

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

941 FIRST APPEAL NO.369 OF 2018

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

... Appellant
(Orig. Respondent No.3)

Versus

1. Prabhuappa Mahadappa Gudale
Age : Major, Occu.: Agriculturist,
2. Chandrakant Mahadappa Gudale
Age : Major, Occu.: Agriculturist,
3. Vaijanath Mahadappa Gudale
Age : Major, Occu.: Agriculturist,
4. Ravindra Chandrakant Gudale
Age : Major, Occu.: Agriculturist,
5. Santosh Chandrakant Gudale
Age : Major, Occu.: Agriculturist,
6. Amarnath Vaijanath Gudale
Age : Major, Occu.: Agriculturist,

All R/o. Chandegaon, Tq. Udgir,
Dist. Latur.

7. The State of Maharashtra,
Through the Collector, Latur.
8. The land Acquisition Officer,
Purna Project, Latur.

... Respondents.

....

Mr. S.G. Bhalerao, Advocate for Appellants.
Mr. S.S. Halkude, Advocate for Respondent Nos. 1 to 6.
Mr. A.M. Phule, AGP for Respondent Nos. 7 and 8.

....

CORAM : P.R. BORA, J.

DATED : 08th FEBRUARY, 2019

ORAL JUDGMENT:-

1. Heard Shri Bhalerao, the learned counsel appearing for the acquiring body and Shri Halkude, the learned counsel appearing for the respondents-claimants as well as Shri Phule, the learned AGP appearing for respondent nos. 7 and 8.

2. The challenge in the present appeal to the impugned judgment is restricted to the extent that interest as has been awarded by the Reference Court under Section 28 of the Land Acquisition Act from the date of taking possession of the acquired land is unsustainable.

3. Shri S.G. Bhaleralo, learned counsel appearing for the appellant, 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***, submitted that the interest under Section 28 as well as Section 34 of the Act could have been granted by the Reference Court from the date of passing the award under Section 11 of the Act and not from any prior date whereas the same has been granted by it from the date of taking possession of the acquired lands. The learned counsel, therefore, prayed for modification of the common judgment and award to the aforesaid extent.

4. Shri Halkude, the learned counsel appearing for the claimants has fairly conceded the legal position as has been canvassed on behalf of the appellant, and in the circumstances, prayed for passing appropriate order.

5. Learned AGP Shri Phule supported the arguments advanced by Shri Bhalerao, the learned counsel appearing for the appellant.

6. I have carefully perused the judgment and award, which has been impugned in the present appeal. The Reference Court has awarded the interest under Section 28 of the Act from the date of taking possession of the lands by the acquiring body. The award under Section 11 of the Act was admittedly passed on 18.10.2010.

7. 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. 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 said interpretation and has held that the interest under Sections 28 and 34 of the Land Acquisition Act payable to the claimants would be from the date of award and not from the date of possession.

8. In view of the law laid down as above, the impugned judgment and award so far as it relates to grant of interest under Section 28 of the Act from the date of the possession cannot be sustained. The challenge raised by the acquiring body to the aforesaid part of the impugned common judgment and award, therefore needs to be upheld. In the result the following order is passed:-

ORDER

[i] The common judgment and award impugned in the present appeal is quashed and set aside so far as it relates to grant of interest under Section 28 of the Act from the date of possession. Instead it is directed that the interest under Section 28 of the Act shall be made payable from the date of passing the award under Section 11 of the Act i.e. from 18.10.2010. The impugned judgment and award be modified to the aforesaid extent.

[ii] The other part of the Award is maintained as it is.

[iii] From out of the amount deposited by the appellant in this Court in the present appeal, the original claimants in the present appeal are permitted to withdraw such an amount which shall be found payable to them as per the modified award with interest accrued thereon. Balance amount with interest accrued thereon be refunded to the appellant.

[iv] The appeal thus stands partly allowed in the aforesaid terms.

(P.R. BORA)
JUDGE

Sudhir Rane