

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3910 OF 2022
WITH
CIVIL APPLICATION NO. 9215 OF 2022
AND
CIVIL APPLICATION NO.9254 OF 2023

The Executive Engineer,
Minor Irrigation Division,
At Osmanabad,
Through Godavari Marathwada Irrigation,
Development Corporation, Aurangabad

... Appellant

[Incharge office of orig. respondent no.3]

Versus

1. Bibhishan Bhanudas Bhange
Age: 53 yrs, Occu: Agriculturist,
R/o: Govindpur, Tq. Kallam,
Dist. Osmanabd

... Original Claimant

2. The State of Maharashtra
Through the Collector at Osmanabad

3. Special Land Acquisition Officer
Medium Project No.2, Osmanabad

[Formal respondents / original respondent nos.1 and 2]

... Respondents

...
FIRST APPEAL NO. 3911 OF 2022
WITH
CIVIL APPLICATION NO. 9219 OF 2022
AND
CIVIL APPLICATION NO.9253 OF 2023

The Executive Engineer,
Minor Irrigation Division,
At Osmanabad,
Through Godavari Marathwada Irrigation,
Development Corporation, Aurangabad

... Appellant

[Incharge office of orig. respondent no.3]

Versus

1. Jeevraj Yadav Munde

Age: 36 yrs, Occu: Agriculturist,

R/o: Govindpur, Tq. Kallam,

Dist. Osmanabd

... Original Claimant

2. The State of Maharashtra

Through the Collector at Osmanabad

3. Special Land Acquisition Officer

Medium Project No.2, Osmanabad

[Formal respondents / original respondent nos.1 and 2]

... Respondents

...

FIRST APPEAL NO. 3912 OF 2022

WITH

CIVIL APPLICATION NO. 9217 OF 2022

AND

CIVIL APPLICATION NO.9256 OF 2023

The Executive Engineer,

Minor Irrigation Division,

At Osmanabad,

Through Godavari Marathwada Irrigation,

Development Corporation, Aurangabad

... Appellant

[Incharge office of orig. respondent no.3]

Versus

1. Gopinath Yadav Munde

Age: 36 yrs, Occu: Agriculturist,

R/o: Govindpur, Tq. Kallam,

Dist. Osmanabd

... Original Claimant

2. The State of Maharashtra

Through the Collector at Osmanabad

3. Special Land Acquisition Officer

Medium Project No.2, Osmanabad

[Formal respondents / original respondent nos.1 and 2]

... Respondents

...

Mr. M. C. Swami, Advocate for the Appellant

Mr. R. V. Naiknavare, Advocate for Respondent No.1 in all appeals

Mrs. P. V. Diggikar, AGP for Respondent Nos.2 and 3 in all appeals

...

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 28.07.2023

PRONOUNCED ON : 07.08.2023

JUDGMENT :

1. The appellant / acquiring body aggrieved by the award passed by the Reference Court dated 07/01/2017, in LAR Nos.1189, 1202 and 1203/2011, approached this Court under Section 54 of the Land Acquisition Act, 1894 [hereinafter referred to as 'the Act' for short].
2. The respondent/s are the original claimants in respective land acquisition references. Their lands situated at Govindpur, Taluka Kallam, District Osmanabad have been acquired for the construction of storage tank. A notification under Section 4 of the Act was published on 16/04/2009 and an award under Section 11 was passed on 23/05/2011 by the Land Acquisition Officer [for short 'LAO'] in File No.2007/LNQ/A-02. The LAO determined the compensation for the acquired lands @ Rs.1,28,000/- to Rs. 1,40,000/- per Hectare.
3. The aggrieved claimants had filed the references under Section 18 of the Act seeking enhanced of compensation. The various sale instances were relied by the claimants to demonstrate market value of acquired land and their entitlement for enhanced compensation. The Reference Court after considering the evidence on record determined the market value of the acquired lands @ Rs.4,50,000/- per Hectare and passed

an award dated 07/01/2017 for enhanced compensation along with statutory benefits. The Reference Court in clause no.4 of the operative part of order directed as under

“4) The respondents shall pay the interest on enhanced compensation @ Rs.9% per annum for the first year from the date of possession i.e. 8/5/2009 and @ Rs.15% per annum for subsequent year till realization of entire amount as per the provisions of Section 28 of the Act”.

4. The appellant / acquiring body impugns the award on the solitary ground that the interest under Section 28 of the Act cannot be granted from the date of notification under Section 4. It is contended that as per law laid down by the full Bench of this Court in the case of **State of Maharashtra Vs. Kailash Shiva Rangari** reported in **2016 (4) All MR 513** and subsequent judgment in the case of **Lalitkumar Himmatlal Shah Vs. The State of Maharashtra** reported in **2012 (4) Mh.L.J 742**, the interest can be granted only from the date of award under Section 11 of the Act.

5. Mr. Swami, learned Advocate appearing for the appellant relying upon the aforesaid decisions submits that the Reference Court has committed apparent error while granting the interest under Section 28 of the Act from the date of possession i.e. 08/05/2009. He submits that the LAO passed the award under Section 11 of the Act on 23/05/2011. The entitlement of the claimants to claim interest under Section 28 of the Act would start from that day. Therefore, he seeks

modification of the award to that extent.

6. Mr. Naiknaware, learned Advocate appearing for the claimants / respondents would submit that from the same acquisition, other references are decided by the judgment dated 24/02/2014 in the group of LAR No.1192/2011 and others. He would submit that the appellant / acquiring body has acquiesced those awards and released the compensation amount. However, in the present matter, the appeal has been preferred. He would submit that similar rate of the lands has been granted in those references. He would submit that appellant has discriminated respondents while filing the selective appeals.
7. Having considered the submissions advanced, it is apparent that the appellant / acquiring body is aggrieved by clause no.4 of operative part of the impugned award dated 07/01/2017 passed by the Reference Court i.e. grant of interest under Section 28 of the Act from the date of possession i.e. 08/05/2009.
8. The appellant has rightly relied upon the judgments of this Court in the case of State of Maharashtra Vs. Kailash Shiva Rangari [*Supra*] and Lalitkumar Himmatlal Shah Vs. the State of Maharashtra [*Supra*] to contend that the interest under Section 28 of the Act would be

applicable from the date of award passed under Section 11. There is no dispute that the award under Section 11 has been passed on 23/05/2011. Apparently, the entitlement of the interest under Section 28 of the Act would start from that day. The Reference Court has committed obvious error in applying provisions of act as clarified by the larger bench of this Court. It is well settled by now that interest of enhanced compensation under Sections 28 & 34 of the act would apply from date of award passed under Section 11 of the Act by Land Acquisition Act.

9. Mr. Naiknaware, learned Advocate appearing for the respondents do not dispute the legal position as espoused in the aforesaid judgments of this Court. However, he contends that the discriminatory treatment is given to the applicants since in earlier group of land acquisition references from selfsame acquisition awards have been satisfied. A copy of judgment in the group of LAR No.1192/2011 and others is made available for perusal during the course of argument. It is noticed that in those matters Reference Court has awarded the interest under Section 28 of the Act from the date of award and not from the date of possession. As such the acquiring body has rightly satisfied those awards and assailed award impugned in present appeals.
10. In the result of the aforesaid discussions, this Court proceeds to pass

the following order:

ORDER

- (a) The appeals are partly allowed.
- (b) The impugned judgment and award dated 07/01/2017 passed by Reference Court Osmanabad, in LAR Nos.1189, 1202 and 1203/2011, particularly clause no.4 of the operative part of order is modified as under:

(4) The respondents shall also pay interest on enhanced compensation @ Rs.9% per annum for the first year from the date of award i.e. 23/05/2011 and @ Rs.15% for subsequent years till realization of entire amount as per the provisions of Section 28 of the Act.
- (c) The amount deposited by the appellant / acquiring body shall be disbursed to the claimants after appropriating the amount as per the aforesaid modification.
- (d) Balance, if any, be refunded to the appellant / acquiring body.
- (e) Appeals are disposed of accordingly.
- (f) In view of disposal of appeals, civil applications, if any, are also disposed of.

[S. G. CHAPALGAONKAR, J.]