

(1)

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

FIRST APPEAL (STAMP) NO.16302 OF 2017

The Executive Engineer,
Minor Irrigation Division, Latur
Through Godavari Marathwada Irrigation
Development Corporation, Aurangabad ...Appellant

Versus

1. Santosh Padhari Maddewad
Age: Major, Occ: Agriculturist,
2. Harishchandra Padhari Maddewad
Age: Major, Occ: Agriculturist,
R/o.- Gugdal, Tq.- Ahmadpur,
Dist.- Latur.
3. The State of Maharashtra
Through Collector Latur. ...Respondents

WITH

FIRST APPEAL (STAMP) NO. 16476 OF 2017

The Executive Engineer,
Minor Irrigation Division, Latur
Through Godavari Marathwada Irrigation
Development Corporation, Aurangabad ...Appellant

Versus

1. Mathurabai Eknath Nagargoje,
Age: Major, Occ: Agriculturist,
R/o.- Gugdal, Tq.- Ahmadpur,
Dist.- Latur.
2. The State of Maharashtra
Through Collector Latur. ...Respondents

WITH

FIRST APPEAL (STAMP) NO. 16491 OF 2017

The Executive Engineer,
Minor Irrigation Division, Latur
Through Godavari Marathwada Irrigation
Development Corporation, Aurangabad ...Appellant

Versus

1. Bhanudas Ramkishan Maddewad,
Age: Major, Occ: Agriculturist,
R/o.- Gugdal, Tq.- Ahmadpur,
Dist.- Latur.
2. The State of Maharashtra
Through Collector Latur. ...Respondents

**WITH
FIRST APPEAL (STAMP) NO. 16488 OF 2017**

The Executive Engineer,
Minor Irrigation Division, Latur
Through Godavari Marathwada Irrigation
Development Corporation, Aurangabad ...Appellant

Versus

1. Manik Nilkanth Mahajan,
Age: Major, Occ: Agriculturist,
R/o.- Gugdal, Tq.- Ahmadpur,
Dist.- Latur.
2. The State of Maharashtra
Through Collector Latur. ...Respondents

**WITH
FIRST APPEAL (STAMP) NO. 16482 OF 2017**

The Executive Engineer,
Minor Irrigation Division, Latur
Through Godavari Marathwada Irrigation
Development Corporation, Aurangabad ...Appellant

Versus

1. Arun Bhimrao Patil,
Age: Major, Occ: Agriculturist,
R/o.- Gugdal, Tq.- Ahmadpur,
Dist.- Latur.
2. The State of Maharashtra
Through Collector Latur. ...Respondents

(3)

**WITH
FIRST APPEAL (STAMP) NO. 16479 OF 2017**

The Executive Engineer,
Minor Irrigation Division, Latur
Through Godavari Marathwada Irrigation
Development Corporation, Aurangabad ...Appellant

Versus

1. Maroti Ramji Amoghe,
Age: Major, Occ: Agriculturist,
R/o.- Gugdal, Tq.- Ahmadpur,
Dist.- Latur.
2. The State of Maharashtra
Through Collector Latur. ...Respondents

**WITH
FIRST APPEAL (STAMP) NO. 16485 OF 2017**

The Executive Engineer,
Minor Irrigation Division, Latur
Through Godavari Marathwada Irrigation
Development Corporation, Aurangabad ...Appellant

Versus

1. Kerba Sambhaji Palde,
Age: Major, Occ: Agriculturist,
R/o.- Gugdal, Tq.- Ahmadpur,
Dist.- Latur.
2. The State of Maharashtra
Through Collector Latur. ...Respondents

...

Mr. Sudhir G. Bhalerao, Advocate for Appellant.
Mr. V.P. Latange, Advocate for Respondent No. 1.
Mr. A.M. Phule, AGP for Respondent/State.

...

**CORAM : P.R. BORA, J.
DATED : 18th FEBRUARY, 2019.**

ORAL JUDGMENT:-

. In the present matters some delay had

occasioned in filing the appeals and the same has been condoned by this Court today only.

2. While making submissions on applications for condonation of delay, it was brought to the notice of this Court that the appeals are filed restricted to the grant of interest by the Reference Court under Section 28 and 34 of the Act from the date of Section 4 notification. In view of the restricted objection, the learned counsel for the respondents-claimants gave no objection for condoning the delay with a further request that the matters be immediately taken up for final disposal. Such an order is therefore passed while condoning the application for condonation of delay and in pursuance of that order with consent of the parties to the present appeals, the appeals are taken up for final disposal at the admission stage.

3. Shri S.G. Bhalerao, the learned counsel appearing for the appellants submitted that in the present appeals, the acquiring body has challenged the impugned awards only to the extent the interest awarded by the Reference Court under Section 28 and 34 of the Act from the date of issuance of Section

4 notification. The learned counsel relying upon the full bench judgment of this Court in the case of **"The State of Maharashtra Vs. Kailash Shiva Rangari, 2016 (4) All M.R. 513"** submitted that such an interest could have been awarded by the Reference Court only from the date of passing of the award under Section 11 of the Act and not from any prior date. The learned counsel also referred to the judgment of the learned Single Judge of this Court in the case of **"State & Ors Vs. Ramesh Tukaram Meshram, 2018(3) Mh.L.J. 616"**. The learned counsel in the circumstances prayed for setting aside the impugned judgments and awards to the aforesaid extent and to make the interest payable under both the aforesaid provisions from the date of passing of the awards under Section 11 of the Act.

4. The learned counsel Shri Latange conceded the settled legal positions and submitted for passing appropriate orders. The learned AGP Shri Phule also submitted for passing appropriate orders.

5. Perusal of the impugned judgments and

awards reveal that the Reference Court has awarded the interest under Section 28 of the Act from the date of issuance of Section 4 notification i.e. 24.04.2002. The award under Section 11 of the Act was admittedly passed on 23.04.2003. In view of the law laid down by the full bench of this Court in the case of "Kailash Shiva Rangari" (cited supra), the interest under Section 34 of the Act can only be awarded from the date of passing of the award under Section 11 of the Act and not from any prior date. Relying upon the judgment of the full bench in the aforesaid case, the learned Single Judge in the case of "Ramesh Tukaram Meshram" (cited supra) has held that the interest under Section 28 of the Act has also to be awarded from the date of passing of the award under Section 11 of the Act and not from any prior date. In view of the law laid down in the aforesaid judgments, the interest awarded by the Reference Court in the impugned common judgment and award from the date of issuance of Section 4 notification deserves to be set aside. In the result, the following order is passed:

ORDER

i) The impugned common judgments and awards stand set aside so far as it relate to grant of interest under Section 28 of the Act from the date of issuance of notification under Section 4 i.e. from 24.02.2002; instead such an interest is made payable from the date of passing of the award under Section 11 of the Act i.e. 24.04.2003.

ii) Save and except the other part of the award is maintained as it is.

iii) Appeals thus stand partly allowed in the aforesaid terms.

iv) Modified awards be prepared accordingly.

v) The claimants are entitled to withdraw the amount which may be found payable to them as per the modified award with interest accrued thereon.

vi) The balance amount be refunded to the acquiring body with interest accrued thereon.

(P.R. BORA, J.)