

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

933 FIRST APPEAL STAMP NO. 15097/2020
WITH
CIVIL APPLICATION NO. 3733 OF 2022

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

VERSUS

NARAYAN CHIMAN BHUSARE AND ANR

...

Advocate for Applicant : Mr S.G. Bhalerao
Advocate for respondent No. 1 : Mr L.C. Patil
AGP for respondent No. 2 : Mr P.M. Kulkarni

WITH
933 FIRST APPEAL STAMP NO. 15374/2020
WITH
CIVIL APPLICATION NO. 3891 OF 2022

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

VERSUS

LAXMAN MURLIDHAR TAYDE AND ANR

...

Advocate for Applicant : Mr S.G. Bhalerao
Advocate for respondent No. 1 : Mr L.C. Patil
AGP for respondent No. 2 : Mr P.M. Kulkarni

CORAM : SHRIKANT D. KULKARNI, J.
DATE : 16th March, 2022

PER COURT :

1. Civil Application No. 3891/2022 in First Appeal St. No. 15374/2020 not on Board. Taken on the Board at the request of Mr S.G. Bhalerao, learned counsel for the applicant.
2. By consent, heard finally at admission stage.

3. The controversy in this appeal revolves around the rate of interest awarded by the Reference Court under section 28 and 34 of the Land Acquisition Act, 1894. Rest of the part of Judgment and award passed by the Reference Court is not in dispute and not under challenge.

4. Heard Mr S.G. Bhalerao, learned counsel for the appellant, Mr L.C. Patil, learned counsel for the original claimant and Mr P.M. Kulkarni, learned AGP for the State.

5. Mr Bhalerao, learned counsel for the appellant/acquiring body invited my attention to the operative order passed by the Reference Court in LAR Nos. 1071/2010 and 621/2010, more particularly, clause Nos. 5 and 6. He pointed out that the Reference Court has awarded interest under section 28 as well as under section 34 of the Land Acquisition Act from the date of possession which is contrary to the full bench decision of this Court in case of ***State of Maharashtra, through Sub Divisional Officer and Special Land Acquisition Officer, Darwha, District Yavatmal Vs. Kailash Shiva Rangari*** reported in ***2016 (3) Mh.L.J. 457***.

6. Mr Bhalerao, learned counsel for the appellant therefore pressed need to modify the Judgment and award to that extent.

7. Mr L.C. Patil, learned counsel for the original claimants has fairly conceded this legal position in view of the full bench decision of this Court referred above.

8. Mr P.M. Kulkarni, learned AGP for the State also conceded this legal position.

9. Having regard to the legal position made clear by the full bench decision of this Court in case of ***State of Maharashtra Vs. Kailash Shiva Rangari*** (supra), it is clear that the Reference Court has committed an error in the eye of law in awarding interest on compensation amount under section 28 of the Land Acquisition Act from the date of possession. The Reference Court has also awarded interest on the compensation amount under section 34 of the Land Acquisition Act from the date of possession. The view taken by the Reference Court is contrary to the full bench decision of this Court. As such, that clause of interest more particularly operative part Nos. 5 and 6 of the order needs 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.

ORDER

- (A) The appeals stand partly allowed as under :-
- (i) The impugned Judgment and award passed in LAR No.1071/2010 dated 18.09.2014 and 621/2010 dated 03.09.2015 are hereby partly modified to the extent of awarding interest under section 28 and 34 of the Land Acquisition Act, which shall be read as under :-
- Clause - 5** : The respondents shall pay interest under section 28 of the Land Acquisition Act from the date of award till realization of the amount.
- Clause - 6** : The respondents shall pay interest under section 34 of the Land Acquisition Act from the date of award till realization of the amount.
- (ii) Rest of the part of Judgment and award stands confirmed.
- (iii) The award be modified accordingly.
- (iv) After making the necessary recalculation in respect of the interest under section 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 appeals are disposed of accordingly.
- (vi) In view of disposal of Appeals, civil applications also stand disposed of.

(SHRIKANT D. KULKARNI, J.)

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