

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

FIRST APPEAL NO. 3260 OF 2018

1. The Executive Engineer
Udhar Pravara Canal Division,
Sangamner, Dist. Ahmednagar,
Through;
Vivek Hanumant Lavat,
Age-32 Years, Occ: Service as
Assistant Engineer Grade I,
at Palkhed Canal Sub-Division No.5,
Talegaon Dhege, Tq. Sangamner,
Dist. Ahmednagar.
2. The State of Maharashtra,
S.L.O. No.3, Aurangabad road,
Ahmednagar. ..Appellants

Versus

1. Kundalik Shankar Gholap,
Age 40 yrs, Occu. Agriculture,
 2. Ramnath Shankar Gholap,
Age-54 yrs, Occ-Agriculture,
- Both R/o- Dhumalwadi, Tq. Akole,
Dist. Ahmednagar. ..Respondents

WITH

FIRST APPEAL NO. 3261 OF 2018

1. The Executive Engineer
Udhar Pravara Canal Division,
Sangamner, Dist. Ahmednagar,
Through;
Vivek Hanumant Lavat,
Age-32 Years, Occ: Service as
Assistant Engineer Grade I,
at Palkhed Canal Sub-Division No.5,
Talegaon Dhege, Tq. Sangamner,
Dist. Ahmednagar.
2. The State of Maharashtra,
S.L.O. No.3, Aurangabad road,
Ahmednagar. ..Appellants

Versus

1. Chima Kashiba Dhumal,
(Since Dead, Through L.Rs.)
- 1A. Raghunath Chima Dhumal,
Age-50 yrs, Occ-Agriculture,
2. Laxman Kashiba Dhumal,
Age-65 yrs, Occ-Agriculture,

1 & 2 R/o. Dhumalwadi, Tq. Akole,
Dist. Ahmednagar.
3. Laxmibai Chima Dhumal,
Age-68 yrs, Occ-Agriculture,
R/o-Dhumalwadi, Tq. Akole,
Dist. Ahmednagar.
4. Kaushayabai Kacharu Awari,
Age-48 yrs, Occ-Nil,
R/o-Dhamangaon Awari, Tq.Akole,
Dist. Ahmednagar.
5. Kisanabai Karbhari Kadum,
Age-45 yrs, Occ-Nil,
R/o-Hivargaon Ambre, Tq.Akole,
Dist. Ahmednagar.
6. Manda Shivaji Kotkar,
Age-43 yrs, Occ-Nil,
R/o-Dhumalwadi, Tq.Akole,
Dist. Ahmednagar.
7. Bharat Chima Dhumal,
Age-41 yrs, Occ-Nil,
R/o-Dhumalwadi, Tq.Akole,
Dist. Ahmednagar.
8. Shindu Dilip Zolekar,
Age-40 yrs, Occ-Nil,
R/o-Dhumalwadi, Tq.Akole,
Dist. Ahmednagar.
9. Nanda Baban Awari,
Age-38 yrs, Occ-Nil,

R/o-Dhamangaon Awari, Tq.Akole,
Dist. Ahmednagar.

10. Sharaswati Bhausaheb Fhargade,
Age-35 yrs, Occ-Nil,
R/o-Nimgaon (B), Tq. Sangamner,
Dist. Ahmednagar.
11. Arun Chima Dhumal,
Age-29 yrs, Occ-Nil,
R/o-Dhamangaon Awari, Tq.Akole,
Dist. Ahmednagar. ..Respondents

WITH

FIRST APPEAL NO. 3262 OF 2018

1. The Executive Engineer
Udhar Pravara Canal Division,
Sangamner, Dist. Ahmednagar,
Through;
Vivek Hanumant Lavat,
Age-32 Years, Occ: Service as
Assistant Engineer Grade I,
at Palkhed Canal Sub-Division No.5,
Talegaon Dhege, Tq. Sangamner,
Dist. Ahmednagar.
2. The State of Maharashtra,
S.L.O. No.3, Aurangabad road,
Ahmednagar. ..Appellants

Versus

Bhauseth Ganpat Bhot,
Age 75 yrs, Occu. Agriculture,
R/o-Dhumalwadi, Tq.Akole,
Dist. Ahmednagar. ..Respondent

WITH

FIRST APPEAL NO. 3263 OF 2018

1. The Executive Engineer
Udhar Pravara Canal Division,
Sangamner, Dist. Ahmednagar,
Through;
Vivek Hanumant Lavat,
Age-32 Years, Occ: Service as
Assistant Engineer Grade I,

at Palkhed Canal Sub-Division No.5,
Talegaon Dhege, Tq. Sangamner,
Dist. Ahmednagar.

2. The State of Maharashtra,
S.L.O. No.3, Aurangabad road,
Ahmednagar. ..Appellants

Versus

Bhaskar Zumbar Deshmukh,
Age 55 yrs, Occu. Agriculture,
R/o-Dhumalwadi, Tq.Akole,
Dist. Ahmednagar. ..Respondent

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Mr. Shyam C. Arora, Advocate for Appellants.
Mr. Vinod Y Bhide, Advocate for Respondents.

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CORAM : P.R. BORA, J.
DATE : 25th OCTOBER, 2018.

ORAL JUDGMENT:-

. Since, in all these appeals common objection has been raised by the acquiring body in exception to the awards impugned in the present appeals, common arguments were heard in these appeals and I deem it appropriate to decide these appeals by a common reasoning.

2. Shri Arora, the learned counsel appearing for the appellants at the outset submitted that challenge to the awards impugned in the present appeals is restricted only to the extent of the interest awarded by the Reference Court under

Section 28 of the Act from the date of Section 4 notification or from the date of possession.

3. Shri Bhide, the learned counsel appearing for the respondents i.e. original claimants submitted that present appeals be admitted so that the claimants may file cross objection for enhancement in the amount of compensation as awarded by the Reference Court. I am, however, not convinced with the request so made by Advocate Shri Bhide. If the claimants intend to file appeal seeking enhancement in the amount of compensation, it would be open for them to file independent appeals. However, in the present appeals, since the challenge is restricted only to the extent of grant of interest under Section 28 of the Act, I find it appropriate to finally decide these appeals.

4. Shri Arora, the learned counsel brought to my notice the judgment of the full bench of this Court in the case of ***"The State of Maharashtra Vs. Kailash Shiva Rangari, 2016 (4) Bom.C.R. 1"*** wherein the full bench has held that interest under Section 34 of the Act can only be awarded from the date of

publication of the award under Section 11 of the Act and not from any prior date. The learned counsel then brought to my notice the judgment of the learned Single Judge of this Court (Coram: S.B. Shukre, J.) in First Appeal No. 383 of 2004. In the aforesaid judgment the learned Single Judge has held that the interpretation which has been made of Section 34 by the full bench of this Court would squarely apply to Section 28 of the Act also. The learned counsel also invited my attention to one another judgment delivered by learned Single Single Judge of this Court (Coram: Sunil P. Deshmukh, J.) in First Appeal No. 483 of 2018 delivered on 05.03.2018, wherein the learned Single Judge has modified the judgment and award so far as the interest under Section 28 of the Act granted by the Reference Court in the said matters from the date of issuance of Section 4 notification or from the date of possession. The learned counsel in the circumstances, prayed for modification in the impugned judgment and award to the said extent and allow the appeals filed by the acquiring body to the aforesaid extent.

5. Shri Bhide, the learned counsel appearing for the original claimants has not disputed the legal position and the arguments as been canvassed by the learned counsel. As noted herein above, it was his only contention that the claimants also want to file the appeal for enhancement since, the compensation has not been adequately awarded by the Reference Court. I reiterate that the right of the claimants will not be taken away if these appeals are decided. In view of the fact that the legal position has not been disputed by the learned counsel appearing for the respondents-claimants, the appeals need to be allowed to the aforesaid extent.

6. The Hon'ble full bench of this Court in the case of ***"The State of Maharashtra Vs. Kailash Shiva Rangari"*** (cited supra) has ruled that the interest under Section 34 of the land acquisition Act can only be awarded from the date of publication of the award under Section 11 of the said Act and not from any prior date. Relying upon the said judgment the learned Single Judge of this Court in First Appeal 383 of 2004 has held that the

interpretation which has been made of Section 34 by the full bench of this Court would squarely apply to Section 28 of the Act also. As was argued by Shri Arora in another judgment in First Appeal No.483 of 2018 delivered on 05.03.2018, the learned Single Judge has modified the judgment and award impugned in the appeal before him so far as interest under Section 28 of the Act granted by the Reference Court in the said matter from the date of issuance of Section 4 notification. In the present matter, the learned Reference Court has awarded the interest under Section 28 of the Act from the date of issuance of notification under Section 4 of the Act. The order so passed thus cannot be sustained in view of the full bench judgment of this Court and the judgments delivered by two learned Single Judges of this Court in the matters referred herein-above. The impugned awards to the aforesaid extent, therefore, need to be modified. It is not in dispute that the award under Section 11 of the Act was declared in all these matters on 25.05.2001, the interest under Section 28 of the Act, therefore, can be granted to the claimants from the said date and not from any prior date.

For the reasons stated above, the following order is passed:

ORDER

- i) The awards impugned in the present appeals so far as they relate to award of interest under Section 28 of the Act from the date of issuance of Section 4 notification, stand quashed and set aside.
- ii) The interest under Section 28 of the Act shall be made payable to the claimants in all these awards from the date of declaration of the award under Section 11 of the Act i.e. from 25.05.2001.
- iii) The awards be modified accordingly.
- iv) All these appeals thus stand partly allowed in the aforesaid terms.
- v) The claimants in all these awards impugned in the present appeals are permitted to withdraw the amount deposited in these appeals in this Court to the extent they would be held entitled in view of the modified award along with interest accrued thereon. The balance

amount be refunded to the acquiring body
along with interest accrued thereon.

(P.R. BORA, J.)

Mujaheed//