

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

FIRST APPEAL NO.2023 OF 2014

Prabhakar Dattatraya Deshpande

.. Appellant

Versus

The State of Maharashtra through
Collector, Aurangabad and ors.

.. Respondents

Mr R.V. Naiknavare, Advocate for appellant

Mr S.P. Daund, A.G.P. for respondents No.1 and 2

Mr S.G. Sangle, Advocate for respondent No.3

CORAM : N.W. SAMBRE, J.

DATE : 17th April 2015

PER COURT

Heard.

2. The Apex Court in the matter of **Union of India Vs. Pramod Gupta (D) by L.Rs and ors.**, reported in **2005 AIR SCW 4645** in paragraph Nos.110 and 111, observed thus :

“110. It may not, thus, be correct to contend that the said provisions are so imperative in character that waiver thereof is impermissible in law or would be against public interest. Grant of interest in terms of Section 28 of the Land Acquisition Act is discretionary. Only rate of interest specified therein is mandatory. Section 34 of the Act *ex facie*, however, appears to be imperative in character as the word 'shall' has been used. A discretion vested in the court, it is trite, may not be exercised where the right to claim interest has been waived expressly by the parties and/or their counsel. Even a mandatory provision of a statute can be waived.

111. The effect of Section 28 of the Act came up for consideration before this Court in *Raghubans Narain Singh v. The Uttar Pradesh Government through Collector of Bijjor* [AIR 1967 SC 465] wherein this Court held the said provision to be discretionary in character observing that it is for the court to consider whether in the facts and circumstances of the case, such interest should be directed to be paid at all.”

3. In view of above, the claim for interest as is sought to be raised by the appellant in the present appeal cannot be granted, particularly when the appellant has taken recourse to provisions of Section 28-A of the Land Acquisition Act. As such, first appeal stands dismissed.

(N.W. SAMBRE, J.)

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