

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

**FIRST APPEAL NO. 682 OF 2021
AND
CA/10660/2019 IN FA/682/2021**

State of Maharashtra and Another ..APPELLANTS

VERSUS

Suresh Manohar Joshi
(Died) Through L.Rs.

Prasad Suresh Joshi and Others

..RESPONDENTS

**AND FA/683/2021 AND CA/10652/2019 IN FA/683/2021
AND FA/684/2021 AND CA/10657/2019 IN FA/684/2021
AND FA/685/2021 AND CA/10662/2019 IN FA/685/2021**

....
Mr. S.S. Dande, A.G.P. for appellants/applicants
Mr. D.A. Bide, Advocate for respondents
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**CORAM : R.G. AVACHAT, J.
DATED : 04th DECEMBER, 2021**

PER COURT :

1. State of Maharashtra is in appeals taking exception to the judgment and award passed by the Land Reference Court enhancing the amount of compensation offered by the Land Acquisition Officer for the lands compulsorily acquired for the construction of percolation tank at village Andrud, Tq. Bhoom, Dist. Osmanabad.

2. Learned A.G.P. would submit that the reference Court, considering the sale instances and other factors relied on by the claimants / land owners,

granted enhancement. The reference Court also relied on the judgments passed in some other references pertaining to the acquisition of land for percolation tank at Andrud. According to him, notification in respect of that proceedings were published way back in 1986, whereas notification under Section 4 of the Land Acquisition Act, 1894 (“the Act”) in the present matters came to be published in 1990. According to him, the reference Court even made addition in price of the lands @ 12 % p.a., since the sale deed therein dates back to 1986. According to him, the interest has also been awarded in breach of Full Bench judgment of this Court in the case of ***State of Maharashtra Vs. Kailash Shiva Rangari*** reported in ***2016 (3) Mh.L.J. 457***.

3. Learned counsel for the respondents, on the other hand, submits that the appellant - State has made discrimination. It has not preferred appeal in some other matters and paid the amount of compensation to the land holders, whose lands have been acquired for the very purpose. He placed reliance on the judgment of the Apex Court in the case of ***Krishi Utpadan Mandi Samiti Vs. Bipin Kumar*** reported in ***SCC 2004 (1) 283*** to submit that even 15% increase per annum in sale price has been held to be reasonable one. According to him, the enhancement is little over four times of the amount of compensation offered by the S.L.A.O. The State has a policy not to prefer appeal in case the enhancement is not more than four times. He, therefore, urged for dismissal of the appeals.

4. Considered the submissions. Perused the impugned award and the material relied on. The reference Court has relied on the decision given by another reference Court in respect of the land acquired from the very village for the purpose of percolation tank, but way back in 1986. The reference Court, therefore, considered the same as base and increased the value by 12% p.a. and awarded the compensation. Since the increase is little over four times, this Court is not inclined to interfere with the amount of compensation granted on the basis of sale instance that was relied on by the reference Court. It is true that generally 10% hike per annum has been considered in respect of sale instance that dates back to the period before notification under Section 4 of the Act. Here only 12% has been considered. In view of this Court, 2% is negligible one when the Apex Court in the case of ***Bipin Kumar*** (supra) has observed that 15% increase is reasonable one.

5. It, however appears that the reference Court has awarded interest under Section 28 of the Act from the date of notification and not from the date of the award, the same is necessarily in breach of the Full Bench judgment in the case of ***Kailas Rangari*** (supra). To that extent, the impugned award needs to be interfered with. It is true that State appears to have not preferred appeal in some other references, wherein interest has been awarded in breach of aforesaid judgment. The respondents – claimants, however cannot claim parity in illegality.

6. In view of above, the appeals partly succeed in view of following order :-

- (i) The appeals are partly allowed.
- (ii) Clause 4 of the impugned award is hereby modified as under -

The interest under Section 28 of the Land Acquisition Act, 1894 shall be payable from the date of award i.e. 30th April, 1994.
- (iii) Rest of the terms of the impugned award stand unaltered.
- (iv) The amount of compensation payable to the respondents be worked out in terms of this order and be paid to them alongwith interest accrued thereon.
- (v) The balance amount, if any, be paid back to the appellant – State immediately with interest accrued thereon.

(R.G. AVACHAT, J.)

SSD