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

**FIRST APPEAL NO. 2659 OF 2024
WITH
C.A. NO. 6193 OF 2024
&
C.A. NO. 16317 OF 2022**

**THE STATE OF MAHARASHTRA
THROUGH COLLECTOR, BEED
VERSUS
RAOSAHEB KHANDU GULVE AND OTHERS.**

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Mr. V.S. Badakh, AGP for appellant
Mr. D.A. Bide, Advocate for respondents.

CORAM :S.G. CHAPALGAONKAR, J.

**RESERVED ON 23.1.2025.
PRONOUNCED ON 30.1.2025.**

ORDER :-

The appellant impugns the judgment and award dated 24.3.2015 passed by Reference Court in LAR No. 555 of 2011, by which the claim filed by respondents/claimants under Section 18 of the Land Acquisition Act, has been allowed.

2. Respondents/claimants were owner of land situated at village Kotan, Taluka Patoda, District Beed which has been acquired for the purpose of construction of village Tank No. 4, Kotan. According to claimants, possession of land was taken on 4.7.1996 by private negotiation. However, notification under Section 4(1) of the Land Acquisition Act was published on 20.8.2009 and finally award under

Section 11 came to be passed on 12.10.2010. After receipt of notice under Section 12(2) of the Act, the claimants presented references under Section 18 seeking enhancement of compensation.

3. The Reference Court, after evaluation of evidence, partly allowed the references and awarded enhanced compensation alongwith statutory benefits. Reference Court awarded interest under Section 28 of the Land Acquisition Act, on the enhanced compensation from the date of actual possession i.e. 4.7.1996 till realization of the entire amount.

4. Aggrieved by the award passed by Reference Court, the State of Maharashtra and Acquiring Body have filed present appeals under Section 54 of the Land Acquisition Act.

5. Mr. V.S. Badakh, learned AGP submits that the Reference Court erroneously held that reference was filed within limitation. According to him, the Reference Court committed gross error of law while awarding interest on enhanced compensation from the date of possession. Relying upon law laid down by this court in case of ***State of Maharashtra vs. Kailas Shiva Rangari*** reported in ***2016(3) Mh.L.J. 457 and Lalita Kumari vs. State reported in 2012(4) Mh.L.J. 743***, he would submit that interest on enhanced compensation is admissible under Section 28 of the Act from the date of award passed under Section 11 of the Act. He submits that this is not a case, where emergency clause under Section 17 was invoked while taking possession prior to passing award. He urges that appeal may be allowed and award passed by the Reference Court may be appropriately modified.

6. Per contra, Mr. D.A. Bide, learned advocate appearing for respondents/claimants supports the award. He submits that evidently possession of acquired land is taken on 4.7.1996 as can be seen from the notification dated 20.8.2004 issued under Section 4 of the Land Acquisition Act. If claimants were deprived of possession from 4.7.1996, certainly they are entitled to receive the statutory benefit i.e. interest from the date of handing over possession. He would point out that respondents have not otherwise compensated claimants by releasing rental compensation as per the Scheme of Government. Mr. Bide would therefore urge that there is no substance in the appeal.

7. Having considered submissions advanced, apparently lands of claimants have been acquired for purpose of construction of Kotan village tank. There is hardly dispute as to the date of possession of land acquired by the appellants. The appeals are filed mainly on two grounds. Firstly, References were filed beyond the prescribed period of limitation and secondly, award of interest from the date of possession is inconsistent with law.

8. So far as issue of limitation is concerned, undisputedly, notice under Section 12(2) of the Act was received by claimants on 5.4.2011. The claimants presented reference before the Land Acquisition Officer on 5.5.2011 i.e. on 30th day. There is no much controversy on aforesaid aspects. Hence Reference Court has rightly held that references are filed well within limitation. The limitation prescribed for filing of Reference under Section 18 is six months from the date of service of notice under Section 12(2) of the Act. Certainly, presentation of the Reference in this case is well within period of limitation as prescribed

under Section 15(2)(b) of the Act. hence, there is no substance in the first contention of the appellants.

9. Second contention raised on behalf of the appellant is that award of interest payable under Section 28 of Act from the date of possession is inconsistent with law. This Court in the case of *Kailas Shiva Rangari (supra)* has held that interest under Section 28 of the Land Acquisition Act has to be awarded from the date of award. Under Section 11 of Act, although possession might have taken by private negotiations prior to passing of such award. Exception to the rule can be made when emergency clause under Section 17 has been invoked.

10. It appears that Reference Court has granted interest on enhanced compensation from the date of possession i.e. 4.7.1996. Award to that extent is certainly inconsistent with the legal position that has been crystallized by the Full Bench of this Court in the case of *Kailas Rangari (supra)*. In that view of the matter, the award of Reference Court deserves to be modified, directing payment of interest on the enhanced compensation from the date of award of L.A.O. under Section 11 of the Act i.e. 12.10.2010.

11. Mr. Bide, learned advocate appearing for claimants relying upon the judgment of this Court in W.P. No. 575 of 2022 dated 31.1.2023 in case of *Ashok Masu Bansode another Vs. State of Maharashtra and others, Dasrao Yadeo Marane vs. State of Maharashtra reported in 2022(3) All M.R. and decision of the Supreme Court in the case of Maimuna Banu Hamid Ali Khan Vs. State and others AIR 2003 SC 3698*, submits that that claimants are entitled for rental compensation

from date of handing over possession till passing of the award. He submits that since amount as per impugned award is already deposited by appellant including interest as per the award passed by the Reference Court the amount of excess interest may be adjusted towards rental compensation.

12. It is true that claimants have right to receive rental compensation. However, this court cannot adjudicate upon entitlement of claimant, particularly in appeal filed by State. It would be for competent authority to determine exact compensation admissible to claimant as per scheme. Claimants are at liberty to pursue their claim for grant of rental compensation before the competent authority and also seek adjustment of interest amount already deposited by the Acquiring Body in pursuance of impugned award. In that view of the matter following order is passed :-

O R D E R

- (i) The first appeal is partly allowed;
- (ii) The judgment and award passed by the Reference court is modified to the extent of **Clause No.4** and same is replaced as under :-

"Opponents do pay interest @ 9% p.a. for the first year and 15 % p.a. for subsequent years on excess compensation from the date of award passed under section 11 by LAO (12.10.2010) till realization of the entire amount as per the Section 28."
- (iii) Rest of the award as passed by Reference court and operative part of the impugned order shall remain undisturbed.
- (iv) Civil application, if any, stands disposed of.

[S.G. CHAPALGAONKAR, J]

grt/-