IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 8708 OF 2018
IN FAST/35491/2016

Annasaheb Hasanrao Shinde and Ors.
Versus
Executive Engineer, Nimna Dudhana Project Selu an Ors.

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Advocate for Applicants : Mr. Kumar Gaurav M. More,
Advocate for Respondent No. 1 : Mr. B.R. Surwase
AGP for Respondent No. 2 : Mr. S.N. Morampalle

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WITH CA/8709/2018 IN FAST/35485/2016
WITH CA/8710/2018 IN FAST/37600/2016
WITH CA/8711/2018 IN FAST/37423/2016
WITH CA/8712/2018 IN FAST/37420/2016
WITH CA/8713/2018 IN FAST/37338/2016
WITH CA/8714/2018 IN FAST/35567/2016
WITH CA/8715/2018 IN FAST/37334/2016
WITH CA/8716/2018 IN FAST/37429/2016
WITH CA/8717/2018 IN FAST/37603/2016
WITH CA/8718/2018 IN FAST/37597/2016
WITH CA/8719/2018 IN FAST/35465/2016
WITH CA/8720/2018 IN FAST/35494/2016
WITH CA/8721/2018 IN FAST/35488/2016
WITH CA/8723/2018 IN FAST/35497/2016
WITH CA/8750/2018 IN FA/1839/2017
WITH CA/8751/2018 IN FA/1834/2017
WITH CA/8752/2018 IN FA/1841/2017

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CORAM : A.M. DHAVALE,J.

DATE: 27th JULY, 2018

PER COURT:-

1. The learned advocate for the applicants submits that

the respondent No.1/appellant has deposited amount and the court has granted stay to the execution of the award/decree. He submits that the entire amount is not deposited while learned advocate for the respondent No.1 submits that entire amount has been deposited in this court.

2. The applicants-original claimants have filed present applications for withdrawal of the amount. The advocate for the applicants submits that in similar matters arising out of the same award, permission is granted to withdraw the entire amount.

3. Learned advocate for the respondent No.1/appellant relies on the Full Bench Judgment in the case of ***State of Maharashtra Vs. Kailash Shiva Rangari*** to submit that payment of interest both under section 28 and 34 of the Land Acquisition Act, 1894, are not permissible, and therefore, those amounts should not be permitted to be withdrawn.

4. Learned advocate for respondent No.1 submits that the deposited amount is only with regard to the interest

under section 28 and not under section 34. The parties shall submit statement of calculation and amount deposited.

5. I find that grant of interest both under sections 28 and 34 is, *prima facie*, wrong. Therefore, if any amount of interest is deposited under section 34, it cannot be permitted to be withdrawn.

6. It is argued that since possession was taken after the notification, but before the Award, the applicants/original claimants are entitled for interest only from the date of Award. I find that the applicants/original claimants would be entitled for rental compensation from the date of possession till the date of Award. Hence, I direct as follows :-

(i) Out of the deposited amount excluding the interest under section 34, 75% amount shall be paid to the applicants/original claimants on undertaking and the balance 25 % shall be paid on furnishing solvent sureties to the satisfaction of the Registrar.

(ii) If the interest under section 34 is not deposited, the entire amount will be paid as above.

7. Civil Applications stand disposed of as above.

(**A.M.DHAVALE, J**)

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