

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

First Appeal No. 0637 of 2019

District : Osmanabad

Dhondiram s/o. Prabhu Tambe,
Age : 43 years,
Occupation : Agriculture,
R/o. Warwanti,
Taluka & Dist. Osmanabad.

.. Appellant.

versus

1. The State of Maharashtra,
Through the Collector,
District Osmanabad.
2. The Spl. Land Acquisition
Officer (P.T. & M.I.W.) No.1,
Osmanabad.
OR Sub-Divisional Officer,
Osmanabad.
3. The Executive Engineer,
Local Sector Division,
Osmanabad.

.. Respondents.

With

First Appeal No. 0638 of 2019

District : Osmanabad

Manohar s/o. Apparao Tambe,
Age : 49 years,
Occupation : Agriculture,
R/o. Warwanti,
Taluka & Dist. Osmanabad.

.. Appellant.

versus

1. The State of Maharashtra,

Through the Collector,
District Osmanabad.

2. The Spl. Land Acquisition
Officer (P.T. & M.I.W.) No.1,
Osmanabad.
OR Sub-Divisional Officer,
Osmanabad.

3. The Executive Engineer,
Local Sector Division,
Osmanabad.

.. Respondents.

With

First Appeal No. 0639 of 2019

District : Osmanabad

Dagdu s/o. Prabhu Tambe,
Age : 46 years,
Occupation : Agriculture,
R/o. Warwanti,
Taluka & Dist. Osmanabad.

.. Appellant.

versus

1. The State of Maharashtra,
Through the Collector,
District Osmanabad.
2. The Spl. Land Acquisition
Officer (P.T. & M.I.W.) No.1,
Osmanabad.
OR Sub-Divisional Officer,
Osmanabad.
3. The Executive Engineer,
Local Sector Division,
Osmanabad.

.. Respondents.

With

First Appeal No. 0640 of 2019

District : Osmanabad

Chandrabhan s/o. Aparao Tambe,
Age : 53 years,
Occupation : Agriculture,
R/o. Warwanti,
Taluka & Dist. Osmanabad.

.. Appellant.

versus

1. The State of Maharashtra,
Through the Collector,
District Osmanabad.
2. The Spl. Land Acquisition
Officer (P.T. & M.I.W.) No.1,
Osmanabad.
OR Sub-Divisional Officer,
Osmanabad.
3. The Executive Engineer,
Local Sector Division,
Osmanabad.

.. Respondents.

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Mr. D.D. Sarawade Patil, Advocate, for the appellants.

*Mr. A.M. Phule, Assistant Government Pleader, for
respondents no.01 to 03.*

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 30TH JULY 2019

ORAL JUDGMENT :

01. Present appeals have been filed by the original claimants challenging the judgment and award passed in L.A.R. No.997 of 2014, L.A.R. No.991 of

2014, L.A.R. No.993 of 2014 and L.A.R. No.227 of 2009, respectively, by Civil Judge (Senior Division), Osmanabad, dated 27-06-2014, on the ground that the learned reference Court failed to award interest under Section 28 of the Land Acquisition Act, 1894 [**For short, "the Act"**].

02. What is not in dispute is, that the appellants were owners of land Gut no.150 situated at village Warwanti, Taluka & District Osmanabad. The respondent acquired land admeasuring 01H 24R, 00H 92R, 01H 09R, 00H 38R, respectively, out of the said gut number for the purpose of common water storage tank at Warwanti / Wadgaon (Siddheshwar), vide notification under Section 4 of the Act, dated 30th December 2005. The award under Section 11 of the Act came to be passed by the Special Land Acquisition Officer on 07-07-2007. The compensation that was given by the Special Land Acquisition Officer was at the rate of Rs. 500, 550/- per R. The present claimants thereafter file reference under 18 of the Act for enhancement. The compensation was enhanced to Rs. 15,000/- per R. The reference Court while passing the judgment and award, as it appears from the submission made by the learned Advocate for the appellants, granted interest under Section 23(1-A) of the Act and Section 34 of the Act. However, interest has not been granted under Section 28 of the Act. Hence, these appeals.

03. Learned Assistant Government Pleader supported the award passed by the reference Court and in addition to that, submitted that the interest that has been awarded under Section 34 is improper taking into consideration the fact that it has been award from the date of possession; whereas it ought to have been from the date of award in view of the decision in *State of Maharashtra Vs. Kailash Shiva Rangari* [2016(4) Bom.C.R. 1]. He relied on the decision in *The State of Maharashtra Vs. Ramesh Tukaram Meshram & another* [2018 (Vol. 1) All MR 645] wherein it has been held that "*The interpretation accorded to Section 34 would also have its equal application while understanding import of Section 28 of the Act.*" He also relied on the decision in *Aba s/o. Dashrath Pawar Vs. State of Maharashtra & another* [2017(1) Mh.L.J. 139] wherein the interest was awarded from the date of the award in view of the Full Bench decision in *Kailash Shiva Rangari (supra)*.

04. Taking into consideration this narrow point involved in the appeal, it is to be noted that the interest that is required to be awarded under Section 28 in view of the decision in *Major General Kapil Mehra & others Vs. Union of India & another* [2015(4) Mh.L.J.40] is discretionary; whereas the award of interest under Section 34 is mandatory. However, the discretion will have to be used in judicious manner. Perusal of

the impugned judgment of the reference Court would show that specific reasons have not been assigned as to why the interest under Section 28 of the Act has not been granted. This Court in the judgment delivered in *Prabhakar Sitaram Lokre & others Vs. State of Maharashtra & others* [First Appeal No. 831 of 2014 and companion appeals], on 02nd September 2015, in similar appeals where interest under Section 28 of the Act was not granted, relied on the decision of the Hon'ble Apex Court in *Haridwar Development Authority Vs. Raghubir Singh* [AIR 2010 SC 1754], wherein it was observed that "*The award of interest on enhanced amount under Section 28 of the Land Acquisition Act is normal rule.*" When exceptional circumstances or reasons for not awarding the interest under Section 28 were not quoted at all and have not been pointed at all, under those circumstances, the claimant is entitled to get the said interest and in view of the Full Bench decision of this Court, it has to be from the date of the award.

05. Now, as regards the interest under Section 34 of the Act is concerned, it has been awarded at the rate of 9 % per annum for the period from 31st December 2005 to 30th December 2006 and thereafter at the rate of 15 % per annum. As aforesaid, the award was passed by the Special Land Acquisition Officer on 07-07-2007 and in fact, the notification under

Section 4 was published on 30th December 2005. Therefore, what has been awarded by the learned reference Court is from the date of the notification. Though there is no cross objection or cross appeal by the State, yet, it can be seen that when there is legal infirmity that has been arisen due to the Full Bench decision which has, in fact, subsequently come after the judgment and award was passed by the learned reference Court, yet, that deserves to be corrected. Under such circumstances, the appeals deserve to be partly allowed.

06. Hence, the following order :-

(a) The appeals are partly allowed.

(b) Clause 'iv' of the operative order passed by the Civil Judge (Senior Division), Osmanabad, in L.A.R. Nos.997 of 2010, 991 of 2010, 993 of 2010 and 227 of 2009, dated 27-06-2014, is modified to the following extent :-

" The claimants are entitled to get interest under Sections 28 and 34 of the Land Acquisition Act, 1894, from the date of the award till actual realization of entire amount."

(c) Rest of the award passed by the reference Court is kept as it is.

(d) There shall be no order as to costs.

(Smt. Vibha Kankanwadi)
JUDGE

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