

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1207 OF 2004

The State of Maharashtra
 Through the Collector, Osmanabad

... APPELLANT

VERSUS

Namdeo Bhaurao Deshmukh,
 Age : 55 years, Occup. Agri.,
 R/o Devalali, Tq & Dist. Osmanabad
 (Died) L.R's.

1. Sagar S/o Namdeo Deshmukh,
 Age : 50 years, Occu. Agri.,
 R/o: Deolali, Tq & Dist. Osmanabad.

2. Limbraj S/o Namdeo Deshmukh,
 Age : 40 yrs, Occu. & R/o As above.

3. Sanjabai W/o Namdeo Deshmukh
 Deceased) L.Rs.

3A) Sagar Namdeo Deshmukh,
 3B) Limbraj S/o Namdeo Deshmukh,
 3C) Rukhamin Bhanasur Deshmukh,
 3D) Satyabhama Pandurang Deshmukh,
 All R/o Deolali, Tq. & Dist. Osmanabad.

... RESPONDENTS
 (Original Claimants)

...

Mr. S.S. Dande, AGP for appellant-State

Mr. R.V. Naiknaware, Advocate for respondents No 1 & 2

Appeal is dismissed as against respondents No. 3C and 3D as per order of this Court dated 07-05-2013.

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CORAM : ANIL S. KILOR, J.

DATE : 30th APRIL, 2021

ORAL JUDGMENT :-

The appellant- State of Maharashtra has approached to this Court by way of present appeal, challenging the Judgment and Award, dated 12th February, 2004 passed by the learned Civil Judge, Senior Division, Osmanabad, in Land Acquisition Reference No. 584 of 1991, enhancing the amount of compensation towards acquisition of house and open space.

2. The house along with open space in question was acquired for Ruibhar Medium Project at village Deolali, Taluka and District Osmanabad. The notification under Section 4 of the Land Acquisition Act, 1894 (Act of 1894) was published in Government Gazette on 16-10-1985 and accordingly Award was declared. The Special Land Acquisition Officer awarded compensation to the tune of Rs.24,426/-. Being dissatisfied with the amount granted by the Land Acquisition Officer, the Reference has been made under Section 18 of the Act of 1894 by the claimants, in which the amount has been enhanced to Rs.27,879/-.

3. I have heard learned AGP appearing for the appellant and Mr. Naiknaware, learned Counsel appearing for the respondents-claimants.

4. The learned AGP submits that the compensation amount granted by the Special Land Acquisition Officer was fair and just and ought not to have interfered.

5. Learned AGP has pointed out that the amount of interest under Section 28 of the Act of 1894 has been granted from the date of notification under Section 4 of the Act of 1894, whereas, it should have been granted from the date of Award as per well settled principle of law laid down in a Judgment of the Full Bench of this Court in the case of ***State of Maharashtra Versus Kailash Shiva Rangar***¹.

6. On the other hand, Mr. Naiknaware, learned Counsel appearing for the claimants supports the impugned Judgment and Award and submits that there is no perversity committed by the learned Reference Court while granting enhanced compensation.

7. To consider the rival contentions of the parties, I have gone through the record and proceedings and also perused the impugned Judgment and Award.

8. From the Judgment and Award, it is revealed that the learned Reference Court after scrutinizing the oral as well as documentary evidence on record and also after considering the relevant factors as per the well settled principles of law has arrived at the amount of enhanced compensation.

1 2016(4) ALL MR 513 (F.B.)

9. The learned Reference Court has considered the location of the land as well as the other factor namely sale instances produced by the claimants. The learned AGP failed to point out any perversity in the findings recorded by the learned Reference Court and also failed to point out any contrary evidence. In that view of the matter, I do not find any merit in the present appeal.

10. Moreover, in view of the Government policy not to file or contest appeal in the matter wherein the amount awarded by the learned Reference Court is not more than four times than the amount awarded by SLAO, as per Government Resolution dated 03-11-2016 and subsequent corrigendum dated 23-02-2017 issued in that regard, I am of the view that on this count also the appeal needs to be dismissed.

11. However, to the extent of grant of interest from the date of Award in view of the Judgment of Full Bench of this Court in the case of *State of Maharashtra Versus Kailash Shiva Rangari (supra)*, I am of the opinion that the operative part of the impugned Judgment and award in that regard needs to be modified. Accordingly, I pass the following order as under :-

ORDER

- (I) The appeal is partly allowed.
- (II) The clause No.4 in regard to awarding of interest in the operative part of the Judgment and Award, dated 12th February, 2004 passed by the learned Civil Judge, Senior Division, Osmanabad, in Land Acquisition Reference No. 584 of 1991, is modified, and, it is held that the claimants are entitled for the interest under Section 28 of the Land Acquisition Act, 1894, from the date of Award. For the first year the interest would be @ 9% per annum and for the subsequent period it would be @ 15% per annum till realization of the entire amount of the Award.
- (III) The appeal is disposed of.
- (IV) No order as to costs.

(ANIL S. KILOR)
JUDGE