

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

952 FIRST APPEAL NO.1001 OF 2016

EXECUTIVE ENGINEER, NIMNA DUDHNA PROJECT SELU
VERSUS
GULABRAO RANGRAO NIRVAL AND ORS.

...
Advocate for Appellant : Shri Shirish G. Sangle
AGP for Respondents – State : Shri A.M.Phule
Advocate for Respondent No.1 : Smt. Asha D. Rakh and
Smt.Pratibha Bharad
...

953 FIRST APPEAL NO.1002 OF 2016

EXECUTIVE ENGINEER, NIMNA DUDHNA PROJECT SELU
VERSUS
MANOJKUMAR RANJITRAO WAYAL AND OTHERS

...
Advocate for Appellant : Shri Shirish G. Sangle
AGP for Respondents – State : Shri S.J.Salgare
Advocate for Respondent No.1 : Smt. Pratibha Bharad
...

CORAM : P.R.BORA, J.

DATE: 6th February, 2019

PER COURT :-

1 When the present appeals are taken up for hearing, the learned Counsel appearing for the Acquiring Body submitted that though in the appeals several grounds are raised in exception to the Judgments and awards impugned in the present appeals, the Acquiring Body is now restricting its objection only to the extent of interest granted by the Reference Court under Sections 28 and 34 of the Act, from the date of possession of the lands. The

learned Counsel submitted that in view of the policy adopted by the Government vide Government Resolution dated 03.11.2016 read with corrigendum dated 23.02.2017 and 13.08.2018, since the market value as has been determined by the Reference Court comes within the prescribed limits mentioned in the said Government Resolution i.e. less than four times of the market value as was offered by the Special Land Acquisition Officer (SLAO), the Acquiring Body does not intend to prosecute the appeals so far as the market value as has been determined and compensation accordingly enhanced by the Reference Court.

2 The learned Counsel submitted that the Reference Court has, however, erred in awarding interest under Sections 28 and 34 of the Act, from the date of possession of the lands. Relying on the Judgment delivered by the Full Bench of this Court in the case of ***State of Maharashtra Vs. Kailash Shiva Rangari [2016 (4) ALL MR 513]***, the learned Counsel submitted for passing appropriate orders.

3 The learned AGP appearing for the State has supported the arguments advanced by the learned Counsel for the Acquiring Body. The learned Counsel for the respondents – claimants has opposed for considering the request so made. She submitted

that the Judgments relied upon on behalf of the appellant may not apply to the facts of the present case. I am, however, not convinced with the submission so made.

4 The Reference Court in the impugned Judgments and awards has admittedly granted the interest under Section 28 as well as 34 of the Act, from the date of taking possession of the land. The law in this regard now stands settled by the Full Bench Judgment of this Court delivered in the case of **Kailash Shiva Rangari** (supra) . As has been held by the Full Bench, 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 on the Full Bench Judgment of this Court in the case of **Kailash Shiva Rangari** (supra), learned Single Judge of this Court in the case of **State and others Vs. Ramesh Tukaram Meshram [2018 (3) Mh.L.J. 616]**, has held that the same interpretation would apply to the provision under Section 28 of the Act and the interest under Section 28 of the Act, also becomes payable only from the date of passing of the award under Section 11 of the Act, and not from any prior date.

5 For the reasons stated above, both the appeals deserve to be allowed to the aforesaid extent. Hence, the following order is

passed:-

ORDER

- I) Appeals are partly allowed.
- II) The Judgments and awards impugned in the present appeals so far as they relate to grant of interest under Sections 28 and 34 of the Act, from the date of taking possession, stand set aside. Instead, such an interest shall be made payable from the date of passing of awards under Section 11 of the Act i.e. 29.11.2001.
- III) The awards be modified accordingly.
- IV) From the deposited amount, the claimants are permitted to withdraw the amount, which may be found payable to them in view of the modified awards alongwith interest accrued thereon. The balance amount be refunded to the Acquiring Body alongwith interest accrued thereon.

(P.R.BORA)
JUDGE

SPT