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{fa983.23}

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

22 FIRST APPEAL NO. 983 OF 2023

THE EX. ENGINEER, MEDIUM PROJECT OSMANABAD AND ORS

VERSUS

VITTHAL S/O MAINK HUKE

WITH

CIVIL APPLICATION NO. 8214 OF 2022

IN FA/983/2023

AND

96 FIRST APPEAL NO. 984 OF 2023

THE EX. ENGINEER, MEDIUM PROJECT, OSMANABAD AND ORS

VERSUS

RAGHUNATH SHANKAR HUKE

AND

97 FIRST APPEAL NO. 985 OF 2023

THE EX. ENGINEER, MEDIUM PROJECT OSMANABAD AND ORS

VERSUS

BHIMA S/O ANNA DEOKAR

Ms. S.D.Shelke, Advocate for the appellants.

Mr. Shrikishan S. Shinde, Advocate for the respondents-claimants.

CORAM : KISHORE C. SANT, J.

DATE : 19.09.2024

PC :-

01. Heard learned Advocates for the parties for some time. At the request of learned Advocates for the parties and in view of nature of the appeals, the appeals are taken up for final disposal at this stage.

02. The Acquiring Body has come to this Court only to the extent of interest under section 28-A of the Land Acquisition Act (for short "Said Act") from the date of possession, which is prior to the date of notification under section 4 of the Land Acquisition Act till realization of the amount. The learned Advocate for the appellants submits that in the impugned judgment and order, the learned Reference Court has directed to pay interest. Though the Reference Court has given enhancement, however, granted interest under section 28-A of the said Act from the date of notification under section 4 of the said Act i.e. from 09.04.1990 as per law till realization of the amount. She further stated that now position is settled in view of the judgment in the case of **State of Maharashtra Vs. Kailas Shiva Rangari, 2016 (4) ALL MR 513** that the interest under section 28-A of the Act can be directed to be paid only from the date of actual possession if it is taken under section 16 or from the date of actual award and not from any other date earlier to this contingency. She thus submits that the judgment and award deserves to be quashed and set aside.

03. The learned Advocate for the respondents opposes the appeal, however, submits that all these judgments are based upon judgment delivered in LAR No. 369 of 1997 by the Reference Court. Said

judgment was challenged in this Court by filing First Appeal No. 3325 of 2011. This Court by judgment and order in connected appeals, has confirmed the judgment of the Reference Court in FA No. 369 of 1997. He, thus, submits that once the judgment has attained finality, these appeals cannot be interfered on any other count. He, thus, prays for dismissal of the appeals.

04. The learned Advocate for the appellants at this stage pointed out that the judgment in FA No. 3325 of 2011 and other connected appeals is dated 19.12.2013 by Single Judge of this Court, whereas judgment of the Hon'ble Supreme Court in the case of **Kailas Shiva Rangari (supra)** is of the year 2016. The Single Judge of this Court while deciding the appeals had no occasion to deal with the specific point of interest under section 28-A of the Act. She submits that in view of Full Bench judgment, now judgment in FA No. 3325 of 2011 and connected appeals, would not be applicable to the present appeals.

05. On considering the submissions, this Court has considered as to whether the judgment of the Single Judge of this Court in FA No. 3325 of 2011 and other connected appeals still holds the field and would be binding upon this Court while deciding the present appeals, so far as

awarding interest under section 28-A of the act is concerned.

06. In view of the judgment in the case of **Kailas Shiva Rangari (supra)**, the answer is clearly "NO". This Court is persuaded to hold that the impugned judgment and order needs to be modified only to the extent of clause 2/B. So far as enhancement is concerned, this Court finds that in FA No.3325 of 2011, this Court has already rejected the appeals by maintaining judgment impugned in that First Appeal. Thus, this Court finds that said issue has already attained finality. In view of this, this Court finds that modification is required only to the extent of clause 2/B of the operative order portion. Hence, following order.

ORDER

- (i) The appeals stand partly allowed.
- (ii) The order passed by the learned Reference Court is modified by deleting clause 2/B of the operative order.
- (iii) The claimants shall be entitled to receive interest in view of Full Court Judgment in the case of **State of Maharashtra Vs. Kailas Shiva Rangari, 2016 (4) ALL MR 513.**
- (iv) The appellants to deposit remaining amount as per this order prior to 31.03.2025 in this Court.
- (v) The claimants-respondents shall be entitled to withdraw amount after it is deposited in this Court without requiring any formal application.

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- (vi) The amount which is already lying in this Court, shall be disbursed to the claimants-respondents subject to final calculations.
- (vii) Pending civil application stands disposed off.

[KISHORE C. SANT, J.]