

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

902 FIRST APPEAL NO. 3840 OF 2017
WITH CA/6238/2012 IN FA/3840/2017 WITH FA/3843/2017
WITH CA/6236/2012 IN FA/3843/2017 WITH FA/3844/2017
WITH CA/6240/2012 IN FA/3844/2017 WITH FA/3845/2017
WITH CA/6234/2012 IN FA/3845/2017

THE STATE OF MAHARASHTRA AND ANR
VERSUS

MURLIDHAR BABA BANKAR AND ANR

WITH

903 FIRST APPEAL NO. 3846 OF 2017
WITH CA/6113/2012 IN FA/3846/2017 WITH FA/3847/2017
WITH CA/6107/2012 IN FA/3847/2017 WITH FA/3848/2017
WITH CA/6105/2012 IN FA/3848/2017 WITH FA/3849/2017
WITH CA/6111/2012 IN FA/3849/2017

THE STATE OF MAHARASHTRA AND ANR
VERSUS

HANUMANT BHAIKAVNATH JAGTAP (DIED) LRS ALKA HANUMANT
JAGTAP

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A.G.P. for Appellants : Mr. S.S. Dande.
Advocate for Respondents : Shinde Chandrakant K.

CORAM : K. L. WADANE, J.

DATE : 4th October, 2017

ORDER:

1. With the consent of the learned counsels for both the sides, the appeals are taken up for final hearing.

2. Heard learned A.G.P. appearing for the appellants and learned counsel appearing for the respondents.

3. These appeals are filed by the appellants

against the impugned judgment and Award mainly on the ground that the learned Reference Court has wrongly awarded the interest under the provisions of Section 34 of the Land Acquisition Act (for short "the Act") from the date of taking over the possession of the land of the respective respondents.

4. Learned A.G.P. restricted his arguments only on the aspect of the date from which the interest under section 34 of the Act has to be paid.

5. In the present matter the notification under section 4 of the Act was issued and published on 05.02.2004, Award was passed on 08.11.2004 and admittedly possession was taken on 22.07.2002. The learned Reference Court has awarded the interest under section 34 of the Act from the date of possession i.e. from 22.07.2002.

6. Learned A.G.P. submitted that the issue regarding the payment of interest and its date answered by the full Bench of this Court in case reported in **A.I.R. 2016 Bombay 141 (State of Maharashtra V/s. Kailash Shiva Rangari)** wherein it is observed by the full Bench of this Court that,

" The interest as provided under section 34 of the Act shall start running from the date of possession, only, if the possession is taken over by the Collector in exercise of his powers under section 17 of the Act, which would obviously be after issuance of notice under section 9 (1) of the Act. If the possession is taken under section 17, the interest payable under section 34 of the Act shall start running from the date of possession and not from the date of Award."

7. In the present case, admittedly, Collector has not taken the possession of the acquired land in exercise of his powers under section 17 of the Act.

8. It is further observed in the above referred case that,

"Where the possession of the land under acquisition is taken prior to issuance of notification under section 4(1) of the Act, then there would be no question of invoking the urgency clause under section 17 of the Act and the interest under section 34 shall start running from the date of passing of the Award."

9. In view of the above, I am of the opinion, the impugned judgment and order is erroneous to the extent of granting interest under section 34 of the Act from the date of possession i.e. on 22.07.2002. However, it

shall be from the date of Award i.e. on 08.11.2004.
Therefore, the impugned judgment and Award needs to be modified to that effect. The respondents are entitled for interest under section 34 of the Act from the date of Award.

10. With this modification, all the appeals are partly allowed and disposed of.

11. Pending Civil Applications are disposed of.

(K. L. WADANE, J.)

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