

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

**FIRST APPEAL NO. 4343 OF 2017**

- |    |                                                                                               |                                                   |
|----|-----------------------------------------------------------------------------------------------|---------------------------------------------------|
| 1. | The Executive Engineer,<br>Minor Irrigation Division,<br>Osmanabad.<br>Tq. & Dist. Osmanabad. | <b>... APPELLANT</b><br>(Orig.Resp.No.3)          |
| 2. | The State of Maharashtra,<br>Through the Collector,<br>Osmanabad.                             |                                                   |
| 3. | Special Land Acquisition Officer,<br>(P.T. & M.I.W. No.2) Medium Project,<br>Osmanabad.       | <b>... CO-APPELLANTS</b><br>(Orig.Resp.Nos.1 & 2) |

**VERSUS**

|                                                                                                           |                                            |
|-----------------------------------------------------------------------------------------------------------|--------------------------------------------|
| Angad S/o Maruti Kakade,<br>Age: 59 years, Occu: Agril,<br>R/o: Adsulwadi, Tq. Kallam,<br>Dist. Osmanabad | <b>... RESPONDENT</b><br>(Orig. Claimant.) |
|-----------------------------------------------------------------------------------------------------------|--------------------------------------------|

...

Mr. Suresh D. Dhongade, Advocate for Appellant.  
 Mr. A. B. Chate, AGP for State.  
 Mr. Rahul D. Khadap, Advocate for Respondent.

...

**AND**

**FIRST APPEAL NO. 4346 OF 2017**

- |    |                                                                                               |                                          |
|----|-----------------------------------------------------------------------------------------------|------------------------------------------|
| 1. | The Executive Engineer,<br>Minor Irrigation Division,<br>Osmanabad.<br>Tq. & Dist. Osmanabad. | <b>... APPELLANT</b><br>(Orig.Resp.No.3) |
| 2. | The State of Maharashtra,<br>Through the Collector,<br>Osmanabad.                             |                                          |

3. Special Land Acquisition Officer,  
(P.T. & M.I.W. No.2) Medium Project,  
Osmanabad.

... **CO-APPELLANTS**  
(Orig.Resp.Nos.1 & 2)

**VERSUS**

Balaji Maruti Kakade (Died)  
Since deceased his L.Rs.

1. Smt. Anusya W/o Balaji Kakade,  
Age : 42 years, Occu: Agril,
2. Dattatraya S/o Balaji Kakade,  
Age : 21 years, Occu: Agril,
3. Shivkanya D/o Balaji Kakade,  
Age : 19 years, Occu: Agril,

All R/o: Adsulwadi, Tq. Kallam,  
Dist. Osmanabad

... **RESPONDENTS**  
(Orig. Claimants.)

...

Mr. Suresh D. Dhongade, Advocate for Appellant.

Mr. A. B. Chate, AGP for State.

Mr. Rahul D. Khadap, Advocate for Respondent Nos.1 to 3.

...

**AND**

**FIRST APPEAL NO. 4345 OF 2017**

1. The Executive Engineer,  
Minor Irrigation Division,  
Osmanabad.  
Tq. & Dist. Osmanabad.
2. The State of Maharashtra,  
Through the Collector,  
Osmanabad.
3. Special Land Acquisition Officer,  
(P.T. & M.I.W. No.2) Medium Project,  
Osmanabad.

... **APPELLANT**  
(Orig.Resp.No.3)

... **CO-APPELLANTS**  
(Orig.Resp.Nos.1 & 2)

VERSUS

1. Kedari S/o Tukaram Jadhav,  
Age : 65 years, Occu: Agril,
2. Raghunath S/o Tukaram Jadhav,  
Age : 60 years, Occu: Agril,  
Both R/o: Adsulwadi, Tq. Kallam,  
Dist. Osmanabad

... **RESPONDENTS**  
(Orig. Claimants.)

...  
Mr. Suresh D. Dhongade, Advocate for Appellant.  
Mr. A. B. Chate, AGP for State.  
Mr. Rahul D. Khadap, Advocate for Respondent Nos.1 & 2.

...

AND**FIRST APPEAL NO. 4344 OF 2017**

1. The Executive Engineer,  
Minor Irrigation Division,  
Osmanabad.  
Tq. & Dist. Osmanabad.
2. The State of Maharashtra,  
Through the Collector,  
Osmanabad.
3. Special Land Acquisition Officer,  
(P.T. & M.I.W. No.2) Medium Project,  
Osmanabad.

... **APPELLANT**  
(Orig.Resp.No.3)

... **CO-APPELLANTS**  
(Orig.Resp.Nos.1 & 2)

VERSUS

Ananta S/o Maruti Kakade,  
Age: 77 years, Occu: Agril,  
R/o: Adsulwadi, Tq. Kallam,  
Dist. Osmanabad

... **RESPONDENT**  
(Orig. Claimant.)

...  
Mr. Suresh D. Dhongade, Advocate for Appellant.  
Mr. A. B. Chate, AGP for State.  
Mr. Rahul D. Khadap, Advocate for Respondent.  
...

CORAM : **SHRIKANT D. KULKARNI, J.**  
DATE : 14<sup>th</sup> March, 2022.

**ORAL JUDGMENT:**

. With the consent of the learned counsel for parties and learned AGP, this group of appeals is taken up for final disposal.

2 Mr. Dhongade, learned counsel for appellant/acquiring body submitted that the State Government has taken policy decision vide Government Resolution dated 3<sup>rd</sup> November, 2016 with Corrigendum dated 23<sup>rd</sup> February, 2017 and 13<sup>th</sup> August, 2018 making it clear that if market value determined by the Reference Court is less than four times of the amount of market value as determined by the Special Land Acquisition Officer, the acquiring body would not press for the appeals in respect of the market value determined by the Reference Court. Mr. Dhongade, learned counsel for appellant submitted that in view of that Government Resolution, this Court has disposed of First Appeal No.1967 of 2017 under order dated 14<sup>th</sup> January, 2019 arising out of same project, same notification and same award. He, therefore, submitted that the same recourse can be taken

and this group of appeal can be disposed of with certain modifications in respect of the award of interest under Section 28 of the Land Acquisition Act, 1894 (hereinafter referred to as the “Act”).

3           Mr. Rahul Khadap, learned counsel for original claimants fairly conceded that this Court has decided First Appeal No.1967 of 2017 arising out of same project and same notification under order dated 14<sup>th</sup> January, 2019. He also fairly conceded the legal position laid down by 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*** regarding interest under Section 28 of the Act.

4           Mr. Chate, learned AGP for the State made similar submissions.

5           Mr. Dhongade, learned counsel for appellant seeks leave to place on record copy of order passed by this Court in First Appeal No.1967 of 2017 dated 14<sup>th</sup> January, 2019. Leave granted. A copy of order is taken on record and marked ‘X’ for identification.

6           I have considered the submissions of Mr. Dhongade, learned counsel for appellant/acquiring body, Mr. Rahul Khadap, learned counsel for original claimants and Mr. Chate, learned AGP for the State. I have also gone through the copy of order passed in First

Appeal No.1967 of 2017 dated 14<sup>th</sup> January, 2019. As per the submissions of the learned counsel for respective sides, First Appeal No.1967 of 2017 arising out of same project and same notification, has been disposed of by this Court under order dated 14<sup>th</sup> January, 2019 by taking the view that since the market value determined by the Reference Court is within the range of four times of the market value determined by the SLAO. The appeals need to be disposed of. This Court has partly allowed the appeal to the extent of award of interest under Section 28 of the Act and accordingly, directed to correct impugned judgment and award passed by the Reference Court.

7 I do not see any reason to take any different view. It is a policy decision taken by the State Government not to prefer the appeal when the market value determined by the Reference Court under Section 18 of the Act is within the range of four times of market value determined by the SLAO. In the present case, the compensation / market value determined by the Reference Court is within the range of four times of the market value determined by the SLAO. As such, there is no need to touch other aspects when the Government has taken the policy decision. So far as awarding interest under Section 28 of the Act is concerned, in view of Full Bench decision of this Court in the Case of ***State of Maharashtra Vs. Kailash Shiva Rangari*** (supra), interest under Section 28 of the Act can be awarded from the date of

passing of the award and not prior to that. The Reference Court has awarded the interest under Section 28 of the Act from the date of possession, which is contrary to the Full Bench decision. As such, the impugned judgment and award to the extent of interest needs to be modified.

8            Having regard to the above reasons and discussion, I proceed to pass the following order:

### **ORDER**

- I. The appeals stand partly allowed to the extent of modification of interest under Section 28 of the Land Acquisition Act, 1894.
- II. Remaining terms of the judgment and award passed by the Reference Court in respective LAR proceedings, is hereby confirmed.
- III. The original claimants are entitled to get interest under Section 28 of the Land Acquisition Act, 1894 from the date of award.
- IV. Award be modified accordingly.
- V. The amount payable in view of modified award, is permitted to be withdrawn by the respective claimants alongwith accrued interest thereon from the amount deposited by the appellant/acquiring body in this Court.

- VI. The balance amount alongwith interest accrued thereon,  
if any, be returned to the acquiring body/appellant.
- VII. The appeals stand disposed of in the above terms.
- VIII. Pending civil applications, if any, also stand disposed of.

**[ SHRIKANT D. KULKARNI, J. ]**

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