

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

WRIT PETITION NO. 2748 OF 2017

Nathrao Kondiba Pinate and Others

..PETITIONERS

VERSUS

State of Maharashtra and Others

..RESPONDENTS

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Mr. V.D. Sapkal, Advocate h/f Mr. L.C. Patil, Advocate for petitioners.
Mr. M.A. Deshpande, A.G.P. for respondent - State.

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**CORAM : S.V. GANGAPURWALA AND
K.L. WADANE, JJ.**

DATED : 01st MARCH, 2017

ORDER :

1. Mr. Sapkal, learned Counsel for petitioners submits that the petitioners have filed reference under Section 18 of the Land Acquisition Act, 1894 against the award passed by the S.L.A.O. The said reference is partly allowed. Though in the said reference benefit under Section 34 of the Land Acquisition Act, 1894 is is granted, same is not given as per the judgment of the Full Bench of this Court. As per the judgment of the Full Bench of this Court, the benefit under Section 34 is to be awarded till realisation of the amount whereas the Reference Court has awarded the said benefit only till the date of award.

2. We have heard learned A.G.P. It is submitted that appeal is already filed against the award passed by the Reference Court by the government. It is the fact that the Full Bench of this Court in the case reported as **2016 (3) Mh.L.J. 457 (State of Maharashtra Vs. Kailash Shiva Rangari)** has observed as under:-

“33.(a) If the possession is taken before the notification under Section 4(1) of the Land Acquisition Act is published and/or before the award is passed, the landowner would be entitled for interest as per section 34 necessarily from the date of passing of the award under Section 11 of the said Act, except in cases where the possession is taken in accordance with section 17 of the said Act, and in that situation only, the provision of section 34 of the said Act shall start operating from the date of possession.

(b) We also hold that the decision of the Division Bench of this Court in the case of Lalitkumar Himmatlal Shah Vs. State of Maharashtra and others, decided by Smt. Vasanti A. Naik and Shri Prasanna B. Varale, JJ. And reported in 2012(4) Mh.L.J. 742, lays down a correct position of law and it does not require reconsideration.”

3. It is submitted in the present case that possession is taken by private negotiations. In view of that the petitioner would be entitled for the interest under Section 34 of the Act from the date of award and not

prior to the said date. The Reference Court has granted interest under Section 34 of the Act to the petitioner from the date of notification till the date of award which certainly is erroneous. The petitioner would not be entitled to claim interest for the said period.

4. The petitioners shall not claim interest under Section 34 awarded by Reference Court. The authority shall decide the application filed by the petitioner seeking interest under Section 34 as per the judgment of the Full Bench of this Court in the case of State of Maharashtra Vs. Kailash Shiva Rangari (supra) expeditiously and preferably within a period of four months. The respondents herein shall not be liable to pay interest under Section 34 as awarded by the Reference Court. Copy of the order be sent to the Executing Court. If application is decided by the authority, the payment accordingly shall be made to the petitioners within four months thereafter. Writ petition is disposed of. No costs.

(K.L. WADANE, J.)

(S.V. GANGAPURWALA, J.)

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