



(This order is corrected pursuant to speaking to minutes order dated 30.09.2024)

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

7 FIRST APPEAL NO. 3016 OF 2022

MOTIRAM NIVRUTTI PONDE

VERSUS

THE STATE OF MAHARASHTRA AND ORS

FIRST APPEAL NO. 3017 OF 2022

FULCHAND NIVRUTTI PONDE

VERSUS

THE STATE OF MAHARASHTRA AND ORS

FIRST APPEAL NO. 3018 OF 2022

TRIMBAK NIVRUTTI PONDE

VERSUS

THE STATE OF MAHARASHTRA AND ORS

FIRST APPEAL NO. 3019 OF 2022

GOPINATH NIVRUTTI PONDE

VERSUS

THE STATE OF MAHARASHTRA AND ORS

FIRST APPEAL NO. 3020 OF 2022

DHONDABAI MANIK PONDE

VERSUS

THE STATE OF MAHARASHTRA AND ORS

Mr.V.V. Ingale, Advocate for the Appellants.

Mr.R.K. Ingole, AGP for the respondent-State.

Ms.R.D. Reddy and Mr. S.V. Warad, Advocate for respondent No.3 in respective matters.

CORAM : KISHORE C. SANT, J.

DATE : 19.09.2024

PC :-

01. Heard learned Advocates for the parties.

02. Limited grievance raised in these appeals is that the learned Reference Court though enhanced the amount of compensation towards acquisition of land, has not awarded interest under section 28 of the Land Acquisition Act (for short "said Act"), on the enhanced amount. Interest is awarded only under section 34 of the said Act. The learned Advocate for the appellants strenuously submits that when the amount is to be enhanced, the Reference Court has to award interest on the excess amount in terms of section 88 and 28 of the Act. He, thus, submits that the award needs to be modified by directing to award interest under sections 28 and 88 of the Act on the enhanced amount.

03. Learned Advocate for the Acquiring Body vehemently opposed the appeals stating that grant of interest under section 28 of the Act is discretion of the Reference Court and it is not absolute provision. He relies upon judgment in the case of **Union of India Vs. Pramod Gupta reported in AIR 2005 SC 3708**. The learned Advocate pointed out para No. 111 of said judgment, which is reproduced below :-

"111. The effect of Section 28 of the Act came up for consideration before this Court in Raghubans Narain Singh Vs. The Uttar Pradesh

Government, through Collector of Bijnor [AIR 1967 SC 465] wherein this Court held the said provision to be discretionary in character observing that it is for the court to consider whether in the facts and circumstances of the case, such interest should be directed to be paid at all. It is now trite that the court having regard to the facts and circumstances of a particular case as, for example, where there is a short interval between the award and the payment, may not direct grant of any interest."

04. The learned Advocate for the Acquiring Body further relied upon judgment in the case of **Raghubans Narain Singh vs The Uttar Pradesh Government reported in AIR 1967 SC 465**. In the said case also the Hon'ble Apex Court has considered the aspect of grant of interest under section 28 of the Act. It is held that though the Court has discretion, taking wording of the section as it is, there is no discretion with the Collector after the Reference Court directs to pay rate of interest.

05. This Court has considered the judgments cited before this Court. In the judgment in the case of **Raghubans Narain Singh (Supra)**, the Hon'ble Supreme Court has held that Reference Court has discretion under sections 28 and 88 of the Act. From the judgment in the case of **Pramod Gupta (Supra)**, what is seen is that under section 28, interest need not be granted as said provision is discretionary in

nature. However, from para 111, what appears is that such interest may not be when there is short interval between the award and the payment. It is pointed out that in the reported case the award is passed on 18.03.2006 and amount is withdrawn on 13.04.2006. However, this withdrawal of the amount was as per the award passed by the SLAO, whereas the Reference Court decided the reference on 27.10.2014. Thus, if the interest is to be paid on enhanced amount, it needs to be paid from the date of award i.e. 18.03.2006 till actual realization of the enhanced amount.

06. Looking to the judgment of the Reference Court, it does not appear that there is discussion on the aspect of interest under section 28 of the Act. When a man loses its valuable property in any acquisition proceeding, in such case he may lose even livelihood. The amount of interest is not by way of penalty or otherwise but simply because of amount of compensation is paid after some time and therefore the claimants need to be held entitled for the amount of compensation. When the amount of compensation is enhanced, it is enhanced considering the circumstances as on the date of award and therefore the interest needs to be granted considering the date of award. Therefore, interest must follow section 28 of the Act, after the reference is decided

and amount is enhanced.

07. For all these reasons, this Court is inclined to allow the present appeals. Thus, the appeals partly succeed. The appellants are held entitled to receive interest under section 28 of the Act from the date of award on the enhanced amount of compensation till the date of realization.

08. While filing appeals, there is delay. While condoning the delay, this Court had directed to file undertaking to the appellants to the effect that in case the appeals are allowed, the appellants shall not be entitled to seek interest for the delayed period. Thus, excluding the period of delay in preferring the appeals, the award be modified.

09. Thus, the appeals are allowed in above terms and are disposed off.

[KISHORE C. SANT, J.]