

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

FIRST APPEAL NO.2816 OF 2017

1. The State of Maharashtra,
through - The Collector, Latur.
2. The Special Land Acquisition Officer,
Purna Project, Latur.
3. The Executive Engineer,
Minor Irrigation Division,
(Local Sector) Latur,
District – Latur.

... Appellants
(Ori. Respondents)

VERSUS

Damodhar s/o. Mariba Gaikwad,
Age – 50 years, Occu. Agril.,
R/o. Chikhali, Tq. Ahmedpur,
Dist. Latur.

... Respondent
(Ori. Claimant)

WITH

FIRST APPEAL NO.2817 OF 2017

1. The State of Maharashtra,
through - The Collector, Latur.
2. The Special Land Acquisition Officer,
Purna Project, Latur.
3. The Executive Engineer,
Minor Irrigation Division,
(Local Sector) Latur,
District – Latur.

... Appellants
(Ori. Respondents)

VERSUS

Waman s/o. Nagorao Gaikwad,
Age – 60 years, Occu. Agril.,
R/o. Chikhali, Tq. Ahmedpur,
Dist. Latur.

... Respondent
(Ori. Claimant)

...

AGP for Appellant : Mr. A.M. Phule
Advocate for Respondent : Mr. K.T. Shirurkar

...

CORAM : MANGESH S. PATIL, J.

Reserved on : 27.11.2019

Pronounced on : 03.12.2019

JUDGMENT :

With the consent of both the sides the matter is heard finally at the stage of admission.

2. These are the appeals under Section 54 of the Land Acquisition Act, 1894 filed by the State and the Acquiring Body being aggrieved and dissatisfied by the common judgment and award passed on 20.03.2009 by the reference Court under Section 18 of that Act.

3. At the outset, it is necessary to observe that the learned A.G.P fairly conceded that this Court having already upheld the judgment and award passed in some of the Land Acquisition Proceedings by the same judgment and award impugned in this appeals viz First Appeal (ST) No.9254/2013 dated 01.08.2017 and the appeals having been dismissed, even these appeals can be disposed of for the reasons given in that judgment and he would not have pressed for decision of these appeals afresh. However, learned A.G.P submits that the reference court has awarded interest under Section 28 of the Land Acquisition Act not from the date of the award but from the date of notification issued under Section 4 which is 10.07.1996. The learned A.G.P submits that in view of the decision of the full Bench in the case of **State of Maharashtra Vs. Kailash Shiva Rangari; 2016 (3) Mh.L.J. 457**, and in view of the observations of the Single Bench of this Court in the matter of **The State of Maharashtra and Ors Vs. Ramesh s/o**

Tukaram Meshram and Ors.; 2018 (1) ALL MR 645, the impugned judgment and award needs to be modified in consonance with these decisions. He would fairly concede that even in those appeals, which have been decided (supra) this issue could have been raised since the decision of the full Bench was rendered prior to the decision of these appeals. However, being a question of law, making entitled to award of interest from a specified date as interpreted by the full Bench it was an error in not pointing this to the Court which decided the earlier appeal namely First Appeal (ST) No.9254/2013 and the error can be corrected.

4. The advocate for the respondents claimants vehemently submitted that the full Bench of this Court (supra) has considered the issue as regards award of interest under Section 34 and the question of award of interest under Section 28 was not at all considered or decided by the full Bench. He therefore submitted that when this Court has already dismissed the First Appeals in respect of other claimants from the same award/group, it would cause injustice to the present respondent/claimants if the self same impugned judgment is to be modified *qua* them and not *qua* the others.

5. As can be seen the notification under Section 4 was issued on 10.07.1996. The award was passed on 02.02.2001 and the reference Court has awarded the interest under Section 28 from the date of notification under Section 4 i.e. 10.07.1996. True it is that in the case of Rangari the full Bench was called upon to decide the following issue which only covered the dispute as regards entitlement of interest under Section 34:

“If the possession is taken before notification under Section 4(1) of the Act of 1894 is published and/or before the award is passed, whether the landowner would be entitled for interest as per Section 34 of the Act of 1894 from the date of publication of the notification under Section 4(1) of the Act of 1894 or from the date of passing of the award?”

6. It is also true that issue as regards entitlement of interest under Section 28 was not directly involved before the full Bench. However, as has been rightly pointed out by the learned A.G.P, in the case of Ramesh Tukaram Meshram (supra) even a similar argument was considered and refuted with the following observations in paragraph no. 5:

*“5. If one goes through the provisions of Section 28 and Section 34 of the Land Acquisition Act, one would require no time to understand that these provisions are in pari materia. They are identical in every sense except for the stage at which the interest is to be granted. Section 34 is about the interest to be granted at the rate of 9% for a period of one year by the Collector at the stage of Section 11 Award, while Section 28 is on the interest to be granted not by the Collector but by a Civil Court which decides the application referred to it by the Collector under Section 18 of the Land Acquisition Act. Except for this difference, one would see no variation and no difference in the intent and the language expressed and used in both these Sections. Therefore, in my humble opinion, the interpretation accorded to Section 34 would also have its equal application while understanding the import of Section 28 of the Land Acquisition Act. The conclusion so drawn by me also receives support from the observations of the Hon'ble Apex Court in the case of **Dr. Sham Lal Narula vs. Commissioner of Income-tax, Punjab, Jammu and Kashmir, Himachal Pradesh and Patiala**, reported in **AIR 1964 SC 1878**, wherein in paragraphs 9 and 10, the Hon'ble Apex Court has described the basic characteristics of Section 34 and Section 28 of the Land Acquisition Act. In paragraph 9, the Hon'ble Apex Court has observed that the statutory interest payable under Section 34 is not compensation paid to the owner for depriving him of the right to possession of the land acquired, but that given to him for the deprivation of the use of the money representing the compensation for the land acquired. The Hon'ble Supreme Court further observed in*

paragraph 10 somewhere in the later portion of its beginning, that the interest awarded under Section 28 of the Act, just like under Section 34 thereof, cannot be a compensation or damages for the loss of right to retain possession but only compensation payable by the State for keeping back the amount payable to the owner. Therefore, I find no substance in the argument of learned counsel for the claimants and I further find that the view taken by this Court in the aforestated First Appeal decided on 16th August, 2017 regarding the interest payable at the rate of 9% p.a. for a period of one year would also cover the issue involved in this regard in the present appeal.”

7. In view of such a legal position, where the decision of the full Bench is interpreted by a coordinate Bench of this Court, the impugned judgment and award awarding interest under Section 28 from the date of notification under Section 4 is erroneous. Consequently to this extent, the impugned judgment and award needs to be modified.

8. True it is that admittedly the appeals preferred by the State and the acquiring body against the self same judgment have been dismissed *qua* several other claimants. However, when it comes to the matter of legality there cannot be such misplaced sympathy. A mistake can never be a precedent. Merely because while deciding the First Appeals earlier in respect of some of the claimants, the issue regarding award of interest under Section 28 was not specifically raised and has been overlooked, it is clearly an error and the respondents/claimants herein are not entitled to derive any benefit there from on emotional grounds. When the law does not permit award of interest under this provision from the date of the notification under Section 4 and make the owners of the lands entitled to claim such interest from the date of award, the illegality needs to be corrected in these

appeals.

9. The appeals are partly allowed.

10. The impugned judgment and award is modified only to the following extent:

i) The respondents/claimants shall be entitled to claim interest under Section 28 from the date of the award i.e. 02.02.2001.

ii) Except such modification the rest of the award is confirmed.

(MANGESH S. PATIL, J.)

habeeb