



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8309 OF 2020

The Executive Engineer Lower Terna Canal Project Div 2
VERSUS
Chandrakant Parshuram Wakude And Another

WITH
WRIT PETITION NO. 8310 OF 2020

The Executive Engineer Lower Terna Canal Project Div 2
VERSUS
Venkatrao Bankatrao Patil And Another

WITH
WRIT PETITION NO. 8311 OF 2020

The Executive Engineer Lower Terna Canal Project Div 2
VERSUS
Shivaji Chandrakant Patil And Another

WITH
WRIT PETITION NO. 8312 OF 2020

The Executive Engineer Lower Terna Canal Project Div 2
VERSUS
Vijaymala Nagnath Swami And Another

WITH
WRIT PETITION NO. 8314 OF 2020

The Executive Engineer Lower Terna Canal Project Div 2
VERSUS
Ashok Lingappa Patil And Another

WITH
WRIT PETITION NO. 8313 OF 2020

The Executive Engineer Lower Terna Canal Project Div 2
VERSUS
Kamalbhai Bhagwat Karwade And Another

WITH
WRIT PETITION NO. 8315 OF 2020

The Executive Engineer Lower Terna Canal Project Div 2
VERSUS
Anant Babruwan Patil And Others

WITH
WRIT PETITION NO. 8316 OF 2020

The Executive Engineer Lower Terna Canal Project Div 2
VERSUS
Omprakash Santram Jatal And Another

WITH
WRIT PETITION NO. 8317 OF 2020

The Executive Engineer Lower Terna Canal Project Div 2
VERSUS
Sachin Shrirang Jatal And Another

WITH
WRIT PETITION NO. 8326 OF 2020

The Executive Engineer Lower Terna Canal Project Div 2
VERSUS
Sarika Shrirang Jatal And Another

WITH
WRIT PETITION NO. 8318 OF 2020

The Executive Engineer Lower Terna Canal Project Div 2
VERSUS
Kamal Shrirang Jatal And Another

WITH
WRIT PETITION NO. 8319 OF 2020

The Executive Engineer Lower Terna Canal Project Div 2
VERSUS
Supriya Shrirang Jatal And Another

WITH

WRIT PETITION NO. 8320 OF 2020

The Executive Engineer Lower Terna Canal Project Div 2

VERSUS

Manjushri Sachin Jatal And Another

WITH

WRIT PETITION NO. 8321 OF 2020

The Executive Engineer Lower Terna Canal Project Div 2

VERSUS

Shrirang Baburao Jatal And Another

WITH

WRIT PETITION NO. 8322 OF 2020

The Executive Engineer Lower Terna Canal Project Div 2

VERSUS

Surekha Bhagwat Kutwad And Others

WITH

WRIT PETITION NO. 8323 OF 2020

The Executive Engineer Lower Terna Canal Project Div 2

VERSUS

Baburao Shakarappa Sugre And Another

WITH

WRIT PETITION NO. 8327 OF 2020

The Executive Engineer Lower Terna Canal Project Div 2

VERSUS

Satyawan Baburao Karwade And Another

WITH

WRIT PETITION NO. 8328 OF 2020

The Executive Engineer Lower Terna Canal Project Div 2

VERSUS

Shrish Ashok Patil And Another

WITH

WRIT PETITION NO. 8324 OF 2020

The Executive Engineer Lower Terna Canal Project Div 2

VERSUS

Narayan Sudam Jatal And Another

WITH

WRIT PETITION NO. 8325 OF 2020

The Executive Engineer Lower Terna Canal Project Div 2

VERSUS

Gafursab Amirsab Sayyed And Anther

WITH

WRIT PETITION NO. 8329 OF 2020

The Executive Engineer Lower Terna Canal Project Div 2

VERSUS

Anusayabai Shrirang Karwade And Another

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Mr. R. B. Deshpande, Advocate for the Petitioner in all Petitions

Mr. R. P. Adgaonkar, Advocate for Respondent No. 1 in all Petitions

Mr. S N. Shirse, AGP for Respondent No. 2/State in all Petitions

CORAM : R. M. JOSHI, J

DATE : AUGUST 08, 2025

COMMON ORDER :

1. By consent of both sides, heard finally at the stage of admission.

2. Since these Petitions involve common question of facts and law, the same are decided by this common order.

3. The facts in these cases are not in dispute to

state that there was acquisition of the lands of Respondents by notification dated 02.01.2008 under Section 4 of the Land Acquisition Act, 1894 (for short '**the Act**'). Award came to be passed on 08.07.2011. The land owners being aggrieved by the quantum of compensation under the said award, filed references under Section 18 of the Act. The references came to be allowed by common judgment and award dated 05.12.2016. Since the amount of compensation as determined by the Reference Court was not paid, claimants filed execution proceedings. In the execution proceeding the amount of compensation along with interest came to be deposited by the Acquiring Body.

4. Acquiring Body during the pendency of the executing proceeding preferred Application before Execution Court on 22.04.2018 calling upon the Executing Court to modify the award to the extent of interest granted to the claimants from the date of notification instead from the date of award. Learned Execution Court heard both sides and passed impugned order dated 24.02.2020 rejecting application filed by the Acquiring Body essentially on the ground that the

Executing Court cannot go behind the award and even if it is accepted that there is error committed by the Court in granting interest under Section 28 of the Act, still Execution Court cannot correct the said error.

5. Learned Counsel for the Acquiring Body submits that the amount of almost Rs. 75 lacs is likely to be paid in excess to the claimants, to which they are not entitled. To support the submission that Reference Court could not have granted interest from the date of notification and it ought to have granted from the date of award, he placed reliance on the judgment of Full Bench of this Court in case of *State of Maharashtra vs. Kailash Shiva Rangari, 2016(3) Mh.L.J. 457*. It is his submission that in view of law settled by Full Bench of this Court, it was not open for the Reference Court to grant interest on the amount of compensation from the date of notification. Thus, it is his contention that since the interest granted by the Reference Court is contrary to the provision of law, it ought to have been modified by the Execution Court. He placed reliance on the judgment of the Supreme Court in case of *Chhanga Singh and Anr. Vs. Union of India and Anr, AIR 12 SC*

2879, in order to argue that as held herein it is open for the Execution Court to modify the award. Similarly, he took this Court through the following judgments: Dhurandhar Prasad Singh vs. Jai Prakash University and Others, AIR 2001 SC 2552, M/s Brakewel Automotive Componenets (India) Pvt. Ltd vs. P. R. Selvam Alagappan, AIR 2017 SC 1577, Sakuntala Mishra and Others vs. Jagdeep Pratap Deo, AIR 2019 (NOC) 456 & Satya Narain Garg vs. Learned Additional District Judge NO. 2, Ajmer and Others, 2019 STPL 3304 Rajasthan, wherein the scope of Section 47 of Code of Civil Procedure has been explained. The sum and substance of his contention is that since miscarriage of justice has been caused by the award passed by the Reference Court, the said error ought to have been corrected by the Execution Court.

6. Learned Counsel for the Respondents/Claimants supported the impugned order by relying upon the proposition of law that the Execution Court cannot go behind the award. He pointed out from record that there is a conscious decision taken by Acquiring Body not to challenge Award passed by Reference Court and,

therefore, even otherwise no modification therein can be asked now. He placed on record photocopy of the communication dated 09.11.2017 wherein it was decided by the Acquiring Body not to challenge the award passed by the Reference Court by filing an Appeal. The said communication is taken on record and marked 'X' for identification.

7. There is no dispute about the fact that the Reference Court was competent to decide the reference and no jurisdictional error has been committed by the Reference Court. Thus, it cannot be said that the award passed by the Reference Court is without jurisdiction and null and void. Now, question arises as to whether any error committed by the Reference Court in passing award could have been corrected by the Execution Court. A candid answer thereto is in negative.

8. Section 47 of the Code of Civil Procedure though sought to be relied upon by the Counsel for the Petitioner. However, it deals with all issues in respect of the execution to be decided in the same proceedings and not by separate suit. This cannot be construed as permitting Execution Court to act as an

Appellate Court in order to correct error, if any, committed by the Court while passing the award or decree. To hold so, would creates wrong precedent then the Execution Court would be able to go into the correctness or otherwise of the award/decreed passed by the Court and pass order as Appellate Court.

9. The Supreme Court in case of *Chhanga Singh and Anr* (supra) also in no uncertain terms has held that it is settled law that an Execution Court cannot go behind the decree. In the said case, however, it is held that where the claim has not been made and rejected either expressly or impliedly by the Reference Court or the Appellate Court, it would be open to the Execution Court to apply the ratio in case of *Sunder* and say that the compensation awarded includes solatium. In the instant case, there is specific order passed by the Reference Court of granting interest on the compensation from the date of notification. Thus, this cannot be said to be a case wherein issue was not dealt with by the Reference Court and hence, this judgment would not apply to the present case.

10. Though it is sought to be argued that

miscarriage of justice has been caused and the public exchequer to the extent of Rs. 75 lacs is likely to be paid in excess to the claimants, if at all miscarriage of justice has been caused, it is on account of negligence of Authorities of the Acquiring Body in not challenging the said part of award by filing an Appeal. Needless to say that the Acquiring Body was duly represented by the Advocate before the Reference Court so also before Execution Court. If any error was committed by the Reference Court, it was open for the Acquiring Body to challenge the said award, as provided by law. This has not been done. If it is not done consciously, it may be open for the Acquiring Body to recover the said amount from the erring person as per law. Suffice it to say that the impugned order passed by the Execution Court is well within the parameters of law and for want of any perversity, the same does not deserve interference.

11. As a result of above discussion, Petitions stand dismissed.

12. At this stage, learned Counsel for the Petitioner seeks continuation of interim relief for a

period of 10 weeks.

13. Learned Counsel for Respondents opposes the continuation of any interim relief on the ground that the award is passed in the year 2016, and according to him, Acquiring Body was never intending to prefer any Appeal.

14. Even accepting the contention of learned Counsel for the Respondent to be true, as a matter of fact interim relief is in force for a period of above five years. Hence, there would be no justification for not extending the same for further reasonable period. Hence, interim relief stands extended for further period of six weeks from today.

(R. M. JOSHI, J.)