



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3561 OF 2016

Executive Engineer,
Minor Irrigation, Osmanabad

... Appellant
[Ori. Respondent No.3]

VERSUS

1. Sambhaji s/o Vasant Dasme
Age 46 yrs, Occu. Agriculture
r/o Renapur, tq. Omerga,
Dist. Osmanabad

... Respondent no.1
Original Claimant

2. The State of Maharashtra
Through the Collector,
Osmanabad

3. The Special Land Acquisition Officer
Manjara Project, Osmanabad

... Respondent No. 2 & 3
[Original Respondent Nos. 1 & 2]

....

Ms Ranjana Reddy, Advocate for Appellant

Mr. S. G. Joshi, Advocate h/f Ms. Deepali S. Patil, Advocate for
Respondent No.1

Mr. D. B. Bhange, AGP for Respondent Nos. 2 and 3 – State

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CORAM : Y. G. KHOBRAGADE, J.

RESERVED ON : 06 MAY 2024

PRONOUNCED ON : 10 MAY 2024

JUDGMENT

1. By the present Appeal under Section 54 of the Land
Acquisition Act, 1894 (for short, 'the Act'), the Acquiring Body

takes exception to the judgment and award dated 02.01.2014, passed by the learned reference Court i.e. Civil Judge Senior Division, Omerga in L.A.R. No.1261 of 2009, whereby the learned Reference Court considered 8 sale instances Exh.34 and enhanced the compensation to the tune of Rs.1,42,000/- per Acre.

2. Having regard to the submissions canvassed by both the sides, I have gone through the record. It is undisputed that on 15.02.1996 even prior to issuance of notification u/s 4 of the Land Acquisition Act, 1894, the present Appellant/Acquiring Body has taken the possession of present Respondent/ Original Claimant's land bearing Survey/Gat No.120 admeasuring 0H 25 R situated at Rampur, Taluka Omerga, District Osmanabad.

3. On 29.10.1998, a notification under Section 4 of the Act came to be issued showing intention of the Acquiring Body for acquisition of the claimant's land. It is not in dispute that, on 24.07.1999, a village notification was published and subsequently a notification under Section 6 of the Act was published on 21.09.2000. The Special Land Acquisition Officer passed an award on 24.03.2003, and determined the compensation to the tune of Rs. 35,500/- per Hectare.

4. Being dissatisfied with the said Award, present Respondent/original Claimant made reference under Section 18 of the Act. After conclusion of trial, the learned reference Court considered 8 sale instances Exh.34 as well as Exh.37 the certified copies of Award and E-statement Exh.38, and enhanced the compensation to the tune of Rs.1,42,000/- per Acre. Therefore, the present Appellant/Acquiring Body has assailed the Judgment & Award dated 02.01.2014, passed by the learned reference Court i.e. Civil Judge Senior Division, Omerga in L.A.R. No.1261 of 2009 under Section 54 of the Act.

5. Ms. Ranjana Reddy, the learned Counsel appearing for the appellant/Acquiring Body vehemently canvassed that the learned reference Court committed gross error while considering the sale instances under Exh.34 and without appreciating the evidence, enhanced ten times excess compensation. So also, the factors of proximity, fertility productivity and quality of the land not been considered. It further canvassed that, the learned reference Court has wrongly granted the interest at the rate 9% p. a., for the first year from the date of notification under Section 4 of the Act and after

expiry of one year interest at the rate 15% p.a., has been granted under Section 28 of the Act.

6. It is further canvassed on behalf of learned Counsel appearing for the appellant/Acquiring Body that land of claimant not acquired by invoking Section 17 of the Act. Therefore, as per Section 16 of the Act, the Collector is empowered to take possession of the land after the Award is passed under Section 11 of the Act. Therefore, the claimant is not entitled for rental compensation and the interest between the period from the date of possession till issuance of notification under Section 4 of the Act. However, the learned reference Court wrongly granted rental compensation with interest, hence, prayed for quashing and setting the impugned judgment and award.

7. In support of these submissions, the learned Counsel appearing for the appellant has placed reliance on the following case laws.

- (i) *Shankarrao Bhagwantrao Patil and others Vs. The State of Maharashtra and others – LAWS (BOM) 2016 3 122;*
- (ii) *Lalitkumar Himmatlal Shah Vs. State of Maharashtra – LAWS (BOM) 2012 5 67;*
- (iii) *Dinkar Sandipan Gholve and others Vs. State of Maharashtra and others – 2008 SCC OnLine Bom 696;*

(iv) *Bhagwat Nathu Patil Vs. State of Maharashtra and others – 2009(3) Mh.L.J. 413;*

(v) *State of Maharashtra Vs. Kailash Shiva Rangari – 2016(3) Mh.L.J. 457.*

8. Per contra, the learned Counsel appearing for present respondent/original claimant has filed written notes of argument. He also argued the matter for a considerable period. The learned counsel for the claimant submits that, on 24.03.2003, the learned Special Land Acquisition Officer passed the award and granted very meagre amount of compensation of Rs.35,500/- per Hectare. Therefore, present respondent/original claimant made reference under Section 18 of the Act and proved substantial documentary evidence, certified copy of award Exh.37, E-statement Exh.38 and other 8 sale instances Exh.34. The market price of the acquired land was Rs. 2,00,000/- per Acre. Therefore, after considering the evidence, the learned reference Court has enhanced the compensation at the rate of Rs. 1,42,000/- per Acre, which is just and proper, hence, prayed for dismissal of present appeal.

9. It is further canvassed on behalf of the claimant that, the possession of the land of present respondent/ claimant was taken by the Government on 15.02.1996, much prior to publication of

notification under Section 4 of the Act and award was passed on 24.03.2003. Therefore, the respondent/claimant is entitled for rental compensation under Section 34 of the Act.

10. In the case in hand, the question arises as to whether a person would be entitled for interest under Section 34 of the Act from the date of his dispossession, if the dispossession is prior to the issuance of notification under Section 4 of the Act and if not, what would be the date of claiming of interest.

11. In case of ***State of Maharashtra Vs. Kailas Shiva Rangari – 2016 (3) Mh.L.J. 457***, the Full Bench considered various case laws cited therein as well as scope of Section 34 of the Act, has observed in Para Nos. 29 to 33, as under:-

“29. In terms of the decision of the Apex Court in the case of Siddappa Vasappa Kuri and another v. Special Land Acquisition Officer and another, reported in AIR 2001 SC 2951, it is held that the starting point for the purposes of calculating the amount of additional compensation under Section 23(1A) of the said Act at the rate of twelve per centum per annum on the market value of the land is the date of publication of Section 4 notification. The terminal point for the purpose is either the date of the award or the date of taking possession, whichever is earlier. The interest payable under Section 34 of the said Act is in the case where the possession is taken under Section 17 of the said Act, but the compensation determined under clause (a) of subsection (3A) of Section 17 or under Section 11 of the said Act has not been paid or deposited on the date when it became due and payable. As such, Section 34 of the said Act operates

only from the date on which the compensation determined becomes due and payable. As against this, the additional component under Section 23(1A) becomes payable on the date of publication of the notification under Section 4(1) of the said Act, or from the date of taking possession of the land, whichever event occurs earlier.

30. In view of above, there is no question of overlapping the benefits available to the claimants under Section 23(1A) or Section 34 of the said Act. The terminal point under Section 23(1A) is either the date of the award or taking of possession, whereas the starting point of interest under Section 34 of the said Act is the passing of the award or taking of possession; both terminating on the date of payment or deposit in Court pursuant to the award passed under Section 11 of the said Act.

31. If the landowner is divested the possession of his land by the Collector or the State Government illegally or de hors the provisions of the said Act, it is open for him to recover such possession and claim rent and damages for the use and occupation for the period for which the State Government has illegally retained the possession of the land. To take care of such situation, certain administrative circulars have been issued by the State Government for payment of rental compensation, in accordance with which the claimants are paid for the period for which they are deprived of the benefits of the land till the notification is published under Section 4(1) of the said Act. We are not concerned in this matter about the rental compensation or the damages to which the claimants are entitled, if the possession of the land is de hors the provisions of the Act.

32. Keeping in view the entire scheme of the Land Acquisition Act and the ratio of the decisions of the Apex Court in the cases of R.L. Jain and Lila Ghosh, cited supra, the position of law can be summarized as under :

(i) If the possession of the land under acquisition is taken under Section 16 of the said Act i.e. after an award is made by the Collector under Section 11 therein, the interest would be payable under Section 34 from the date of passing of the award and we are in agreement with such a view expressed by the Division Bench of this Court (S/Shri N.V. Dabholkar and M.G. Gaikwad,

JJ.) in the case of State of Maharashtra & anr. v. Rajendra Narayanrao Gaikwad, reported in 2008 (1) BCR 839.

(ii) The interest as provided under Section 34 of the said Act shall start running from the date of possession, only if the possession is taken by the Collector in exercise of his powers under Section 17 of the said Act which would obviously be after issuance of notice under Section 9(1) of the said Act. If the possession is taken under Section 17, the interest payable under Section 34 of the said Act shall start running from the date of possession and not from the date of award.

(iii) Where the possession of the land under acquisition is taken prior to issuance of notification under Section 4(1), then there would be no question of invoking the urgency clause under Section 17 of the said Act and the interest under Section 34 shall start running from the date of passing of the award.

(iv) The starting point for the purposes of calculating the amount of additional component under Section 23(1A) of the said Act at the rate of twelve per centum per annum is the date of publication of the notification under Section 4 of the said Act, and the terminal point is either the date of the award or the date of taking possession, whichever is earlier. (v) We hold that in none of the eventualities, the claimant shall be entitled to interest under Section 34 of the said Act from the date of publication of the notification under Section 4(1) of the said Act.

(vi) There is no overlapping of the benefits under Section 23(1A) and Section 34 of the said Act. The terminal points under Section 23(1A) are the starting points under Section 34 of the said Act and both the provisions operate in different fields.

(vii) We express our full agreement with the view taken by the Division Bench of this Court in Lalitkumar Shah's case, cited supra, that in a case where possession is

taken prior to issuance of notification under Section 4(1) of the said Act, the interest under Section 34 shall start running from the date of award only.

(viii) We also express our full agreement with the view taken by the Division Bench of this Court in Lalitkumar Shah's case, cited supra, that the decision of the Division Bench in the case of Jafarali Mithabhai Hirani & Ors. v. State of Maharashtra & Ors., reported in 2009 (3) All MR 779, and the similar view taken in other matters is no longer a good law.

33. In view of above, we answer the question of reference as under :

(a) If the possession is taken before the notification under Section 4(1) of the Land Acquisition Act is published and/or before the award is passed, the landowner would be entitled for interest as per Section 34 necessarily from the date of passing of the award under Section 11 of the said Act, except in cases where the possession is taken in accordance with Section 17 of the said Act, and in that situation only, the provision of Section 34 of the said Act shall start operating from the date of possession.

(b) We also hold that the decision of the Division Bench of this Court in the case of Lalitkumar Himmatlal Shah v. State of Maharashtra and others, decided by Smt. Vasanti A. Naik and Shri Prasanna B. Varale, JJ., and reported in 2012(4) Mh.L.J. 742, lays down a correct position of law and it does not require reconsideration."

12. It is well settled principle of law that while determining the compensation of acquired land under the Act, sale instances and fertility of the acquired land required is to be considered. In case in

hand, the learned reference court has considered the certified copies of award Exh.37 and E-statement Exh.38 passed in other similarly acquired land wherein the land of the owners were acquired for Kalnimbala Medium Project Right Canal.

13. Further, the claimant proved other 8 sale instances at Exh.34. The learned Special Land Acquisition considered Exh. 34 i.e. 8 (Eight) Sale instances and awarded compensation only to the tune of Rs. 35,500/- per Hectare, though, Exh. 34 Sale instances proved by the claimant at Exh.34 for the year 1999, is comparable sale instances after calculating the same at the same rate per Acre, which comes to Rs. 1,42,000/- per Acre.

14. Merely, production of the sale-deed for less area than the acquired land it cannot be discarded while determining the compensation. Therefore, I do not find substance in submissions canvassed on behalf of the appellant.

15. Since the land of present respondent/original claimant has been acquired on 15.02.1996, much prior to issuance of village notification. Therefore, as per the ratio laid down in the case of ***State of Maharashtra Vs. Kailash Shiva Rangari (supra)***, by the Full Bench

of this Court, the respondent/original claimant is entitled for interest as per Section 34 of the Act from the date of possession of land and not from the date of passing of the award.

16. On perusal of the impugned judgment and award it appears that the learned reference Court has rightly enhanced the compensation to the tune of Rs. 1,42,000/- per Acre for acquired land of 24 R out of Survey No.120, situated at village Rampur with solatium at the rate of 30% under Section 23(2) of the Act on enhanced amount of compensation. It further held entitle for interest at the rate of 12% p. a. from the date of notification under Section 4 and under Section 23(1) of the Act and interest at the rate of 9% p. a., for the first year from the date of notification under Section 4 of the Act. Further after the date of expiry of one year, granted interest at the rate of 15% p. a., till realization of the amount under Section 28 of the Act and rental compensation at the rate of 8% p. a., from the date of taking over possession of the land i.e. 15.02.1996, does not appears to be perverse, illegal and bad in law.

17. In view of the above discussions, I proceed to pass the following order:

:: ORDER ::

- (i) First Appeal is hereby dismissed.
- (ii) No order as to costs.
- (iii) The record and proceedings be remitted back to the trial Court.

[Y. G. KHOBRADE, J.]

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