

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3689 OF 2019

1] The State OF Maharashtra
through the Collector, Beed.

2] The Executive Engineer,
Minor Irrigation, Local Sector,
Division Beed.

.

.. APPELLANTS
[Original respondents]

Versus

1] Ashok S/o. Sopan Zambre,
Age 30 years, Occ. Agril.

2] Manjulabai w/o. Sopan Zambre
Age 50 years, Occ. Agril,
Both R/o. Jamgaon, Tq. Ashti,
Dist. Beed.

.. Respondents

Mr. S.B. Yawalkar, AGP for appellants.

Mr. D.R. Jaybhar, Advocate for respondent Nos. 1 and 2.

...

CORAM : ABHAY AHUJA, J.

DATE : 30th JANUARY, 2021

PER COURT :-

1. Heard learned counsel for the parties.

2. The appellant State has filed this appeal against the common judgment and order dated 30.04.2010 passed by the Ad-hoc District Judge, Beed challenging the compensation as well as interest rate under Sections 28 and 34 of the Land Acquisition Act, 1894 in LAR No. 196 of 2007

3. Mr. Yawalkar, learned AGP for the appellant State drawing this Court's attention to the impugned judgment and order points out that the LAR No.196 of 2007 impugned in this Appeal has been decided by the same common judgment and order which has decided LAR No. 192/2007 to 195/2007 and 197/2007. He would submit that in case of all the LARs referred to above, except the one appealed before us, viz. LAR No. 196 of 2007, this Court (Coram : Smt. Vibha Kankanwadi, J.) vide order dated 5th August, 2019, in F.A. Nos. 1641 of 2018 to 1645 of 2015 has partly allowed the appeals in respect of LAR No. 192/2007 to 195 of 2007 and 197/2007 by passing the following order :-

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

FIRST APPEAL NO.1641 OF 2018

1) *The State of Maharashtra,
Through : The Collector, Beed.*

2) *The Executive Engineer,
Minor Irrigation, Local Sector,
Division Beed.*

***...Appellants
(Ori.Respondents)***

VERSUS

*Babasaheb s/o Gajaba Dhas,
Age Major, Occupation Agriculture,
R/o Jamgaon Tq. Ashti Dist.Beed.*

***...Respondent
(Ori. Claimant)***

....

WITH

FIRST APPEAL NO.1642 OF 2018

1) *The State of Maharashtra,
Through : The Collector, Beed.*

2) *The Executive Engineer,
Minor Irrigation, Local Sector,
Division Beed.*

...Appellants
(Ori.Respondents)

VERSUS

1) *Uttam s/o Bhagwan Zambre,
Age Major,*

2) *Shantilal s/o Bhagwan Zambre,
Age Major,*

3) *Ankush s/o Bhagwan Zambre,
Age Major,*

4) *Shahaji s/o Bhagwan Zambre,
Age Major,
All Occupation Agriculture,
R/o Jamgaon Tq. Ashti Dist.Beed.*

...Respondents
(Ori. Claimants)

....

WITH

FIRST APPEAL NO.1643 OF 2018

1) *The State of Maharashtra,
Through : The Collector, Beed.*

2) *The Executive Engineer,
Minor Irrigation, Local Sector,
Division Beed.*

...Appellants
(Ori.Respondents)

VERSUS

1) *Tukaram s/o Naba Dhas,
Age Major,*

2) *Tulsabai w/o Raosaheb Janjire,
Age Major,
Both Occupation Agriculture,
R/o Jamgaon Tq. Ashti Dist.Beed.*

...Respondents
(Ori. Claimants)

....

WITH

FIRST APPEAL NO.1644 OF 2018

1) *The State of Maharashtra,*

Through : The Collector, Beed.

2) *The Executive Engineer,
Minor Irrigation, Local Sector,
Division Beed.*

...Appellants
(Ori.Respondents)

VERSUS

*Pandurang s/o Jaiwanta Zambare,
Age 55 years, Occupation Agriculture,
R/o Jamgaon Tq. Ashti Dist.Beed.*

...Respondents
(Ori. Claimant)

....

WITH

FIRST APPEAL NO.1645 OF 2018

1) *The State of Maharashtra,
Through : The Collector, Beed.*

2) *The Executive Engineer,
Minor Irrigation, Local Sector,
Division Beed.*

...Appellants
(Ori.Respondents)

VERSUS

*Sadashiv s/o Parabati Zambre,
Age Major, Occupation Agriculture,
R/o Jamgaon Tq. Ashti Dist.Beed.*

...Respondents
(Ori. Claimant)

....

*AGP for Appellants : Mr. P. M. Kulkarni.
Advocate for Respondents : Mr. D. R. Jayabhar.*

....

CORAM : SMT.VIBHA KANKANWADI, J.
Date : 05-08-2019.

ORDER :

1. *All these appeals have been filed by the State challenging the enhancement in the compensation as well as interest rate under Section 28 and 34 of the Land Acquisition Act granted vide common Judgment and award passed by reference Court i.e. Ad-hoc District Judge -1, Beed, in LAR No.194 of 2007, LAR No.197 of 2007, LAR No.192 of 2007, LAR No.193 of 2007 and LAR No.195 of 2007 on 30-04-2010.*

2. *The lands, which are the subject matter of these appeals, were acquired for the purpose of 'Percolation Tank No.7 At Jamgaon Tq. Ashti Dist. Beed'. The present respondents / original claimants had filed reference under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as 'Act') for getting enhancement in the compensation that was granted by Land Acquisition Officer. Claimants were the owner and possessor of lands situated at village Jamgaon Tq. Ashti Dist. Beed. The award was passed by Land Acquisition Officer on 09-06-2000 under Section 11 of the Act. The Special Land Acquisition Officer (SLAO) has granted compensation to the claimants @ Rs.250/- per R. Being dissatisfied with the rate given by SLAO, the said reference were filed under Section 18 of the Act. After taking into consideration the evidence and hearing both sides, the learned reference Court has determined the market value of the acquired lands @ Rs.700/- per R. The interest under Section 28 of the Act has been granted for the first year at the rate of 9 % per annum from the date of taking possession, and thereafter, it has been granted at the rate of 15% per annum. So also interest under Section 34 of the Act has been granted.*

3. *Heard learned AGP Mr. P. M. Kulkarni for appellants/State and learned advocate Mr. D. R. Jayabhar for respondents and perused the impugned Judgment.*

4. *It is the contention of the appellants/State in these appeals that, the Reference Court has arbitrarily enhanced the amount of compensation without there being any cogent evidence therefor. It is further contended that, the sale instances, which are relied upon by the Reference Court while determining the market value of these lands, cannot be held to be the sale instances of the comparable lands. It was further contended that, the Special*

Land Acquisition Officer, in fact, had correctly determined the market value of the acquired lands by visiting each and every land personally and by considering the relevant sale instances, which have occurred in the relevant period and as such, no interference was called for. The learned counsel, therefore, prayed for setting aside the Judgment and award passed by the Reference Court and to restore the award passed by the Special Land Acquisition Officer in the matters. The learned AGP for appellants / State also submitted that, rate of interests under Section 28 and 34 have been wrongly given from the date of possession, when as per the decision of the Full Bench in, State of Maharashtra Vs. Kailash Shiva Rangari, reported in AIR 2016 Bombay 141, it should be from the date of award.

5. *On perusal of the Judgment, it is revealed that, the Reference Court has elaborately considered the evidence on record, more particularly the sale instances Exhibits 15 and 16 brought on record has determined the market value of the acquired lands. Learned Reference Court has also considered location, shape, size, fertility, yield taken in the lands. After perusal of the impugned Judgment, apparently, it does not appear that the Reference Court has taken any unreasonable view or has enhanced the market value of the acquired lands arbitrarily or on excessive side. Moreover, in view of the policy adopted by the Government vide Government Resolution dated 3rd November, 2016 read with Corrigendum dated 23rd February, 2017, the present appeals are not liable to be prosecuted further since the market value, as has been determined by the Reference Court, is less than four times of the market value as was offered by the Special Land Acquisition Officer. The fact remains that the market value, as has been determined by the Reference Court, is less than four times of the market value as was offered by the Special Land Acquisition Officer. In such circumstances, considering the Government policy, there seems no case for any*

interference in the impugned Judgment and award only in respect of enhanced compensation amount by the Reference Court.

6. *Another point raised by the learned AGP for appellants/ State in respect of rate of interests under Section 28 and 34 have been wrongly given from the date of possession, when as per the decision of the Full Bench in, State of Maharashtra Vs. Kailash Shiva Rangari, reported in AIR 2016 Bombay 141, it should be from the date of award. There is substance in the submissions made by appellants / State. The decision given by Full Bench deserves to be followed, though it has come later in point of time, than the award was passed, in these appeals. Yet, since the appeals are the continuation, the said decision will have to be made applicable. Hence, appeals deserve to be partly allowed as follows ;*

ORDER

(i) *Appeals are hereby partly allowed.*

(ii) *The Judgment and award passed by Ad-hoc District Judge -1, Beed, in LAR No.194 of 2007, LAR No.197 of 2007, LAR No.192 of 2007, LAR No.193 of 2007 and LAR No.195 of 2007 on 30-04-2010, is hereby set aside to the extent of award of interest under Sections 28 and 34 of the Land Acquisition Act and it is modified as follows ;*

“(a) Original claimants are entitled to interest under Section 28 of the Land Acquisition Act on the enhanced compensation, solatium and component amount @ of 9 % per annum from the date of award i.e. 09-06-2000 till deposit of enhanced compensation, solatium and

component amount in the Court.”

“(b) If this enhanced compensation and solatium amount with interest thereon is not deposited till 09-06-2001, the claimants are entitled to interest @ of 15 % per annum from 10-06-2001 till the date of deposit of entire compensation amount and solatium amount in the Court.”

“(c) Claimants are entitled for interest under Section 34 of the Land Acquisition Act on the compensation amount awarded by Collector @ of 9 % per annum from the date of award i.e. 09-06-2000 till acceptance of compensation amount by claimants.”

(iii) It is clarified that, rest of the award is kept as it is.

(iv) Modified award be drawn accordingly.

Sd/-

(SMT. VIBHA KANKANWADI)
JUDGE”

4. Ld. AGP submits that since the LAR No.196 of 2007 being challenged in this appeal is part of the common impugned order dated 30.04,2010, a similar order needs to be passed in this appeal as well.

5. Mr. Jaybhar, learned counsel appearing for the respondents agrees with the submission made by the learned AGP and states that he has no objection if a similar order is passed in

this Appeal as well.

6. Having perused the papers and proceedings in the First Appeal, the Full Bench decision of this Court in the case of *State of Maharashtra vs. Kailash Shiva Rangari (AIR 2016 SC Bom.41)*, as well as the order of this court dated 05.08.2019, we are of the view that considering that the impugned order with respect to the instant LAR No. 196 of 2007 is the same with respect to other LARS referred to above in respect whereof this court has already passed order dated 05.08.2019 as referred to above deciding similar issues as raised in this appeal, no different course of action is warranted and we deem it appropriate to take a similar approach in this matter as well.

7. Accordingly, we pass the following order :-

“(i) Appeal is partly allowed.

(ii) The Judgment and award passed by Ad-hoc District Judge-1, Beed, in LAR No. 196 of 2007 is hereby set aside to the extent of award of interest under Sections 28 and 34 of the Land Acquisition Act and it is modified as follows :-

(a) Original claimants are entitled to interest under Section 28 of the Land Acquisition Act on the enhanced compensation, solatium and component amount at the rate of 9% per annum from the date of award i.e. 09.06,2000 till deposit of enhanced compensation, solatium and component amount in the Court

(b) If this enhanced compensation and solatium amount with interest thereon is not deposited till 09.06.2001, the claimants are entitled to interest at the rate of 15% per annum from 10.06.2001 till the date of deposit of entire compensation amount and solatium amount in the Court.

(c) Claimants are entitled for interest under Section 34 of the Land Acquisition Act on the compensation amount awarded by Collect at the rate of 9% per annum from the date of award i.e. 09.06.2000 till acceptance of compensation amount by claimants.

(iii) It is clarified that, rest of the award is kept as it is.

(iv) Modified award be drawn accordingly.

(v) The first appeal is accordingly disposed of with no orders as to costs.

(vi) It is also clarified that civil applications, if any, stand disposed of and any ad-interim, interim orders or stay, stand vacated.

(ABHAY AHUJA)
JUDGE

grt/-