



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

901 FIRST APPEAL NO. 1049 OF 2020
WITH
FIRST APPEAL NO. 1052 OF 2020
WITH
FIRST APPEAL NO. 1053 OF 2020
WITH
FIRST APPEAL NO. 1050 OF 2020
WITH
FIRST APPEAL NO. 806 OF 2020
WITH
FIRST APPEAL NO. 808 OF 2020
WITH
FIRST APPEAL NO. 801 OF 2020
WITH
FIRST APPEAL NO. 812 OF 2020
WITH
FIRST APPEAL NO. 807 OF 2020
WITH
FIRST APPEAL NO. 1055 OF 2020
WITH
FIRST APPEAL NO. 1054 OF 2020
WITH
FIRST APPEAL NO. 1051 OF 2020
WITH
FIRST APPEAL NO. 811 OF 2020
WITH
CIVIL APPLICATION NO. 2717 OF 2020
IN FAST/3847/2020
WITH
FIRST APPEAL NO. 1056 OF 2020
WITH
FIRST APPEAL NO. 802 OF 2020
WITH
FIRST APPEAL NO. 1057 OF 2020
WITH
FIRST APPEAL NO. 1059 OF 2020
WITH
FIRST APPEAL NO. 1060 OF 2020

WITH
FIRST APPEAL NO. 1061 OF 2020
WITH
FIRST APPEAL NO. 810 OF 2020
WITH
FIRST APPEAL NO. 804 OF 2020
WITH
FIRST APPEAL NO. 809 OF 2020
WITH
FIRST APPEAL NO. 805 OF 2020
WITH
FIRST APPEAL NO. 803 OF 2020
WITH
FIRST APPEAL NO. 1058 OF 2020

UTTAM SHIVAJI JOHARE
VERSUS
THE DY. COLLECTOR, (LAND ACQUISITION - 1) U.T.P.
(HATNOOR) JALGAON AND ANR

...
Advocate for Appellants : Mr. Patil Vijay Y.
AGP for Respondents/State : Mrs.M.N.Ghanekar
Advocate for Respondent No. 2 : Mr.Pawar A.D.
...

CORAM : KISHORE C. SANT, J.

DATE : 02nd AUGUST, 2024.

PER COURT :

1. Issue notice to the respondents, returnable forthwith.
2. Respective learned Advocates waives service of notice

for respondents.

3. All these appeals arising out of the same award of acquisition proceedings from which other appeals are already on board today are arising out of the common judgment and award passed by the learned reference Court i.e. 6th Jt. Civil Judge Senior Division, Jalgaon vide judgment and order dated 04.08.2018. Therefore, all these appeals are taken together.

4. First group of appeals is by the Claimants for enhancement in the amount of compensation. The second group of the appeals is by the acquiring body on the limited issue challenging Clause 6 and 7 of the operative order and Clause No. 5 to the extent of awarding interest under Section 28 and 34 of the Land Acquisition Act from the date of possession of the land instead of from the date of award in view of the full bench judgment in the case of State of Maharashtra Vs. Kailash Shiva Rangari, 2016 (4) ALL MR 513.

5. The facts in short are that all the claimants are from the village Gondkhed, Tq. Jamner, District Jalgaon. Their

respective lands came to be acquired for percolation tank, Hizara Nala, of village Gondkhed. The Notification was issued bearing SR/24/10. After determining the amount of compensation the SLAO awarded compensation @ Rs. 1,56,000/- per Hectar considering all the lands as jirayat lands and passed the award.

6. Being aggrieved by the amount of compensation the claimants approached the learned Collector under Section 18 A of the Land Acquisition Act by filing reference under the Act. The references were referred to the Civil Judge, Senior Division, Jalgaon. The judgment and award passed in Land Acquisition Reference No. 532 of 2009 (for short 'L.A.R.') decided by the learned 3rd Jt.Civil Judge Senior Division, Jalgaon by judgment and order dated 23.08.2017, wherein, the rate is awarded is Rs. 5,40,000/- to jirayat land is relied upon the claimants.. The learned trial judge, however, held that the LAR No. 532 of 2009 was in respect of different project i.e. for percolation tank Paladhi and the said rate cannot be applied to the lands from village Gondkhed. Village Paladhi is close to the State Highway and did not accept the said value. It is further observed that

the village Gondkhed is at some distance from the Highway and also at some distance from the village Paladhi.

7. The Court thus granted rate of Rs. 4,80,000/- per hector considering all the relevant aspects. The Court thus, partly allowed the claims. The claimants are thus aggrieved to the extent of not granting the rate as per the judgment in LAR No. 532 of 2009, have approached this Court.

8. So far as the acquiring body is concerned, the acquiring body has fairly not challenged the enhancement in the rate of the amount. The acquiring body is aggrieved by Clause- 6, 7 and Clause- 5 to some extent. As per Clause- 6 the learned Court has directed to pay rental compensation @ 8% p.a. on the entire amount of compensation including the enhanced amount, 30% isolation etc. from the date of possession which was taken even prior to the Section 4 (1) of the notification. By Clause-7 the Court further directed to pay the interest @ 6% even on the amount of rental compensation. These both Clauses are challenged in its entirety. So far as Clause-5 is concerned, challenge is only to the extent of direction for grant of statutory

interest and statutory benefits from the date of possession. The ground taken is that in view of the judgment in the case of **Kailash Shiva Rangari** (supra), the claimants are entitled to receive the interest under Section 28 and Section 34 only from the date of award and not from any other date prior to passing of the award under Section 11.

9. Heard the parties.

10. Learned Advocate Mr. Patil vehemently argued that the claimants have relied upon the judgment in LAR No. 532 of 2009 which was in respect of adjoining village Paladhi. There is no difference in the quality of the land as all the lands are jiriyat lands. He submits that the distance between the village Paladhi and Gondkhed is less than 5 k.m. The crop cultivation pattern is the same. There is no difference in respect of lands of both the villages and there was no reason for not accepting the rate as awarded in LAR No. 532 of 2009 to the extent of award of rental compensation and awarding interest from the date of possession is justifies judgment and award to the extent of Clause 5 part 6 & 7. He thus, prays for allowing the appeals

and claimed rate of Rs. 5,88,000/- per hectore as is given in LAR No. 532 of 2009. So far as the other aspects are concerned, he submits that same needs to be maintained.

11. Coming to the arguments of Mr. Pawar for the acquiring body, as already observed he fairly states that the Acquiring Body has not challenged the rate granted by the reference Court. He however, submits that in view of the full Bench judgment in the case of **Kailash Shiva Rangari** (supra) it is clearly & categorically held that the claimants are entitled to the interest under Section 34 and 28 only from the date of award till realization of the amount. He further submits that the award of rental compensation has to be considered by the learned Collector and the reference Court has no powers to award rental compensation. As per Government Resolutions of the year 1972 and 1988, it is entirely for the learned Collector to decide the rate/value of the rental compensation. There is no provision in the law for vesting powers in the Civil Court to award the rental compensation and to that extent the Clauses 6 & 7 needs to be set aside from the impugned judgment and award.

12. In support of his submission he submits that the award was passed on 08.04.2013 in respect of the present proceedings. While passing the award the sale instances from the village Gondkhed were considered. Considering those rates the award was passed. The same rate was lower than the rate which is awarded by the reference Court. He submits that though the sale instances from village Gondkhed were very much available, the Claimants did not produce the same and have relied upon the award in 532 of 2009 and the Court is thus justified in not accepting the said rate when the project is different, the acquisition proceeding is different and even the location of the land are also different.

13. So far as the observations of the learned Court in paragraph No. 26 about the rental compensation, the learned trial Court failed to consider the order in Writ Petition No. 10916 of 2014 dated 29.06.2015. This Court had only kept it open for the Claimants to raise the issue in respect benefit available to them under Section 34 of the land Acquisition Act. It was only expected of the reference Court to consider such claims and to pass appropriate orders. The reference Court

however, has taken said order as if the reference Court is directing to award the interest under Section 34 from the date of possession.

14. This Court has gone through the order passed in Writ Petition No. 10916 of 2014 which reads as under :

“1. The petitioners, it is stated, have presented Reference Applications seeking enhancement in the amount of compensation and those applications are stated to be pending.

2. It would be open for the petitioners to raise the issue in respect of benefits accruable to them under Section 34 of the Land Acquisition Act. If the petitioner raises such claim, it would be obligatory on the part of the Reference Court to deal with such claims and pass appropriate orders.

3. With the observations as above, the Writ Petition stands disposed off.”

15. It is no where in the said order to interpret the reference Court is directed to award the interest under Section 34 from the date of possession. The direction given was only to consider the said claim. Naturally the Court will consider the

matter of awarding interest under Section 34 and the same is governed by the legal position which is well settled in the case law of **Kailas Shiva Rangari** (supra).

16. Thus, from all these discussions, this Court finds that the learned trial judge has certainly erred in passing the order in terms of Clause Nos. 6 and 7 of the impugned judgment. This Court is thus inclined to decide clause Nos. 6 and 7 of the impugned judgment.

17. So far as Clause No. 5 is concerned, the Court finds that the same needs to be modified holding that applicants/Claimants to be entitled to receive interest as per Section 28 and 34 only from the date of award i.e. date 08.04.2013 till its realization. With this, this Court holds that it is open for the Claimants to approach learned Collector and claim rental compensation as per law. If such an application is pending the learned Collector to decide the same within six months from today.

18. It is informed that the Acquiring Body had deposited

the entire amount of compensation as per impugned judgment and award in the executing Court/Reference Court. 80% of the said amount is already withdrawn by the Claimants. In view of this, the reference Court to make fresh calculations in the light of discussion and above cited judgments and if an access amount is deposited the same shall be refunded to the Acquiring Body and in case there is more amount lying towards the compensation, the same shall be given to the Claimants in their proportionate shares. The said exercise be done within two months from today. No order as to costs.

19. In view of the above discussion, the First Appeals stand disposed off.

20. Consequently the Civil Applications, if any, stand disposed off.

**(KISHORE C. SANT)
JUDGE**

mahajansb/