would be entitled for interest under Section 34 of the Land Acquisition Act, 1894 from the date of passing of award under Section 11 of the Land Acquisition Act, 1894 i.e. from 31/12/1994 and not from 1990 when possession of acquired lands were taken.

38. In the matter of **The State of Maharashtra and Others Vs. Ramesh Tukaram Meshram and Others** (Supra), learned Single Judge of this Court at Nagpur Bench in paragraph 5 of the judgment held as under :

“5. If one goes through the provisions of Section 28 and Section 34 of the Land Acquisition Act, one would require no time to understand that these provisions are in pari materia. They are identical in every sense except for the stage at which the interest is to be granted. Section 34 is about the interest to be granted at the rate of 9% for a period of one year by the

Collector at the stage of Section 11 Award, while Section 28 is on the interest to be granted not by the Collector but by a Civil Court which decides the application referred to it by the Collector under Section 18 of the Land Acquisition Act. Except for this difference, one would see no variation and no difference in the intent and the language expressed and used in both these Sections. Therefore, in my humble opinion, the interpretation accorded to Section 34 would also have its equal application while understanding the import of Section 28 of the Land Acquisition Act.”

39. Relying upon the judgment of Full Bench of this Court in the case of **State of Maharashtra Vs. Kailash Shiva Rangari** and judgment of single bench of this Court in the case of **The State of Maharashtra and Others Vs. Ramesh Tukaram Meshram and Others** referred in para (Supra), learned Single Bench of this Court at Aurangabad Bench, in the matter of **State of Maharashtra through The Collector, Beed and Another Vs. Dattatrya Uttam Misal and Others in First Appeal No. 483 of 2018**, held as under :-

(Paragraph No.22 of the Judgment)

“22. In the circumstances, clauses 3 and 4 of the operative order under decision in land acquisition references will have to undergo modification in tune with the two judgments in the cases of *State of Maharashtra Vs. Kailash Rangari* and *State of Maharashtra Vs. Ramesh Tukaram Meshram* (Supra) and, as such, the interest under sections 28 and 34 of the Land Acquisition Act, payable to the claimants would be from the date of award and not as observed by

reference Court, from the date of possession.”

40. In case at hand, after perusal of operative part of the impugned judgment and award it appears that learned Joint Civil Judge, Senior Division, Osmanabad, awarded interest at two places, one is in clause (4) and another is in clause (6). The Section under which interest is awarded is neither mentioned in the body of the judgment nor in the operative part. However, looking to the operative part in its entirety it appears that interest awarded in clause (4) is awarded either under Section 28 or Section 34 of the Land Acquisition Act, 1894 and interest awarded in clause (6) is in the form of rental compensation. In view of the ratio laid down in one judgment passed by the Full Bench and two judgments passed by the Single Benches of this Court referred above it is abundantly clear that claimant is entitled for interest under both Sections of the Land Acquisition Act, 1894 i.e. Section 28 and Section 34 and that has to be awarded from the date of award till realisation of compensation amount.

41. In case of **R. L. Jain (D) by Lrs. Vs. DDA and Others reported in (2004) (4) SCC 79**, Hon’ble Supreme Court in paragraph 18 has held as under :

“18. In a case where the landowner is dispossessed prior to the issuance of preliminary notification under Section 4(1) of the Act the Government merely takes possession of the land but the

title thereof continues to vest with the landowner. It is fully open for the landowner to recover the possession of his land by taking appropriate legal proceedings. He is therefore, only entitled to get rent or damages for use and occupation for the period the Government retains possession of the property. Where possession is taken prior to the issuance of the preliminary notification, in our opinion, it will be just and equitable that the Collector may also determine the rent or damages for use of the property to which the landowner is entitled while determining the compensation amount payable to the landowner for the acquisition of the property. The provisions of Section 48 of the Act lend support to such a course of action. For delayed payment of such amount appropriate interest at the prevailing bank rate may be awarded.”

42. Relying on ratio laid down by Hon’ble Supreme Court in **R. L. Jain (D) by Lrs. Vs. DDA and Others** referred in para (Supra), Division Bench of this Court in the case of **State of Maharashtra Vs. Bhaskar Namdeo Wagh reported in [2009 (1) Mh.L.J. 299]**, held as under : -

“Thus, it is clear that where the possession is taken prior to the issuance of Section 4 Notification, it has been held to be just and equitable that the Collector should determine and pay the rent or damages for use of the property to the land owner. In the present case, the Collector has not paid any rent or damages for a period of about one month on account of taking of possession before issuance of section 4 Notification. As stated hereinabove, that period involved in the present case is of about one month and hence, it has hardly any

impact while determining the market value. We do not propose to interfere with the Judgment and Award passed by the District Judge in relation to the payment of sum by way of interest for a period of about one month prior to the issuance of Notification under section 4(1), as in our opinion, the said amount would represent the rent and/or damages, which the claimants would be entitled to. ”

43. Herein in this case, I have already held that in the absence of exact date of taking possession of the acquired lands, it is difficult to decide whether the possession was taken before or after the preliminary notification under Section 4 of the Land Acquisition Act, 1894 was published, but it was taken in the same year i.e. 1990 when preliminary notification under Section 4 of the Land Acquisition Act, 1894 was published. Even if it is assumed that possession of the acquired land was taken after publication of preliminary notification under Section 4 of the Land Acquisition Act, 1894, question of determination and payment of rent does not arise. However, if it is assumed that possession is taken prior to the publication of preliminary notification under Section 4 of the Land Acquisition Act, 1984 then also looking to the fact that no exact date of taking possession is brought on record, either by respondent – claimant or by appellant – State, and the admitted fact that preliminary notification under Section 4 of the Land Acquisition Act, 1894 was issued in the year 1990 and possession of acquired land was

also taken in the 1990, there will be no propriety in determining the rent and directing to pay the same.

44. Having regard to the fact that the possession of acquired land was taken in the year in which preliminary notification under Section 4 of the Land Acquisition Act, 1894 was published i.e. in the year 1990, special land acquisition officer appears to have not determined and paid the rent vide 'E' Statements at Exhibit 22 and 23 in compliance of clause (T) of award Exhibit 19. Thus, in any angle, respondent – claimant cannot said to be entitled for rental compensation. Learned Joint Civil Judge, Senior Division, Osmanabad, in clause (6) of operative part of the impugned judgment committed mistake in awarding rental compensation in the form of interest covered under Section 28 and Section 34 of the Land Acquisition Act, 1894.

45. Having regard to the legal position regarding payment of interest to owner of the acquired land under Sections 28 and 34 of the Land Acquisition Act, 1894 and mistake committed by learned Joint Civil Judge, Senior Division, Osmanabad, in passing operative part of the impugned judgment discussed in paragraph (Supra), it will be just and necessarily to modify the same.

46. In view of foregoing discussion, appeal and cross objection both deserves to be allowed partly.

47. Appeal is allowed to the extent of modification in date of awarding interest under Section 34 and Section 28 of the Land Acquisition Act, 1894 and cross objection is allowed by enhancing compensation to Rs.50,000/- (Rupees Fifty Thousand Only) per acre from Rs.30,000/- (Rupees Thirty Thousand Only) per acre with corresponding statutory benefits i.e. solatium at the rate of 30%, interest at the rate of 9% per annum for the first year and at the rate of 15% per annum for subsequent years on additional / enhanced compensation from date of award till realisation of full amount under Section 34 of the Land Acquisition Act, 1894, interest at the rate of 9% per annum for the first year and at the rate of 15% per annum for subsequent years on the enhanced / additional compensation from the date of award till realisation of full amount under Section 28 of the Land Acquisition Act, 1894, and additional benefit at the rate of 12% per annum under Section 23 (1-A) of the Land Acquisition Act, 1894 on enhanced amount of compensation from the date of notification under Section 4 till the date of passing of award by collector i.e. from 13/04/1990 to 31/12/1994.

48. Award be modified accordingly. First appeal is partly allowed.

(B. U. DEBADWAR, J.)

SVH