

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**25 FIRST APPEAL NO.1967 OF 2017
WITH CA/653/2019 IN FA/1967/2017**

THE EXECUTIVE ENGINEER, OSMANABAD MINOR IRRIGATION
DIVISION, OSMANABAD AND ORS
VERSUS
SAMBU DAGDU ADSUL AND ORS

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**WITH
FIRST APPEAL NO. 1968 OF 2017
WITH CA/650/2019 IN FA/1968/2017**

WITH

**FIRST APPEAL NO.1969 OF 2017
WITH CA/651/2019 IN FA/1969/2017**

WITH

**FIRST APPEAL NO.1970/2017
WITH CA/652/2019 IN FA/1970/2017**

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Advocate for Appellants : Shri B.A.Shinde
AGP for Respondents – State : Shri P.M.Kulkarni
Advocate for Respondents - claimants : Shri Rahul D. Khadap

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CORAM : P.R.BORA, J.

DATE: 14th January, 2019

PER COURT:-

1 The present appeals are taken up for final disposal with consent of the learned Counsel for the parties.

2 The learned Counsel appearing for the appellants i.e. Acquiring Body submitted that in view of the policy adopted by the State 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 is less than four times of amount of market value as was determined by the Special Land Acquisition Officer (SLAO), the Acquiring Body does not intend to press the objection in respect of the market value determined by the Reference Court.

3 The learned Counsel further submitted that however, since the Reference Court has awarded interest under Section 28 of the Land Acquisition Act (hereinafter referred to as 'the Act'), from the date of possession of the lands, to that extent the present appeals require to be allowed.

4 The learned Counsel relying upon the Judgment of this Court in the case of **State & others Vs. Ramesh Tukaram Meshram [2018(3) Mh.L.J., 616]** submitted that the interest under Section 28 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. The learned Counsel pointed out that in the impugned Judgment and award, the Reference Court has awarded the interest under Section 28 of the Act from the date of taking possession of the subject lands i.e. from 10.02.2004,

whereas the award under Section 11 of the Act was passed on 04.04.2006. The learned Counsel, therefore, prayed for setting aside the impugned Judgment and award to the aforesaid extent and modify the Judgment and award so far as it relates to grant of interest under Section 28 of the Act.

5 The learned Counsel appearing for the claimants conceded the legal position with regard to the grant of interest under Section 28 of the Act as has been settled by the Judgment relied upon by the learned Counsel for the Acquiring Body.

6 I have perused the impugned Judgment and award. It is true that the Reference Court in the impugned Judgment and award has awarded the interest under Section 28 of the Act from the date of taking possession of the acquired lands i.e. from 10.02.2004. In view of the Judgment relied upon by the learned Counsel appearing for the Acquiring Body, the impugned Judgment and award to the aforesaid extent cannot be sustained and deserve to be set aside.

7 For the reasons stated above, the following order is passed:-

ORDER

I) The impugned Judgment and award so far as it relates to grant of interest under Section 28 of the Act from the date of taking possession of the lands i.e. 10.02.2004 is set aside. Instead, such an interest is made payable from the date of passing of the award under Section 11 of the Act i.e. 04.04.2006.

II) The award be modified accordingly.

III) The amount payable in view of the modified award is permitted to be withdrawn by the respective claimants alongwith interest accrued thereon from the amount deposited by the appellant in this Court.

IV) Balance amount alongwith interest accrued thereon be refunded to the Acquiring Body.

V) The appeals stand disposed of in the aforesaid terms.

VI) Pending Civil Applications stand disposed of.

(P.R.BORA)
JUDGE