

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

MISC. CIVIL APPLICATION NO.943 OF 2018

IN

FIRST APPEAL NO.492 OF 2005

(Gulabrao s/o Motideo Malapure (deceased) Leelabai wd/o Gulabrao Malapure and
others Vs. V.I.D.C. thr. Executive Engineer, Medium Project Division, Nagpur and
another)

MISC. CIVIL APPLICATION NO.944 OF 2018

IN

FIRST APPEAL NO.480 OF 2005

(Daulat s/o Motideo Malapure Vs. V.I.D.C. thr. Executive Engineer, Medium Project
Division, Nagpur and another)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri Y.R. Kinkhede, Advocate for Applicant.
Shri V.G. Palshikar, Advocate for Respondent No.1.
Shri A.M. Balpande, AGP for Respondent No.2.

CORAM: SUNIL B. SHUKRE, J.

DATE: 14th NOVEMBER, 2019.

The question here raised by these applications is about denial of right of the petitioners to claim interest at the rate of 9% per annum not from the date of the award but from the date on which the possession of land has been taken, in terms of Section 28 of the Land Acquisition Act, 1894.

The first objection taken to this review application by Shri V.G. Palshikar, learned counsel for non-applicant No.1, is that such a right cannot be claimed by the review applicant when it was never argued at the time of final hearing of the First Appeal Nos.480/2005, 465/2005 and 492/2005, which is disagreed to by learned

counsel for the applicants. He relies upon the judgment of the Hon'ble Apex Court in the case of *Executive Engineer and General Manager, Karnataka Housing Board, Gadag v. Assistant Commissioner and Special Land Acquisition Officer and another* reported in (2017) 12 SCC 740.

In *Executive Engineer (supra)*, the Hon'ble Apex Court has held that if the appellant is entitled to interest as per the provisions of Land Acquisition Act, the same can be given to him even at the time of hearing of the review application. So, following the law laid down by the Hon'ble Apex Court, I am of the view that the point raised here can be heard and considered by this Court.

The review applicants have placed reliance upon the provisions made in Section 28 of the Land Acquisition Act, 1894. Careful reading of Section 28 shows that the interest that has to be granted on the enhanced portion of land as determined by the Civil Court, is at the rate of 9% per annum from the date of possession and not from the date of award. It is thus clear that right to receive interest at 9% per annum is not from the date of award but from the date of possession of the land.

So, it cannot be doubted that right did exist in the applicant to claim interest from the date of possession. But, there is a distinction between existence of right and assertion of right. The question in the present case would only be about the assertion of this right by the claimant. If the claimant has not asserted his right at any point of time, in my view, the effect would be waiving or giving up

such right by the claimant. In so far as procedural aspect for assertion of such a right is concerned, I must say, it is not necessary, as held by the Hon'ble Apex Court in the case of *Shree Vijay Cotton & Oil Mills Ltd. v. State of Gujarat* reported in (1991) 1 SCC 262 to lodge any formal claim by filing some appeal or cross-objection and it would be enough that such right is claimed even by simply inviting attention of the Civil Court or the Appellate Court to the provisions contained in Section 28 of the Land Acquisition Act. But, in a case like the present one in which no counter claim has been filed, no appeal has been filed nor any cross-objection has been filed nor any oral argument claiming such right has been advanced nor attention of this Court to the provisions of Section 28 of the Land Acquisition Act has been invited by any of the claimants, I do not think that at this belated stage, it could be said by this Court that that there is no waiving or giving up of the right by the applicants. The waiver of the right has been completed now because of its consistent abdication by the applicants, I find that these applications deserve to be dismissed being devoid of any merit. Both the applications stand dismissed. No costs.

JUDGE