

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

FIRST APPEAL NO.4454 OF 2016

The Executive Engineer,
Nanded Minor Irrigation through
Medium Project Division,
Nanded

.. APPELLANT
(Ori.Resp.No.2)

VERSUS

1. Sarjabai Dharat Mundhe
Age: Major, Occu.: Agri.,
2. Ushabai Shivaji Mundhe
Age: Major, Occu.:Agri.,
3. Dharat Devrao Mundhe
Age: Major, Occu.:Agri.,
4. Shivaji Devrao Mundhe
Age: Major, Occu.:Agri.,
5. Venkat Devrao Mundhe
Age: Major, Occu.:Agri.,
All R/o. Hagdal,
Tq. Ahmedpur, Dist. Latur
6. The State of Maharashtra,
Through the Collector,
Latur.

Respondent No.1 to 5
(Ori. Claimant)

Respondent No.6
(Ori. Resp.No.1)

... RESPONDENTS

.....

Mr. Ruturaj C. Patil, Advocate for Appellant;
Mr. P.G. Borade, AGP for Respondent - State;
Mr. N.P. Patil Jamalpurkar, Advocate for Resp.Nos.1 to 5.

.....

WITH**FIRST APPEAL NO.4455 OF 2016**

The Executive Engineer,
Nanded Minor Irrigation through
Medium Project Division,
Nanded

.. APPELLANT
(Ori.Resp.No.2)

VERSUS

1. Balaji Bapurao Mundhe
Age: Major, Occu.:Agri.,
2. Govind Bapurao Mundhe
Age: Major, Occu.:Agri.,
3. Bapurao Devrao Mundhe
Age: Major, Occu.:Agri.,
All R/o. Hagdal,
Tq. Ahmedpur, Dist. Latur
4. The State of Maharashtra,
Through the Collector,
Latur.

Respondent No.1 to 3
(Ori. Claimant)

Respondent No.4
(Ori. Resp.No.1)

...RESPONDENTS

Mr. Ruturaj C. Patil, Advocate for Appellant;
Mr. P.G. Borade, AGP for Respondent - State;
Mr. N.P. Patil Jamalpurkar, Advocate for Resp.Nos.1 to 3.

CORAM : PR. BORA, J.

Dated: September 25, 2018

ORAL JUDGMENT :

1. Though it was sought to be contended by Shri Ruturaj Patil the learned Counsel appearing for the appellant that the compensation as has been enhanced by the

reference Court is arbitrarily enhanced, I do not wish to indulge in making any more discussion on the said issue for the reason that in both these matters the lands which were the subject matter of the acquisition were the small pieces of lands admeasuring 10-R, 11-R, 22-R etc. Moreover, on perusal of the Judgment, apparently, it does not appear to me that, the compensation as has been determined by the reference Court is in any way on higher side or excessive. However, there appears substance in the another objection raised by learned Counsel Shri Patil, which relates to the interest awarded by the reference Court on the enhanced amount of compensation under Section 28 of the Land Acquisition Act (hereinafter referred to as the 'Act') from the date of issuance of Section-4 notification.

2. Learned Counsel Shri Patil relying upon the Judgment of the Full Bench of this Court in the case of **State of Maharashtra Vs. Kailash Shiva Rangari, AIR 2016 Bombay Page No.141** submitted that, the interest under Section 34 of the Act can only be awarded from the date of the Award under Section 11 of the Act and not from the date of issuance of

Section-4 notification or from the date of taking possession of the subject lands. The learned Counsel further relied upon the Judgment of this Court (**Coram: S.B. Shukre, J.**) delivered on 23.11.2017 in First Appeal No.383 of 2004 to canvass that even for grant of interest under Section 28 of the Act, the same criteria would be applicable and the interest under Section 28 of the Act can also be granted only from the date of publication of the Award under Section 11 of the Act and not from any prior date. The learned Counsel also relied upon the another Judgment delivered by this Court (**Coram: Sunil P. Deshmukh, J.**) on 05.03.2018 in First Appeal No.483 of 2018 with connected appeals, wherein this Court has relying upon the Full Bench Judgment in the case of **State of Maharashtra Vs. Kailash Shiva Rangari** (cited supra) and in the First Appeal No.383 of 2004 has modified the awards impugned in the appeals before it.

3. The learned Counsel submitted that, in the present matters, the reference Court has awarded the interest under Section 28 of the Act from the date of issuance of Section-4 notification and as such, the impugned Award to that extent

deserve to be set aside.

4. Shri N.P. Patil Jamalpurkar the learned Counsel appearing for the respondents – original claimants fairly submitted that, in view of the Judgments relied upon by Shri Ruturaj Patil the awards impugned in the present appeals will have to be modified to the extent of award of interest under Section 28 of the Act.

5. In the present matters, reference Court has awarded the interest under Section 28 of the Act from the date of issuance of Section-4 notification. In view of the Judgments referred to herein above relied upon by Shri Ruturaj Patil, the aforesaid part of the impugned order cannot be sustained and deserves to be set aside.

6. For the reasons stated above, the following order is passed.

ORDER

(i) Clause-5 of the common Judgment and Award passed on 17.12.2012 in L.A.R. No.95 of 2012 with connected appeals stand set aside insofar as L.A.R. Nos.95 of 2012 and 96 of 2012 are concerned.

(ii) The claimants in L.A.R. Nos.95 of 2012 & 96 of 2012 are entitled for the interest under Section 28 of the Act on the amount of compensation as enhanced by the reference Court from the date of Award under Section 11 of the Act.

(iii) The impugned common Judgment and Award stands modified to the aforesaid extent insofar as L.A.R. Nos.95 of 2012 and 96 of 2012 are concerned.

(iv) The Acquiring Body shall deposit the amount of compensation, as may be redetermined, before the reference Court within eight weeks from the date of this order.

(v) Pending Civil Application, if any, stands disposed of.

. First Appeals are partly allowed in the aforesaid terms.

(PR. BORA, J.)