



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1483 OF 2016
WITH
CIVIL APPLICATION NO. 5952 OF 2016
IN FA/1483/2016

The Executive Engineer Kukadi Canal Construction Division,
Kolwadi Division

....Appellant

VERSUS

Chandrakala Dinkar Borade And Another

.....Respondents

.....

Mr. G. B. Rajale, Advocate for Appellant

Mr. G. D. Kale, Advocate for Respondent No. 1

Mr. D. B. Bhange, AGP for Respondent No. 2

.....

CORAM : R.M. JOSHI, J

DATE : JANUARY 10, 2024

PER COURT :

1. Present Appeal is filed challenging judgment and award dated 05.05.2012 passed by learned CJSD, Shrigonda, Dist. Ahmednagar in LAR No. 427/2008 whereby reference is partly allowed and enhanced compensation has been granted in favour of the Respondent – Original Claimant.

2. The land of the respondent was acquired under an award passed by Land Acquisition Officer under Section 11 of the Act. The Respondent had made a reference Petition under Section 18 of the Land

Acquisition Act, 1894 seeking enhancement of compensation. The reference Court partly allowed the claim in reference petition and granted the enhanced compensation @ Rs. 9000/- per R. The interest under Section 34 of the Act has been awarded from the date of possession. Similarly, the benefit under Section 28 of the Act is also granted from that date.

3. Mr. Rajale, learned Counsel for the Appellant, points out that the reference Court has committed an error in awarding the interest *de hors* statutory scheme. He submits that the interest under Section 28 and 34 of the Act has been granted by the reference Court contrary to the law declared by the Full Bench judgment in case of State of Maharashtra Vs. Kailash Shiva Rangari, 2016 (4) ALL MR 513 and subsequent judgment in the case of State of Maharashtra and Others Vs. Ramesh Tukaram Meshram and Others, 2018 (3) Mh.L.J. 616. He also points out that in the present case, the Special Land Acquisition Officer has passed an award on 21.05.2004. The notification under Section 4 of the Act was published on 25.05.2002. In that view of the matter, he urged that the reference Court erred in granting the interest/benefit under Sections 28 and 34 of the Act from the date of possessions. The issue raised on behalf of the Appellant is no more *res integra*. It is well settled that the benefit under Sections 28 and 34 of the Act will be available from the date of award passed by the Land Acquisition Officer in terms of Section 11 of the Act.

4. At this juncture, the reference to the findings recorded by the Larger Bench of this Court in the case of State of Maharashtra Vs. Kailash Shiva Rangari (Supra) in Paragraph No.32 is necessary, which reads thus:

“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. Vs. Rajendra Narayanrao Gaikwad, reported in 2008 (1) Bom. C.R. 839 (A.B.).

(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(1-A) 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(1-A) and Section 34 of the said Act. The terminal points under Section 23(1-A) 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."

5. Pertinently, this Court in the matter of State of Maharashtra Vs. Ramesh Tukaram Meshram (supra) again dealt with the finding recorded by the full bench and interpreted the provisions of Section 28 of the Act and concluded that the interpretation accorded to Section 34 would also have its equal application while understanding the import of Section 28 of the Act. It is further observed that the interest awarded under Section 28 of the Act, just like under Section 34 thereof, cannot be a compensation or damages for the loss of right to retain possession but only compensation payable by the State for keeping back the amount payable to the owner.

6. Keeping in mind the aforesaid propositions of law, it can be seen that manifest error is committed by the reference Court while passing the impugned judgment and award to the extent of grant of interest from the date of award.

7. Mr. Kale, learned Counsel appearing for Respondent, though endeavors to support the award, did not dispute the legal propositions underlined in the aforesaid judgments.

8. In view of the aforesaid discussion, this Court proceed to pass the following order:

ORDER

- (i) The Appeal is partly allowed.
- (ii) The clause no. 5 of the operative part in the impugned judgment and award dated 05.05.2012 passed by CJSD, Shrigonda in LAR No. 427/2008 stands partially replaced as under, without disturbing the other clauses:
 - (a) The Applicants shall be entitled for the benefit under Sections 28 and 34 of the Act from the date of award i.e., 21.05.2004.
 - (b) The Applicants shall be entitled for the interest @ 9% per annum for the first year from the date of award and thereafter @ 15% till realization of the entire amount.
- (iii) The judgment and award passed by the reference Court is modified in the aforesaid terms while confirming rest of award.
- (iv) The appeal is disposed of accordingly.

- (v) In view of disposal of appeal, pending civil applications, if any, are also disposed of.

(R. M. JOSHI, J.)

Malani