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fa2037.24

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

**FIRST APPEAL NO. 2037 OF 2024
AND
FIRST APPEAL NO. 1458 OF 2024**

**THE EX. ENGINEER, MINOR IRRIGATION DIVISION,
OSMANABD THR G.M.I.D.C., AURANGABAD**

.....Appellant

VERSUS

NAMDEV JIVLA BOLKE AND OTHERS

.....Respondents

Mr. S. B. Bhalerao, Advocate for the appellant
Mr. D. B. Bhange, AGP for the respondents/State
Mr. N. J. Patil, Advocate for the respondent Nos. 1 to 5

CORAM : KISHORE C. SANT, J.

RESERVED ON : 08th JULY, 2024

PRONOUNCED ON : 16th AUGUST, 2024

JUDGMENT

1. Since common questions are involved in all these appeals, these are taken together and are being disposed off by common judgment. The first question is as to which is a material date for grant of interest under Section 28 of the Land Acquisition Act. Whether it is to be granted from the date of

taking of possession of the lands of claimants, if possession is taken prior to notification under section 4(1) of the Act, or it is to be granted from the date of award or any other date. Second question is that whether the judgment in the case of State of Maharashtra Vs Kailash Shiva Rangari reported in 2016 (3) Mh.L.J. 457 and followed in the case of State of Maharashtra Vs Ramesh Tukaram Meshram and another reported in 2018 (1) ALL MR 645 is applicable in these case.

2. In all these appeals the learned reference court has granted interest to the claimants on the amount of compensation from the date of actual taking of possession of lands. Possession of land in all these cases is taken prior to notification under Section 4(1) of the Act. These appeals are thus, filed for limited purpose challenging award of interest from the date of possession and not from the date of award. It is the submission of the learned advocate for acquiring body that this case is clearly covered by the judgment in the case of Kailash Shiva Rangari (supra) and Ramesh Tukaram Meshram

(supra) this position is disputed by the claimants.

3. It is the submission of the claimants that the said judgments are not applicable to the present cases. The judgment in the case of Kailash Shiva Rangari (Supra) is given considering judgment of the Hon'ble Supreme Court in the case of R. L. Jain (D) by LRs Vs V. D. D. A. and others reported in AIR 2004 SC 1904. Both the judgments deal with the aspect of grant of interest under Section 34 of the Act and not in respect of section 28 of the Act. The judgment in the case of Ramesh Tukaram Meshram (supra) is not in tune with the judgment in the case of Kailash Shiva Rangari (supra) and R. L. Jain (D) by LRs (supra). The claimants therefore, support the impugned judgments.

4. Heard the parties for quite some time.

5. For understanding the exact dispute few facts are taken from the lead matter i.e. first appeal No. 1543/2023. In

this case, the facts in short are that, the respondent-claimant was the owner of various lands acquired for Sina Kolegaon project situated at Kaudgaon, Tq. Paranda, Dist. Osmanabad.

6. For the purpose of acquisition notification under Section 4(1) of the Act was published in the Government Gazette on 24-07-1997. Declaration under Section 6 was published in the Gazette dated 18-03-1999. The claimants received notice under Section 12(2) of the Act on 18-08-2006. Before publishing of the notifications under Section 4 of the Act, the possession of the land was already taken. The reference court directed to pay interest under Section 28 of the Act from the date of publication of notice under Section 4(1) i.e. from 24-07-1997. Since other facts and rate of lands are not in dispute, this court need not go into further details. The appellant acquiring body filed appeal only to the extent that the interest is directed to be paid from the date of possession instead of granting the same from the date of award.

7. Mr. A. M. Gaikwad, learned advocate for the appellant in a lead case, argued at length. He submits that the learned reference court could not have granted interest from the date of taking possession of the land, on the strength of the judgment in the case of R. L. Jain (Supra), Kailash Shiva Rangari (supra) and Ramesh Tukaram Meshram (supra).

8. He submits that as per the scheme of the act notification under section 4(1) only shows that the government is intending to acquire the land. Section 5 of the Act authorizes the authorities to inspect the land by visiting the lands likely to be acquired and objections are called under Section 5(1-a). Section 6 is a declaration that the lands are required by the Government for the purposes under the Act. Section 9 is only a notice to the persons interested. Section 11 provides the powers of the Collector to pass an award. It is section 12 which gives finality to the award. It is only after award is passed the authorities can take possession of the land under Section 16. It is only a possession taken under Section 16 that passes the title

of the land in favour of the government/acquiring body. Till that date title is with the owner of the land /claimants. It is only in exceptional circumstances under Section 17 the Government can take possession by invoking emergency clause, where considerations for grant of compensation are distinct. Thus, for the purpose of grant of interest, it is the date of possession, when possession is taken under Section 16 of the Act is the material date. Thus, the claimant himself is owner of the land till that date. This argument is adopted by all the lawyers for the appellants.

9. Mr. Mulkul Kulkarni, learned Advocate adopts argument of Mr. A. M. Gaikwad. In addition he submits that purpose of notification under Section 4(1) is only to give the point at which market value is to be determined. This notification does not take away title of the owner over the land. If possession is taken prior to this event owner is entitled only to get rental compensation or damages. This submission is made in view of the judgment which are already stated above. In

addition he relied upon the judgment in the case of Gurpreetsingh Vs Union of India reported in 2006 AIR (SCW) 5813.

10. Respective AGPs support arguments of the appellants.

11. To counter this argument learned advocate Abhijit Chaudhary for the claimants submits that the judgment in the case of Kailash Shiva Rangari (supra) deals only with the aspect of grant of interest under Section 34 of the Act. The analogy in the judgment of Kailash Shiva Rangari (Supra) is wrongly applied in the case of Ramesh Tukaram Meshram (supra). In the case of Ramesh Tukaram Meshram (supra) question was of grant of interest under Section 28. He further submits that at any rate that judgment would not be applicable while considering question of grant of interest under Section 23(1-A) and section 28. The starting point is only dispossession of owner from the land even if it is prior to notification under Section 4(1). He

relied upon the judgment reported in 2011 11 page 648 in the case of Revenue Divisional Officer, Karnool District Vs M. Ramkrishna Reddy. In any case, he submits that interest needs to be granted at the most from the date of publication of section 4(1) notification. He also relied upon the judgment reported in AIR 2021 SC 4962 in the case of Shankarrao Bhagwantrao Patil Etc. Vs State of Maharashtra. His main submission is that grant of interest under Section 34 is different from section 28 and Section 23(1A). He lastly relied upon the judgment reported in Manu/MH/0733/2012 in the case of Lalitkumar Shah Vs State of Maharashtra. He ultimately submits that the appeal needs to be dismissed. The learned advocate for the claimants in other appeals adopted his arguments.

12. Thus, on hearing the arguments, this court needs to consider whether reference courts in these cases have rightly granted interest from the date of possession in the present case in the light of the judgment of the full bench in the case of Kailash Shiva Rangari (supra) followed in the judgment of

Ramesh Meshram (supra) on grant of interest under Section 28 and 34 of the Act.

13. In view of the judgment in the case of *Kailash Rangari (supra)* it is clear that section 34 interest is to be awarded only from the date of award under Section 11 or from the date of possession, if said possession is taken in the manner provided by the act i.e. under section 16. This court is not considering possession taken under Section 17 of the Act. In the present case, the possession is taken prior to notification under Section 4(1). Though the possession is taken prior to such notification, it cannot be taken to be a starting point for grant of interest under Section 34.

14. So far as Section 28 interest is concerned, this court in the case of Ram has clearly held that the interest is payable even under this section from the date of award and if the possession is taken pursuant to section 16 of the Act then from the date of possession whichever is earlier. No case is made out

to take a different view than taken in the case of Ramesh Meshram (supra).

15. So far as interest under Section 23(1A) is concerned the Hon'ble Supreme Court in the case of Siddappa Visappa Kuri and Anr Vs Special Land Acquisition Officer and another reported in 2002(1)ALL MR 262 (SC) has clearly held that the starting point is only section 4(1) till the date of award under Section 11.

16. Thus, considering all above, this court finds that in the present case, the learned reference courts have erred in directing payment of interest from the date of actual possession or from the date of section 4(1) notification. Said needs to be modified by directing to pay interest under Section 28 and 34 from the date of award under Section 11. So far as interest under Section 23(1A) is concerned, there is no error committed by the learned trial court.

17. All the appeals are thus stand disposed off in above terms.

18. In view of disposal of the appeals, pending civil applications, if any do not survive and are disposed off.

[KISHORE C. SANT, J.]

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