

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.1350 OF 2019

The Executive Engineer,
Minor Irrigation Division,
Osmanabad.
Through Godavari Marathwada
Irrigation, Development
Corporation, Aurangabad. ...**APPELLANT**
(original Respondent
No.2)

VERSUS

1. Trimbak Baburao Navtake,
 (Died through L.Rs.)
 - (i) Ashwini w/o Arvind Biradar,
 Age; Major, Occ; Agriculturist,
 R/o; Tugaon, Tq. Omerga,
 District; Osmanabad.
 - (ii) Nirmalabai w/o Trimbak Navtake,
 Age; Major, Occ; Agriculturist,
 - (iii) Rohini d/o Trimbak Navtake,
 Age; Major, Occ; Agriculturist,
 - (iv) Somshankar S/o Trimbak Navtake,
 Age; Major, Occ; Agriculturist,
 - (v) Mandakini D/o Trimbak Navtake,
 Age; Major, Occ; Agriculturist,
 - (vi) Sonali D/o Trimbak Navtake,
 Age; Major, Occ; Agriculturist,
- All R/o; Kalnimbala, Tq. Omerga,
District; Osmanabad. ...**RESPONDENTS**
(Original Claimants)

2. The State of Maharashtra
Through the Collector,
Osmanabad.

3. The S.L.A.O., Osmanabad. **..RESPONDENTS**
(Formal Respondents/
Original Respondent
Nos. 1 & 2)

...

Mr. Sudhir G. Bhalerao, Advocate for Appellant
Mr. G.K. Sontakke, Advocate for Respondent No.1
Mr.R.B. Bagul, AGP for Respondent No.-2- State.

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATED : 2nd, July, 2019.

JUDGMENT :

The acquiring body has preferred the present appeal in exception to the judgment and award passed by the court of Civil Judge, Senior Division, Omerga, (herein after referred to as the Reference Court) in LAR No.1156 of 2009 decided on 23.7.2013.

2. Land of present Respondent No.1 was acquired for the purpose of Minor Irrigation Tank at Kalnimbala, in the year 1994. An Award in that regard was passed on 31.03.2006. The Special Land Acquisition Officer had offered the compensation

to Respondent No.1 herein (petitioner original claimant) @ Rs. 11,000/- per Are. Dissatisfied with the amount of compensation so offered, the claimant had preferred an application under Section 18 of the Land Acquisition Act, 1894 (herein after referred to as the Act), on the basis of which, the aforesaid LAR came to be filed. The Reference Court has enhanced the amount of compensation by determining the market value of the acquired land @ Rs. 74,360/- per Are. The Reference Court has also held the claimant entitled for the statutory benefits as well as interest under Sections 28 and 34 of the Act. Aggrieved by, the acquiring body has preferred the present appeal.

3. Heard Shri S.G. Bhalerao, learned counsel appearing for Acquiring Body, Shri G.K. Sontakke, learned Counsel for Respondent No.1 – original claimant and learned AGP Shri R.B. Bagul, appearing for State.

4. The Award passed by the Reference Court

is challenged to the extent the Reference Court has awarded the interest under Section 28 and 34 of the Act from the date of taking possession of the land. The learned Counsel Shri Bhalerao appearing for the acquiring body, placing his reliance on the Full Bench judgment of this Court in the case of The State of Maharashtra Vs. Kailash Shiva Rangari – 2016 (4) ALL MR 513 and relying on the judgment delivered by learned Single Judge of this Court (Coram: S.B.Shukre, J.) in FA No. 383/2004 and also the subsequent judgment delivered by another learned Single Judge of this Court (Coram: Sunil P. Deshmukh, J.) in FA No.483/2018 along with connected appeals, submitted that the Reference Court has committed an error in awarding the interest under Section 28 as well as under Section 34 of the Act from the date of possession of the land. The learned counsel submitted that in view of the judgments relied upon by him referred to herein above, the interest under Section 28 as well as under Section 34 of the Act, could have been awarded by the Reference Court only from the date of Award under

section 11 of the Act and not from any prior date.

5. The learned counsel appearing for the Respondent No.1 – original claimant was fair enough in conceding the legal position, as was argued by learned counsel for the Acquiring Body. The learned counsel, in the circumstances, prayed for passing appropriate order.

. Learned AGP supported the arguments advanced by the learned counsel for the Acquiring Body.

6. The Full Bench of this Court in the Case of The State of Maharashtra Vs. Kailash Shiva Rangari (cited supra) has ruled that, the interest under Section 34 of the Act can only be made payable from the date of Award under Section 11 of the Act and not from any prior date. The learned Single Judge of this court (Coram: S.B.Shukre,J.) while deciding the First Appeal No.383/2004, vide the judgment delivered on 23rd November, 2017, has held that the interpretation accorded to Section

34 of the Act by the Full Bench of this Court would also have its equal application while understanding the import of Section 28 of the Act, and has accordingly set aside the Award impugned in the said appeal wherein the Reference Court has awarded the interest from the date of taking over possession of the land and instead made it applicable from the date of declaration of the Award under Section 11 of the Act.

7. In the subsequent judgment, another learned Single Judge of this court (Coram:Sunil P.Deshmukh, J.) in First Appeal No.483/2018 with connected appeals, has affirmed the view taken by another learned Single Judge of this court (Coram: S.B.Shukre, J.) in FA No.383/2004.

8. As stated herein above, the learned counsel for the original claimant fairly conceded the legal position settled as above.

9. In view of the submissions so made, the order passed by the Reference Court in the

impugned judgment and award in so far as it relates to grant of interest under Section 28 as well as under Section 34 of the Act from the date of possession of the acquired land, cannot be sustained and deserves to be set aside. In so far as other part of the award is concerned, the same has not been seriously objected to and I also do not see any reason to cause interference in the same. In the result, following order is passed,

ORDER

i. Clause 5 in the impugned order passed by Civil Judge, Senior Division, Omerga, in LAR No. 1156 of 2009 decided on 23.7.2013, is quashed and set aside and is substituted with the following,

. The petitioner – claimant is entitled for interest on the amount of compensation under Section 28 and 34 of the Land Acquisition Act from the date of declaration of the Award under Section 11 of the Act, i.e. from 31.3.2006.

ii. The other part of the Award is maintained

as it is.

iii. The appeal thus stands partly allowed in the aforesaid terms.

iv. Pending Civil Application, if any, stands disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

mahajansb/