

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

1 FIRST APPEAL NO. 1190 OF 2003

. The State of Maharashtra ..Appellant
(Ori. Respondent)

VERSUS

1. Arjun Sopan Kungar
Age: 35 yrs.
2. Dattatraya Sopan Kungar
Age: 30 yrs.,
3. Santosh Rakhmaji Kungar
Age: Minor.
- 4 Jalindar Rakhmaji Kungar
Age: Minor.

[Nos.1 and 2 are Agriculturists,
guardian Deubai Rakhmaji Kungar]
All R/o. Takali – Ionar, Tq.Shrigonda
Dist.Ahmednagar.

..Respondents
(Ori. Claimants)

...

2 FIRST APPEAL NO. 1399 OF 2003

. The State of Maharashtra ..Appellant
(Ori. Respondent)

VERSUS

1. Ramchandra Ganpat Ghawade
Age: 56 yrs., Occu.: Agriculturists,
2. Haribhau Ganpat Ghawade
Age: 48 yrs., Occu.: Agriculturists.
3. Sanjay Vithoba Shinde
Age: 34 yrs., Occu.: Agriculturists.
4. Pandurang Ananda Shinde

Age: 32 yers. Occu.: Agriculturists.

All R/o. Tandali -dumala
Tal.Shrigonda, Dist.Ahmednagar.

..Respondents
(Ori. Claimant)

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AGP for Appellant : Shri A.M.Phule & Shri P.M.Kulkarni
Advocate for Respondents : Shri S.D.Jaybhar h/f.
Shri D.R.Jaybhar
...

CORAM : P.R.BORA, J.

DATE: 31st January, 2019

ORAL JUDGMENT:-

1 Not on board. Taken on board.

2 These appeals were directed to be placed on today's board for final disposal, however, the same were not included in the cause-list. The matters are, therefore, taken up for final disposal.

3 Heard Shri A.M.Phule and Shri P.M.Kulkarni, learned Assistant Government Pleaders for the appellant State. Both were common in submitting that the challenge to the awards impugned in these appeals is restricted only to the grant of interest under Section 28 and 34 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act). Learned Assistant Government Pleaders pointed out that the Reference Court in both these matters has granted interest under Section 28 as well as Section 34 of the Act, from the date of possession of the

subject lands. The learned Assistant Government Pleaders submitted that in view of the Full Bench Judgment of this Court in the case of ***State of Maharashtra Vs. Kailash Shiva Rangari [2016 (4) All MR 513]***, the interest under Section 34 of the Act requires to be awarded from the date passing of the award of under Section 11 of the Act. The learned Assistant Government Pleaders relied upon the Judgment in the case of ***State and Others Vs. Ramesh Tukaram Meshram and Others [2018 (3) Mh.L.J. 616]*** wherein this Court has held that the same criteria would apply while interpreting the provisions under Section 28 of the Act, which has been given to Section 34 of the Act, by Full Bench of this Court in the case of ***Kailash Shiva Rangari*** (supra). The learned Assistant Government Pleaders pointed out that since the Reference Court has enhanced the amount of compensation moderately and though in the memo of appeals, the objection is raised even in that regard, the said objection is now restricted to the aforesaid extent of grant of interest under Sections 28 and 34 of the Act.

4 Shri S.D.Jaybhar, learned Counsel for the claimants fairly conceded the legal position and prayed for passing appropriate orders.

5 Perused the impugned awards. It is revealed that the

Reference Court has awarded the interest under Sections 28 and 34 of the Act, from the date of taking possession of the lands. In view of the Judgments (supra) relied upon by the learned Assistant Government Pleaders, the impugned Judgments and awards to that extent cannot be sustained. The law is now settled that the interest under Sections 28 and 34 of the Act, can only be granted from the date of declaration of the award under Section 11 of the Act, and not from any prior date. In the circumstances, to the aforesaid extent, the impugned awards need to be modified. Hence, the following order is passed:-

ORDER

I) The awards impugned in the present appeals in Land Acquisition Reference Nos.60 of 1997 and 61 of 1997, so far as they relate to grant of interest under Sections 28 and 34 of the Act, from the date of possession i.e. 15.11.1986, are set aside. Instead, such an interest is made payable from the date of declaration of the awards passed under Section 11 of the Act i.e. 20.03.1996

II) Awards be modified accordingly.

III) The appeals stand partly allowed in the aforesaid terms.

IV) The amount, if any, deposited by the State in these appeals, is permitted to be withdrawn by the claimants alongwith interest accrued thereon, as per the calculations, which may be made in the modified awards.

V) The balance remains, if any, be refunded to the State alongwith interest accrued thereon.

(P.R.BORA)
JUDGE

SPT