

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

FIRST APPEAL NO.2635 OF 2018

Bhagwan S/o. Dhondiba Dahale
Age: 65 years, Occu.:Agril,
R/o. Kedarwakdi, Tq. Mantha,
Dist. Jalna

... APPELLANT
(Ori. Applicant)

VERSUS

1. The State of Maharashtra
Through Collector, Jalna.
2. The Special Land Acquisition Officer
Minor Irrigation Works, Jalna
3. The Executive Engineer,
Lower Dudhana Project Sailu
At present Minor Irrigation
Project, Jalna

... RESPONDENTS
(Orig. Respondents)

Shri. Kailas B. Jadhav, Advocate for appellant;
Shri. A.M.Phule, AGP for Resp. Nos.1 and 2.
Smt Sunita D. Shelke, Advocate for Respondent No.3

WITH

FIRST APPEAL NO.2636 OF 2018

Asaram Limbaji Shinde,
Age: 50 years, Occu. Agri,
R/o. Kedarwakdi, Tq. Mantha,
Dist. Jalna

... APPELLANT
(Ori. Claimant)

VERSUS

1. The State of Maharashtra
Through Collector, Jalna.

2. The Special Land Acquisition Officer
Minor Irrigation Works, Jalna

3. The Executive Engineer,
Nimna Dudhana Project Selu
Dist. Parbhani
At present Office Shifted to
Minor Irrigation Department
at Motibag Jalna Tq. and Dist.
Jalna

... **RESPONDENTS**

Shri. Kailas B. Jadhav, Advocate for appellant;
Shri P.G. Borade, AGP for Resp. Nos.1 & 2
Smt. Sunita D. Shelke, Advocate for Resp. No.3

WITH

FIRST APPEAL NO.2637 OF 2018

Sunder S/o. Limbaji Shinde,
Age: 45 years, Occu. Agri,
R/o. Kedarwakdi, Tq. Mantha,
Dist. Jalna

... **APPELLANT**
(Ori.Claimant)

VERSUS

1. The State of Maharashtra
Through Collector, Jalna.

2. The Special Land Acquisition Officer
Minor Irrigation Works, Jalna.

3. The Executive Engineer,
Nimna Dudhana Project, Selu,
At present Office Shifted to
Motibag At Jalna Tq. and Dist.
Parbhani

... **RESPONDENTS**

Shri. Kailas B. Jadhav, Advocate for appellant;
 Ms S.S.Raut, AGP for Resp. Nos.1 and 2.
 Smt. Sunita D. Shelke, Advocate for Resp.No.3

WITH

FIRST APPEAL NO.2638 OF 2018

Kisan Jijabhau Kavhale (Died)
 Through LRs.

1. Sarubai W/o. Kisan Kavhale,
 Age: 70 years, Occu. Agri.,
2. Asaram S/o. Kisan Kavhale,
 Age; 55 years, Occu. Agri.,
3. Rajebhau S/o. Kisan Kavhale,
 Age: 35 years, Occu.:Agri.,

All R/o. Kedarwakdi, Tq. Mantha,
 Dist. Jalna

... APPELLANTS
 (Ori.Claimants)

VERSUS

1. The State of Maharashtra
 Through Collector, Jalna.
2. The Special Land Acquisition Officer
 Minor Irrigation Works, Jalna
3. The Executive Engineer,
 Nimna Dudhana Project, Selu,
 At present Office Shifted to
 Motibag At Jalna, Tq. and Dist.
 Parbhani

... RESPONDENTS

Shri. Kailas B. Jadhav, Advocate for appellants;
 Shri. A.M.Phule, AGP for Resp.No.1 and 2.
 Smt. Sunita D. Shelke, Advocate for Resp.No.3

WITH**FIRST APPEAL NO.2639 OF 2018**

Pandit S/o. Thavra Rathod (Died)
Through LRs.

1. Rukhminbai W/o Pandit Rathod,
Age: 50 years, Occu.:Agril.,
R/o. Kedarwakdi, Tq. Mantha,
Dist. Jalna
2. Mahadeo S/o. Pandit Rathod,
Age: 27 Years, Occu.:Agril.,
R/o. As above
3. Govind S/o. Pandit Rathod,
Age: 26 Years, Occu. Agril,
R/o. As above.
4. Radha D/o. Pandit Rathod (Pawar)
Age: 22 years, Occu.:Agril,
R/o. As above

... APPELLANTS
(Ori. Claimants)

VERSUS

1. The State of Maharashtra
Through Collector, Jalna.
2. The Special Land Acquisition Officer
Minor Irrigation Works, Jalna
3. The Executive Engineer,
Nimna Dudhana Project, Selu,
Dist. Parbhani
At present Office Shifted to
Minor Irrigation Department,
Motibag At Jalna Tq. and Dist.
Jalna

... RESPONDENTS

Shri. Kailas B. Jadhav, Advocate for appellants;
Ms S.S.Raut, AGP for Resp. Nos.1 and 2.
Smt. Sunita D. Shelke, Advocate for Resp. No.3

CORAM : P.R. BORA, J.

Dated: SEPTEMBER 25, 2018

ORAL JUDGMENT :

1. These appeals are filed against the Judgments and Awards dtd. 25.07.2008 & 22.08.2008 passed by District Judge-2, Jalna arising out of the L.A.R. Nos.16 of 2001, 44 of 2001, 456 of 2002, 45 of 2001 and 337 of 2002. Since the lands acquired in all these appeals are for the purpose of same project i.e. the Lower Dudhna Project, I have heard the common arguments in all these appeals and I deem it appropriate to decide these appeals by a common reasoning.

2. The lands involved in all these appeals were acquired for Lower Dudhna Project from village Kedarwakdi, Tal. Mantha, Dist. Jalna. The lands were acquired vide notification under Section-4 of the Land Acquisition Act (hereinafter referred to as the 'Act') published in the official Gazette on 13.05.1995 and Award under Section 11 of the Act was passed on 31.03.1999. The lands involved in these matters

are non-irrigated lands. Seeking enhancement in the amount of compensation as has been awarded by the reference Court, the claimants have preferred the present appeals.

3. The learned Counsel appearing for the appellants at the beginning of his argument itself pointed out that, the present appeals can be disposed of since these appeals stand covered by the Judgment and Award dated 17.07.2017 made by this Court in First Appeal No.4083 of 2016 and connected matters, concerning to the very same acquisition under the very same notification and for the very same purpose.

4. In view of the fact that, in the earlier appeals decided by this court, the compensation has been enhanced by determining the market value of the lands acquired in the said matters at the rate of Rs.1500/- per *Are* for dry lands, the present appeals need to be allowed since the lands involved in the present appeals are also from village Kedarwakdi acquired for Lower Dudhna Project vide the same notification and under the same Award.

5. Smt Shelke the learned Counsel appearing for the Acquiring Body submitted that, the Reference Court in the present matters has committed an error in awarding the interest under Section 34 of the Act from the date of issuance of Section 4 notification. The learned Counsel further submitted that, even though Acquiring Body has not filed separate appeals challenging the Judgments and Awards passed in Land Acquisition References involved in the present appeals, invoking the powers under Order-XLI, Rule-33 of the Code of Civil Procedure this Court can rectify the mistake committed by the Reference Court in awarding the interest under Section 34 of the Act, in some cases from the date of Section 4 notification and in some cases from the date of taking possession of the land. The learned Counsel relied upon the Judgment of Full Bench of this Court in the case of **State of Maharashtra Vs. Kailash Shiva Rangari, 2016 (4) Bom.C.R. 1.**

6. Shri K.B. Jadhav the learned Counsel appearing for the appellants conceded the legal position settled by the Full Bench of this Court in the case of **State of Maharashtra Vs.**

Kailash Shiva Rangari (cited supra) and submitted for passing appropriate orders.

7. In the present group of appeals, it is noticed that, in First Appeal No.2635 of 2018 arising out of L.A.R. No.16 of 2001 and in First Appeal No.2639 of 2018 arising out of L.A.R. No.337 of 2002, the Reference Court has awarded the interest under Section 28 of the Act correctly from the date of Award.

8. In other three matters i.e. First Appeal No.2636 of 2018 arising out of L.A.R. No.44 of 2001, First Appeal No.2637 of 2018 arising out of L.A.R. No.456 of 2002 and First Appeal No.2638 of 2018 arising out of L.A.R. No.45 of 2001, the Reference Court has awarded the interest under Section 34 of the Act from the date of possession. The orders to that extent will have to be set aside. In the result, the following order is passed.

ORDER

(i) The Judgments and Awards passed in L.A.R. Nos.16 of 2001, 44 of 2001, 456 of 2002, 45 of 2001, 337 of 2002 are modified as under:

- (a) The respondents shall jointly and severally pay to the appellants the compensation at the enhanced rate of Rs.1500/- per *Are*.
 - (b) As undertaken by the appellants, they shall not be entitled for the statutory benefits and the interest in respect of the period of delay caused in filing the appeals by them on the enhanced amount of compensation.
 - (c) The order passed by the Reference Court in L.A.R. Nos.44 of 2001, 456 of 2002 & 45 of 2001 insofar as it relates to grant of interest under Section 34 of the Act from the date of possession is quashed and set aside, instead such an interest is made payable from the date of declaration of the Award under Section 11 of the Act i.e. from 31.03.1999.
- (ii) The Awards be prepared as per the above modification.
- . The appeals stand partly allowed in the aforesaid terms.
- (iii) Pending Civil Application, if any, stands disposed of.

(P.R. BORA, J.)