

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

**FIRST APPEAL NO.2909 OF 2022
WITH
CIVIL APPLICATION NO.6807 OF 2023
AND
CIVIL APPLICATION NO.4149 OF 2022**

1. The Maharashtra Krushna Valley
Development Corporation,
Through, Executive Engineer,
Pimpalgaon Joga Dam Division,
Narayangaon Tq. Junnar
District Pune

... Appellant

2. The State of Maharashtra
Through the Collector, Ahmednagar

... Co-Appellant

Versus

1. Lalu @ Yeshwant Manaji Jagtap
Age: 72 yrs., Occu: Agri.

2. Suman Lalu @ Yeshwant Jagtap
Age: 67 yrs., Occu: Agri.

3. Vitthal Janaji Jagtap
Age: 83 yrs., Occu: Agri.

All R/o Padali Ale, Tq. Parner,
District Ahmednagar

... Respondents

...

Mr. A. M. Gaikwad, Advocate for the Appellant No.1

Mr. A. B. Chate, Advocate for the Appellant No.2

Mr. M. R. Sonawane, Advocate for Respondent Nos.1A, 1B and 2

...

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 20.07.2023

PRONOUNCED ON : 18.08.2023

JUDGMENT :

1. The appellants impugn the judgment and award dated 12/07/2017, passed by the 5th Joint Civil Judge, Senior Division, Ahmednagar, in Land Acquisition Reference (LAR) No.57/2016, by which, the reference is allowed and enhancement compensation has been granted in favour of the respondents – original claimants.

2. The land of the respondents was acquired under an award passed by Land Acquisition officer under Section 11 of the Act. The respondents had made a reference petition under Section 18 of the Land Acquisition Act, 1894 seeking enhancement of compensation. The reference court partly allowed the claim in reference petition and granted the enhanced compensation @ Rs.2,228/- Per R for Jirayat lands and @ Rs.3,342/- Per R for irrigated lands alongwith statutory benefits. The interest under Section 34 of the Act has been awarded from the date of possession i.e. 14/12/2005. Similarly, the benefit under Section 28 of the Act is also granted from that date.

3. Mr. Gaikwad, learned Advocate appearing for the appellant / acquiring body points out that the reference court has committed an error in awarding the interest dehors statutory scheme. He submits that the interest under Sections 28 and 34 of the Act has been granted by the reference court contrary to the law declared by the full bench judgment in the case of **State**

of Maharashtra Vs. Kailash Shiva Rangari reported in **2016 (4) All MR 513** and subsequent judgment in the case of **State of Maharashtra and Others Vs. Ramesh Tukaram Meshram and Ors.** reported in **2018 (3) Mh.L.J. 616.**

He also points out that in the present case, the Special Land Acquisition Officer has passed an award on 17/01/2012. The possession of the land was taken on 14/12/2005 i.e. prior to the date of passing of the award. The notification under Section 4 of the Act was published on 16/04/2009. In that view of the matter, he urges that the reference court erred in granting the interest/benefit under Sections 28 and 34 of the Act from the date of possession. The issue raised on behalf of the appellants is no more res-integra. It is well settled that the benefit under Sections 28 and 34 of the Act will be available from the date of award passed by the Land Acquisition Officer in terms of Section 11 of the Act.

4. At this juncture, the reference to the findings recorded by the Larger Bench of this Court in the case of *State of Maharashtra Vs. Kailash Shiva Rangari* (Supra) in Paragraph No.32 is necessary, which reads thus:

“32. Keeping in view the entire scheme of the Land Acquisition Act and the ratio of the decisions of the Apex Court in the cases of *R.L. Jain* and *Lila Ghosh*, cited supra, the position of law can be summarized as under :

(i) If the possession of the land under acquisition is taken under Section 16 of the said Act i.e. after an award is made by the Collector under Section 11 therein, the interest would be payable under Section 34 from the date of passing of the award and we are in agreement with such a view expressed by the Division Bench of this Court (*S/Shri N.V.. Dabholkar and M.G. Gaikwad, JJ.*) in the case of *State of Maharashtra & anr. Vs. Rajendra Narayanrao*

Gaikwad, reported in 2008 (1) Bom. C.R. 839 (A.B.).

(ii) The interest as provided under Section 34 of the said Act shall start running from the date of possession, only if the possession is taken by the Collector in exercise of his powers under Section 17 of the said Act which would obviously be after issuance of notice under Section 9(1) of the said Act. If the possession is taken under Section 17, the interest payable under Section 34 of the said Act shall start running from the date of possession and not from the date of award.

(iii) Where the possession of the land under acquisition is taken prior to issuance of notification under Section 4(1), then there would be no question of invoking the urgency clause under Section 17 of the said Act and the interest under Section 34 shall start running from the date of passing of the award.

(iv) The starting point for the purposes of calculating the amount of additional component under Section 23(1-A) of the said Act at the rate of twelve per centum per annum is the date of publication of the notification under Section 4 of the said Act, and the terminal point is either the date of the award or the date of taking possession, whichever is earlier.

(v) We hold that in none of the eventualities, the claimant shall be entitled to interest under Section 34 of the said Act from the date of publication of the notification under Section 4(1) of the said Act.

(vi) There is no overlapping of the benefits under Section 23(1-A) and Section 34 of the said Act. The terminal points under Section 23(1-A) are the starting points under Section 34 of the said Act and both the provisions operate in different fields.

(vii) We express our full agreement with the view taken by the Division Bench of this Court in Lalitkumar Shah's case, cited supra, that in a case where possession is taken prior to issuance of notification under Section 4(1) of the said Act, the interest under Section 34 shall start running from the date of award only.

(viii) We also express our full agreement with the view taken by the Division Bench of this Court in Lalitkumar Shah's case, cited supra, that the decision of the Division Bench in the case of Jafarali Mithabhai Hirani & Ors. v. State of Maharashtra & Ors., reported in 2009 (3) All MR 779, and the similar view taken in other matters is no longer a good law."

5. Pertinently, this Court in the matter of State of Maharashtra Vs. Ramesh Tukaram Meshram (Supra) again dealt with the finding recorded by the full bench and interpreted the provisions of Section 28 of the Act and concluded that the interpretation accorded to Section 34 would also have its equal application while understanding the import of Section 28 of the Act. It is further observed that the interest awarded under Section 28 of the Act, just like under Section 34 thereof, cannot be a compensation or damages for the loss of right to retain possession but only compensation payable by the State for keeping back the amount payable to the owner.

6. Keeping in mind the aforesaid prepositions of law, it can be seen that manifest error is committed by the reference court while passing the impugned judgment and award to the extent of grant of interest from the date of award.

7. Mr. Sonawane, learned Advocate appearing for the respondents though endeavors to support the award, did not dispute the legal prepositions underlined in the aforesaid judgments.

8. In view of the aforesaid discussion, this Court proceed to pass the following order :

ORDER

- (i) The appeal is partly allowed.
- (ii) The clause no.4 of the operative part in the impugned judgment and award dated 12/07/2017 passed by Civil Judge, Senior Division,

Ahmednagar, in LAR No 57/2016 stands partially replaced as under, without disturbing the other clauses:

- (a)** The applicants shall be entitled for the benefit under Sections 28 and 34 of the Act from the date of award i.e. 17/01/2012.
- (b)** The applicants shall be entitled for the interest @ 9% per annum for first year from the date of award and thereafter @ 15% till realization of the entire amount.
- (iii) The judgment and award passed by the reference court is modified in the aforesaid terms while confirming rest of award.
- (iv) The appeal is disposed of accordingly.
- (v) In view of disposal of appeal, pending civil applications, if any, are also disposed of.

(S. G. CHAPALGAONKAR, J.)

Sameer