

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

FIRST APPEAL NO.1283 OF 2007

The State of Maharashtra. = APPELLANT
(orig.Opponent)

VERSUS

Dhondu Rama Kachare
Age: 45 Yrs., occu. Agril.
R/o Kohandi, Tq. Akole,
Dist. Ahmednagar = RESPONDENT/S

WITH
FIRST APPEAL NO.1323 OF 2007

The State of Maharashtra. = APPELLANT
(orig.Opponent)

VERSUS

Popat Nimba Gaware (dead)Heirs,-

1. Mathurabai Ramchandra Mundhe,
Age: 30,
2. Manabai Popat Gaware,
Age: 60,
3. Manohar Kashinath Gaware,
Age: 42.

All R/o Kohandi, Tq. Akole,
Dist. Ahmednagar = RESPONDENT/S
(orig.Appellants)

WITH
FIRST APPEAL NO.1324 OF 2007

The State of Maharashtra. = APPELLANT
(orig.Opponent)

VERSUS

- Krishan Khanduji Tatile(dead)Heirs,
1. Anjali Krishana Tatile, Age: 40
 2. Eknath Krishana Tatile, Age: 35,

3. Sarubai Deoram Gaware, Age: 26

All R/o Kohandi, Tq. Akole,
Dist. Ahmednagar

= RESPONDENT/S
(orig.Appellants)

WITH

FIRST APPEAL NO.1326 OF 2007

The State of Maharashtra.

= APPELLANT
(orig.Opponent)

VERSUS

Shri Khandu Rama Kirve
Age: 60 Yrs., occu. Agril.
R/o Kohandi, Tq. Akole,
Dist. Ahmednagar

= RESPONDENT/S
(orig.Appellant)

WITH

FIRST APPEAL NO.1327 OF 2007

The State of Maharashtra.

= APPELLANT
(orig.Opponent)

VERSUS

Nana Chima Parate (dead)Heirs,

- a. Kalu Nana Parate, Age: 45 Yrs.
- b. Balu Nana Parate, Age: 43 Yrs.
- c. Dhavale Nana Parate, Age: 40 Yrs.
- d. Indu Nana Parate, Age: 38 yrs.

All R/o Kohandi, Tq. Akole,
Dist. Ahmednagar

= RESPONDENT/S
(orig.Claimants)

WITH

FIRST APPEAL NO.55 OF 2008

The State of Maharashtra.

= APPELLANT
(orig.Opponent)

VERSUS

Sakharam Khandu Tatala(dead)Heirs,

1. Kausabai Manohar Gaware, Age: 35,
2. Dhavalabai Sakharam Tatile, Age: 70,
3. Abhalabai Sakharam Tatile, Age: 55.

All are Agriculturists,
All R/o Kohandi, Tq. Akole,
Dist. Ahmednagar

= RESPONDENT/S
(orig. appellants)

Mr. AM Phule, AGP for Appellant-State;
None for the Respondent/s though served.

CORAM : SMT. VIBHA KANKANWADI, J.
DATE : 31st July, 2020.

ORAL JUDGMENT:-

1. All these appeals pertain to References in respect of the lands acquired by the same Notification; Project and they are almost disposed of by same Presiding Officer on the same date though by different judgments. Since the challenge raised in these appeals is also identical, they are proposed to be disposed of by this common judgment.

2. The subject matter of all the appeals is acquisition of lands of the respective respondent/s-claimant/s from village Kohandi, Tq. Akole, District Ahmednagar for submergence area of Upper Pravara Project. By notification dated 29.4.1986, under Section 4 of The Land Acquisition Act, 1894 (herein after referred to as the Act),

the lands involved in these appeals, which arise out of respective Land Acquisition References, have been acquired as per the following chart, -

FA Nos.	LAR No.	Survey No.	Total Area Acquired.
1283 of 2007	47 of 1990	37/3, 117/1, 33/6	01 Hector 61 R
1323 of 2007	21 of 1990	168/1, 169/1A	02 Hector 00 R
1324 of 2007	48 of 1990	259, 177/B, 25/7, 26/4, 31/3	0.92.9 R
1326 of 2007	20 of 1990	37/1.B.2, 37/5	01 Hector 61 R
1327 of 2007	14 of 1990	167/4, 126/3	01 Hector 91 R
55 of 2008	36 of 1990	31/2, 177/2B, 25/9, 25/7, 26/4, 31/3	01 Hector 34 R

3. After acquisition of the lands, the Special Land Acquisition Officer (for short, SLAO) passed an Award under Section 11 of the Act on 12.2.1988 and the lands were taken in possession on 5.8.1988. The rate that was awarded by the SLAO was Rs.100, 115, 118, 143, 150, 165 per Are respectively. Being aggrieved by the said rate, all the land owners/claimants have preferred the References under Section 18 of the Act. It appears that all the claimants as well as the State relied on the evidence that was adduced in LAR No.

35/1990. Taking into consideration the said evidence, the Reference Court enhanced the compensation to Rs.800/- per Are. Different amount of compensation was awarded in respect of trees taking into consideration the entry about the same in 7/12 extracts and evidence adduced to that effect. Valuation report in respect of trees was submitted by the claimants, which was prepared by a private valuer viz. Mr.Gaikwad. Following is the chart, showing the amount granted by the SLAO and that was enhanced by the Reference Court in each of the appeals, -

First Appeal No.	SLAO (Amount)	Reference Court (Amount)
1283 of 2007	Rs.21,514/- for Land and Rs.14,009/- for Trees.	Rs.1,28,800/- for Land and Rs.14,933/- for Trees.
1323 of 2007	Rs.23,169/- for Land.	Rs.1,60,000/- for Land.
1324 of 2007	Rs.10,998/- for Land and Rs.6,703/- for Trees.	Rs.74,320/- for Land and Rs.25,200/- for Trees.
1326 of 2007	Rs.23,058/- for Land and Rs.2,293/- for Trees.	Rs.1,28,800/- for Land and Rs.97,350/- for 30 Mango Trees.
1327 of 2007	Rs.28,860/- for Land and Rs.11,091/- for Trees.	Rs.1,52,800/- for Land and Rs.13,580/- for Trees.
55 of 2008	Rs.22,158/- for Land and Rs.6,708/- for Trees.	Rs.1,07,200/- for Land and Rs.12,243/- for Trees.

Being aggrieved by the aforesaid enhancement, present appeals have been filed by the acquiring

body-State.

4. Heard learned AGP Shri AM Phule for appellant-State all the appeals. In all the appeals, though the respondent/s-claimants have been duly served, none of them appeared and, therefore, the appeals have been tried ex parte against them.

5. It has been vehemently submitted on behalf of the appellant-State that the enhancement granted by the Reference Court is arbitrary and without any basis. A very cryptic judgment has been passed by the Reference Court, which is solely based on the reasons those were assigned while disposing of the LAR No.35.1990 on merits. The valuation report of the private valuer has been accepted, which is very much on higher side as regards the valuation of the trees is concerned. Further, as regards the interest that has been awarded under Section 28 of the Act, it has been granted from the date of possession, which is contrary to Full Bench judgment of this Court in the case of The State of Maharashtra Vs. Kailas

Shiva Rangari – 2016 (4) ALL MR 513 (FB). On these grounds, it is submitted that the Award deserves to be set aside or modified.

6. At the outset, it is to be noted that various pieces of lands from the village appear to have been acquired by the Government for the aofresaid project. Many Land Acquisition References appear to have been filed. Out of that, main LAR was LAR No.35/1990. Oral evidence adduced in that case was accepted by the claimants herein as well as by the State Government also. A pursis to that effect appears to have been filed by both sides at Exhibit-16 and Exhibit-20 respectively. Perusal of the pursis at Exh.6 would show that the claimants submitted that the nature of the land acquired in the present cases as well as in LAR No.35/1990, is of same quality and in respect of the market value, same evidence was to be adopted and, therefore, by that pursis, said evidence was adopted. Thereafter, by pursis at Exh.20, AGP informed to the Court that the Respondent-State does not want to lead any evidence. Thus, the valuer Gaikwad had given evidence in respect of all

those cases; but no counter evidence was led by the State Government by examining any Government valuer. When there is absolutely no evidence in rebuttal, the learned Reference Court was justified in relying upon the valuation report given by Valuer Mr.Gaikwad. Further, it has not been brought on record that any appeal was preferred by the Government, challenging the judgment in LAR No. 35/1990. When the rate was fixed in respect of the same project for the adjacent lands, then the Reference Court was again justified in awarding the same rate to the lands involved in these appeals also. There is no such material shown by the appellant in support of their contention that the Reference court had fixed the compensation arbitrarily and, therefore, no interference is required in respect of the rate of the lands determined by the Reference Court.

7. Now, as regards the interest that has been awarded under Section 28 of the Act, the Reference Court has awarded it from the date of possession of the lands. It is against the ratio laid down in the Full Bench decision (cited supra).

It should be from the date of Award. However, in the present cases, it appears that the possession of the lands were taken after the Award was passed, i.e. on 5.8.1988 and, therefore, it appears that the learned Reference Court had granted the interest from the date of possession. By the said order granting interest under Section 28 of the Act, the claimants ought to have been aggrieved, however, neither they have filed any cross-objections nor they have challenged the same by way of separate appeals. Even though they have not contested the present appeals though they are served. Under such circumstance, there is no necessity to change or modify the Award. There is no merit in the appeals, they deserve to be dismissed. Accordingly, they are dismissed without any costs. Pending civil applications, if any, stand disposed of.

(SMT. VIBHA KANKANWADI, J.)

BDV