

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

FIRST APPEAL NO.2769 OF 2019

1. Executive Engineer, Upper Penganga
Project Division No.8, Nanded
Under Godawari Marathwada Irrigation
Development Corporation, Aurangabad
2. The State of Maharashtra
Through Collector, Nanded
3. The Special Land Acquisition Officer,
PT/MIW-1, Nanded.

... APPELLANTS

VERSUS

Maroti S/o Laxman Shinde
Age : 64 years, Occu: Agri.,
R/o Gortha, Taluka Umari,
District : Nanded

... RESPONDENT

.....

Mr. B.R. Surwase, Advocate for Appellant No.1
Mr. A.D. Hande, Advocate for Respondent

.....

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 2nd AUGUST, 2019

ORDER :

. Present appeal has been filed by the acquiring body
challenging only the part of judgment and award passed by reference
Court i.e. Civil Judge, Senior Division, Bhokar, Dist. Nanded in L.A.R.

No.264 of 2010 (Old L.A.R. No.289 of 2008) dated 04.05.2012.

2. At the outset, it can be said that the scope of the appeal is limited to the extent of awarding of interest on the enhanced amount. Heard learned Advocate Mr. B.R. Surwase for appellant No.1 and learned Advocate Mr. A.D. Hande for respondent/claimant.

3. The present respondent/original claimant had filed reference under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") for getting enhancement in the compensation that was granted by original respondent No.2-Special Land Acquisition Officer. Claimant was the owner and possessor of land admeasuring 0 Hectare 32 R out of the land of Block No.16, situated at village Gortha, Tq. Umri, Dist. Nanded. The award was passed by original respondent No.2 on 19.12.2007 under Section 11 of the Act. Being dissatisfied with the rate that was granted, the said reference was filed and after taking into consideration the evidence and hearing both sides, the learned reference Court has enhanced the said rate at Rs.2,70,000/- per Hectare. The interest under Section 28 of the Act has been granted for the first year at the rate of 9% per annum from the date of taking possession and thereafter, it has been granted at the rate of 15% per annum. So also interest under Section 34 of the Act has

been granted and this is the part which is under challenge.

4. The learned Advocate for appellant No.1 submitted that these rates have been wrongly given from the date of possession, when as per the decision of the Full Bench in **State of Maharashtra Vs. Kailash Shiva Rangari [AIR 2016 BOM 141]** it should be from the date of award.

5. There is substance in the submissions made by appellant No.1. The decision given by Full Bench deserves to be followed, though it has come later in point of time then the award was passed in this case. Yet, since the appeal is the continuation, the said decision will have to be made applicable. Hence, appeal deserves to be partly allowed as follows:

i) Appeal is hereby partly allowed.

ii) The judgment and award passed by Civil Judge, Senior Division, Bhokar, Dist. Nanded in L.A.R. No.264 of 2010 dated 04.05.2012 is hereby set aside to the extent of award of interest under Sections 28 and 34 of the Land Acquisition Act and it is modified as follows :

“i) Claimants are entitled to interest under Section 28 of the Land Acquisition Act on the enhanced compensation,

solatium and component amount at the rate of 9% per annum from the date of award i.e. 19.12.2007 till deposit of enhanced compensation, solatium and component amount in the Court. If this enhanced compensation and solatium amount with interest thereon is not deposited till 19.12.2008, the claimants are entitled to interest at the rate of 15% per annum from 20.12.2008 till the date of deposit of entire compensation amount and solatium amount in the Court.

ii) Claimants are entitled for interest under Section 34 of the Land Acquisition Act on the compensation amount awarded by Collector at the rate of 9% per annum from the date of award i.e. 19.12.2007 till acceptance of compensation amount by claimants.”

iii) Modified award be drawn accordingly.

(Smt. Vibha Kankanwadi, J.)

Shubham/