

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

6 FIRST APPEAL NO. 621 OF 2022

THE EXECUTIVE ENGINEER, MINOR IRRIGATION DIVISION NO.1,
AURANGABAD THR G.M.I.D.C., AURANGABAD

VERSUS

PARASRAM BABURAO KARHALE AND OTHERS

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Advocate for Appellant : Mr. Sudhir G. Bhalerao.

Adv. for Respondent Nos.1 & 2 : Ms. Laxmi R. Thakur, h/f Mr. L. C. Patil.

AGP for Respondent No.3: Mr. S. N. Morampalle.

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CORAM : **SHRIKANT D. KULKARNI, J.**

DATE : 28th March, 2022.

PER COURT:

. By consent, heard finally at admission stage.

2 The controversy in this appeal revolves around the rate of interest awarded by the Reference Court under Sections 28 and 34 of the Land Acquisition Act, 1894 (hereinafter referred to as the "Act"). Rest of the judgment and award passed by the Reference Court is not in dispute and also not under challenge.

3 Heard Mr. Bhalerao, learned counsel for appellant/acquiring body, Ms. Laxmi R. Thakur, holding for Mr. L. C. Patil, learned counsel for original claimants and Mr. Morampalle, learned AGP for respondent No.3.

4 Mr. Bhalerao, learned counsel for appellant invited my attention to the copy of judgment delivered by the Reference Court in LAR No.90 of 2012 dated 24th May, 2016. He pointed out that the Reference Court has awarded the interest under Sections 28 and 34 of the Act from the date of possession, which is contrary to the Full Bench decision of this Court in the case of ***State of Maharashtra Vs. Kailash Shiva Rangari***, reported in, ***2016 (3) Mh.L.J. 457***.

5 Ms. Laxmi R. Thakur, holding for Mr. L. C. Patil, learned counsel for original claimants and Mr. Morampalle, learned AGP for respondent No.3 fairly conceded this legal position in view of Full Bench decision of this Court in the case of ***State of Maharashtra Vs. Kailash Shiva Rangari*** (supra).

6 Having regard to the legal position made clear by the Full Bench decision of this Court in the Case of ***State of Maharashtra Vs. Kailash Shiva Rangari*** (supra), it is clear that the Reference Court has committed an error in the eyes of law in awarding interest on compensation amount under Sections 28 and 34 of the Act from the date of possession. The claimants are entitled to get interest under Sections 28 and 34 of the Act from the date of award in view of the Full Bench decision of this Court in the Case of ***State of Maharashtra Vs. Kailash Shiva Rangari*** (supra). The view taken by the Reference Court

is contrary to the Full Bench decision of this Court referred above. As such, that clause of interest more particularly clauses (5) and (6) of the operative part of the order need to be corrected in the appeal. There is no need to discuss rest of the part of the judgment and award passed by the Reference Court. Hence, the following order is passed:

ORDER

- I. The appeal stands partly allowed as under:
- II. The impugned judgment and award passed in LAR No.90 of 2012, is hereby partly modified to the extent of awarding interest under Sections 28 and 34 of the Land Acquisition Act, 1894, which shall be read as under:
 5. The appellant shall pay interest under Section 28 of the Land Acquisition Act, 1894 from the date of award till realization of the amount in full.
 6. The appellant shall pay interest under Section 34 of the Land Acquisition Act, 1894 from the date of award till realization of the amount in full.

- II. Rest of the part of the judgment and award stands confirmed.
- III. Award be modified accordingly.
- IV. After making necessary calculations in respect of the interest under Sections 28 and 34 of the Land Acquisition Act, 1894, the compensation amount with interest shall be paid to the original claimants and balance, if any, be paid to the appellant/acquiring body.
- V. The appeal is accordingly disposed of.
- VI. In view of disposal of appeal, civil application is also disposed of.

[SHRIKANT D. KULKARNI, J.]