

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

FIRST APPEAL NO. 835 OF 2013

GYANOBA BHAGWANRAO JADHAV (PATIL), DIED THR. L.RS.
TUKARAM AND ORS

VERSUS

THE STATE OF MAH AND ANR

...

Advocate for Appellants : Gunale V.D.

AGP for Respondents: S.P.Deshmukh

...

CORAM : S.V.GANGAPURWALA,J.

DATED : 15TH OCTOBER, 2015

ORDER :-

1. Mr. Gunale, the learned counsel submits that, present appeal is restricted to the extent of non grant of interest under Section 28 of the Land Acquisition Act. According to the learned counsel the interest under Section 28 of the Land Acquisition Act is permissible on the enhanced amount of compensation. The said provision is mandatory. According to the learned counsel the said statutory provision has to be implemented. When the Reference Court has come to the conclusion to enhance the market value the interest under Section 28 of the Land Acquisition Act would follow.

2. Mr. Deshmukh, the learned AGP submits that, in exceptional circumstances and cases the Court can exercise its discretion in not granting interest under Section 28 of the Land

Acquisition Act. In the present case, the petitioner was committing delay in prosecuting the reference. As such, the Reference Court vide order dated 03rd March, 1988 had specifically passed order below Exh. 1 that claimant would not be entitled for interest under Section 28 of the Land Acquisition Act at the rate of 15% per annum. The Reference Court took note of the delay being caused by the claimant for prosecuting with the reference.

3. The learned A. G. P. relies on the judgment of the Apex Court in a case of **Ramanlal Deochand Shah V/s State of Maharashtra and another reported in 2013 AIR (SC) 3452** so also the judgment in a case of **Major General Kapil V/s. Union of India reported in 2015 (4) Mh.L.J. 40.**

4. The Apex Court in the case of Major General Kapil referred supra has observed that, award of interest under Section 28 of the Land Acquisition Act is discretionary power vested in the Court and it has to be exercised in a judicious manner and not arbitrarily. Normally Court awards interest if it enhances the compensation in cases of the amount awarded by the Collector unless there are exceptional circumstances.

5. The Apex Court in a case of Ramanlal referred supra has observed that, the aspect of delay can be considered and the statutory benefits for the delayed period can be denied to the claimants.

6. The Reference Court on 03rd March, 1998 has specifically passed the order invoking Section 151 of C. P. C. that, the claimant would not be entitled for interest under Section 28 of the Land Acquisition Act considering the conduct of the claimant in protracting the matter. The reference is filed in the year, 1991. The Court observed that, even till the year 1998 the documents are not filed and applications for adjournment were given. The delay has been caused in deciding the reference at the behest of the claimant. In view of that, claimant certainly cannot be allowed to take advantage of his own wrong i.e. his act of commission of delay. The claimant can be denied the benefit of interest under Section 28 of the Land Acquisition Act for the delay that has been caused by him.

7. Considering judgment of the Apex Court referred to above and the conduct of the appellant it would be appropriate to deny the benefit of interest under Section 28 to the appellant for the period of the delay caused by the appellant.

8. In the result I pass the following order.

The order with regard to the interest under Section 28 of the Land Acquisition Act is modified to the extent that, the applicant would not be entitled to the interest under Section 28 of the Land Acquisition Act from March 1998 till 15th January, 2013. However, apart from the said period as referred to above

the interest under Section 28 shall be payable by the respondents to the appellant.

[S.V.GANGAPURWALA,J.]

umg/

...