

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 852 OF 2020
WITH
CIVIL APPLICATION NO.8873 OF 2013

1. The State of Maharashtra,
Through the Collector, Beed
2. The Executive Engineer,
Minor Irrigation L.S. Division,
Beed, District Beed .. Appellants

Versus

- . Mahadeo s/o Baburao Mungse,
Age major, Occu. Agriculture,
R/o Khuntefal, Taluka Ashti,
District Beed .. Respondent

Mr A.M. Phule, A.G.P. for appellants
Mr D.R. Jayabhar, Advocate for respondent/sole

CORAM : SHRIKANT D. KULKARNI, J.

RESERVED ON : 28.10.2021

PRONOUNCED ON : 13.01.2022

JUDGMENT :

1. Feeling aggrieved by the impugned judgment and award passed in L.A.R. No.342/2006 by the reference Court/District Judge-3 at Beed thereby determining the compensation at Rs.1,26,000/-, the appellant/State has preferred this appeal.

2. Notification under Section 4 (1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act" for brevity) came to be published on 29.10.1998. The possession of the acquired land was taken on 20.1.1997. The Special Land Acquisition Officer passed award on 28.2.2004 thereby determined the compensation of the acquired land at Rs.57,750/-.

3. Feeling dissatisfied with the amount of compensation determined by the S.L.A.O., original claimant/respondent has filed reference under Section 18 of the Act before the reference Court. The reference Court/learned District Judge-3, Beed after considering rival pleadings of parties and documents on record was pleased to enhance the compensation from Rs.57,750/- to Rs.1,26,000/-. The reference Court was also pleased to award interest under Sections 28 and 34 of the Act.

4. Heard Mr A.M. Phule, learned A.G.P. for the State/appellants and Mr D.R. Jayabhar, learned Counsel for respondent/original claimant.

5. Mr Phule, learned A.G.P. submitted that the reference Court has awarded exorbitant compensation in respect of acquired land without considering the sale instances. Compensation and interest awarded by the reference Court is contrary to the provisions of the Act and the Full Bench decision of this Court in case of **State of Maharashtra Vs. Kailas Shiva Rangari**, reported in **2016 (4) ALL MR 513 (FULL BENCH)**. He submitted that the S.L.A.O., after taking into consideration the nature of land, its quality and fertility determined the market value prevailing at the relevant point of time and awarded compensation assessed at Rs.57,750/-, which was reasonable and fair. The reference Court has committed an error in enhancing the compensation. Mr Phule further submitted that the reference filed by the claimant was barred by law of limitation. The reference Court has not considered this legal point and allowed the claim for enhancement. He submitted that the impugned judgment and award passed by the reference Court needs to be quashed and set aside.

6. Mr Phule, learned A.G.P. has placed his reliance on following citations in support of his argument.

- (i) **State of Maharashtra Vs. Kailas Shiva Rangari,** reported in **2016 (4) ALL MR 513 (FULL BENCH);**
- (ii) **State of Maharashtra Vs. Ramesh Tukaram Meshram and anr.,** reported in **2018 (1) ALL MR 645;**

7. Per contra, Mr D.R. Jayabhar, learned Counsel for respondent/ original claimant supported to the findings recorded by the reference Court. He submitted that the market value determined by the reference Court is reasonable and fair having regard to the sale instances produced on record. The reference Court has considered the quality and fertility of acquired land and accordingly, enhanced the compensation and also awarded statutory benefits under the Act. There is no merit in the appeal. Mr Jayabhar, learned Counsel for the respondent/original claimant has placed his reliance on following citations :

- (i) **Shankarrao Bhagwantrao Patil etc., Vs. The State of Maharashtra (Civil Appeal Nos.5712-5713 of 2021 - Arising out of SIP (Civil) Nos.33471-33472 of 2016);**
- (ii) **Chanabasappa Vs. Karnataka Neeravari Nigam Ltd., & Anr., (Civil Appeal No.475 of 2020 - arising out of SLP (Civil) 29148 of 2016);**
- (iii) **Balwan Singh and others Vs. Land Acquisition Collector and another,** reported in **2016 AIR (SC) 1565;**

- (iv) **Madishetti Bala Ramul (D) by L.Rs. Vs. The Land Acquisition Officer, reported in 2007(5) ALL MR 904 (SC)**

8. Having regard to the submissions made by the learned Counsel for both the sides, I have gone through the judgment and award passed by the reference Court and evidence on record as well as sale instances referred in the impugned judgment.

Following is the admitted scenario:

- (i) Date of notification under Sec. 4(1) of the Act : 29.10.1998
- (ii) Date of possession by private negotiation : 20.1.1997
- (iii) Date of award under Sec.11 of the Act : 28.02.2004
- (iv) Notice under Section 12 (2) of the Act : 03.01.2005
- (v) Market value determined by the S.L.A.O. in respect of acquired land at Rs.550/- per R and accordingly, compensation assessed
- (vi) Rs.17,990/- was awarded as compensation for two stone bunds and Rs.4,905/- for five Bor trees.

9. The reference Court enhanced the compensation in respect of acquired land at Rs.1,200/- per-R by determining the acquired land in the category of seasonally irrigated land.

10. On going through the findings recorded by the reference Court coupled with the evidence, it is evident that the reference Court has considered two sale instances, which were prior to the date of notification under Section 4 of the Act. It is further observed by the reference Court that the lands shown in the sale instances and the acquired land are from the same village. The lands shown in the sale instances and the acquired land are seasonally irrigated lands. The reference Court, after taking into consideration both the sale deeds and taking into consideration the quality and fertility of the land on the basis of 7/12 extracts and after comparative assessment has determined the market price of the acquired land at Rs.1,200/- per-R for seasonally irrigated land. The market price of the acquired land determined by the reference Court at Rs.1,200/- per-R for seasonally irrigated land is found reasonable, on the basis of comparative assessment of the sale instances which had taken place prior to the date of notification under Section 4 of the Act.

11. The compensation awarded by the reference Court is found to be within the range of four times from the compensation determined by the S.L.A.O. The State has taken a policy decision by issuing Government Resolution dated 3.11.2016 and corrigendum dated 23.2.2017 not to prefer appeal in land acquisition matters where the compensation awarded by the reference Court is found to be within the range of four times. In the case in hand, the compensation awarded by the reference Court in respect of acquired land is found to be within range of four times. The compensation awarded by the reference Court cannot be said to be

exorbitant. I do not find any merit in the submissions of Mr A.M. Phule, learned A.G.P. for the appellants in this regard.

12. So far as compensation in respect of Well, five Bor trees and stone bunds is concerned, the reference Court has rightly recorded a finding that petitioner has not adduced any evidence to enhance the compensation in respect of Well, Bor trees and stone bunds. As such, the compensation awarded by the S.L.A.O. in respect of Well, Bor trees and stone bunds came to be upheld. I do not see any reason to disturb that finding recorded by the reference Court in respect of Well, Bor trees and stone bunds.

13. Having regard to the above reasons and discussion, it is found that the compensation determined by the reference Court in respect of acquired land is reasonable and in the range of four times as per the Government policy.

14. Mr Phule, learned A.G.P. for the appellants has pointed out the observations made by the reference Court in paragraphs 27 to 29 of the impugned judgment as well as operative part and submitted that the reference Court has committed an error in awarding interest. The reference Court awarded the interest under Sections 28 and 34 of the Act contrary to the Full Bench judgment in case of **State of Maharashtra Vs. Kailas Shiva Rangari** (supra). On perusing the impugned judgment, more particularly paragraphs 27 to 29, it is noticed that the reference Court has committed an error in awarding the interest to the claimant/respondent from the date of possession under Sections 28 and 34 of the Act and the

same is found to be contrary to the Full Bench decision of this Court in case of **State of Maharashtra Vs. Kailas Shiva Rangari** (supra). In the present case, possession of the acquired land was taken by way of private negotiations on 20.1.1997. The award under Section 11 of the Act came to be passed on 28.2.2004.

15. According to Full Bench decision, if the possession is taken before notification under Section 4 of the Act is published and/or before the award is passed, the claimant/owner would be entitled for interest as per Section 34 of the Act from the date of Award under Section 11 of the Act. The claimant may claim interest accordingly from the Collector. It is for the Collector to make payment of interest under Section 34 of the Act. That error needs to be corrected and the impugned award needs to be modified to the extent of awarding interest. Similarly, the claimant is entitled to get interest under Section 28 of the Land Acquisition Act from the date of award passed under Section 11 of the Act at the rate of 9% per annum for one year and thereafter at the rate of 15% per annum till realisation of amount. Rest of the impugned award needs to be confirmed.

16. Though Mr Jayabhar, learned Counsel for the original claimant has referred certain citations in support of his argument, the issue of awarding interest under Sections 28 and 34 of the Act is no more *res integra* in view of Full Bench judgment of this Court in case of **State of Maharashtra Vs. Kailas Shiva Rangari** (supra). There is no need to discuss the citations relied upon by Mr Jayabhar when the legal position is now settled and the

compensation enhanced by the reference Court is to be confirmed in the appeal. With this, I conclude and proceed to pass the following order :

ORDER

- (i) The appeal is partly allowed.
- (ii) The impugned judgment and award dated 19.12.2009 passed in L.A.R. No. 342/2006 by the reference Court/District Judge-3, Beed stands modified to the extent of interest under Sections 28 and 34 of the Land Acquisition Act, 1894.
- (iii) The claimant/respondent is entitled to get interest on the enhanced amount of compensation @ 9% per annum for a period of one year from the date of award and thereafter @ 15% per annum till the realisation of the amount under Section 28 of the Land Acquisition Act, 1894. The appellants/State to pay the same.
- (iv) The respondent/original claimant is entitled to get interest under Section 34 of the Land Acquisition Act, 1894 as discussed in paragraph no.15. The appellants/State to pay the same.
- (v) The impugned award stands modified in above terms.
- (vi) The First Appeal stands disposed of accordingly. No order as to costs.
- (vii) In view of disposal of First Appeal, Civil Application no.8873 of 2013 stands disposed of.
- (viii) R & P be sent to the concerned Court.

(SHRIKANT D. KULKARNI, J.)