

(2023) 02 BOM CK 0010
In the Bombay High Court
Case No : First Appeal No.416 Of 2006

Executive Engineer

APPELLANT

Vs

Tatyaba Dagdu Dhumal And Others

RESPONDENT

Date of Decision : 03-02-2023

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 11, 28, 34

Citation : (2023) 02 BOM CK 0010

Hon'ble Judges : Sandipkumar C. More, J

Bench : Single Bench

Advocate : S. G. Bhalerao, S. N. Kendre, V. Y. Bhide

Final Decision : Partly Allowed/Disposed Of

Judgement

Sandipkumar C. More, J

1. The appellant - acquiring body has challenged the judgment and award passed by the learned Civil Judge (Senior Division), Sagamner (hereinafter referred to as 'the learned reference court') in LAR No.77 of 2011 dated 01/01/2017 only to the extent of granting exorbitant interest.

2. The learned counsel for the appellant - acquiring body submits that the learned reference court has granted interest to the respondent No.1 - claimant under section 28 of the Act from the date of notification under Section 4 of the Land Acquisition Act instead of from the date of award.

3. During the course of argument, the learned counsel for the appellant - acquiring body as well as the learned counsel for the respondent No.1- claimant submitted that this appeal be disposed of in view of the order dated 25/10/2018 in group of First Appeal No. 3260 of 2018 and others.

4. On perusal of the judgment in the aforesaid appeals, it is evident that the full bench of this Court in the case of State of Maharashtra vs. Kailash Shiva Rangari, 2016 (4) Bom.C.R. 1, has held that interest under Section 34 of the Act can only

be awarded from the date of publication of award under Section 11 of the Act and not from any prior date. Thereafter, it is evident that the learned Single Judge of this Court (Coram : S. B. Shukre, J.) in First Appeal No.383 of 2004, has held that interpretation which has been made of Section 34 by the full bench of this court would equally apply to Section 28 of the Act also. In view of this interpretation, the learned Judge of this court in First Appeal No.483 of 2018 has also taken same view and passed order dated 05/03/2018. Thus, on perusal of the aforesaid judgment relied by rival parties in First Appeal No. 3260 of 2018 and others, it has been sufficiently made clear that interest under Section 28 of the Act is to be granted from the date of award under Section 11 of the Act and not from the date of issuance of Section 4 notification. Since both the rival counsel have prayed for similar order in this matter also, the following order is passed.

ORDER

- I) The impugned award in this appeal so far as it relates to award of interest under section 28 of the Act from the date of issuance of Section 4 notification, stands quashed and set aside
- II) The interest under Section 28 of the Act in this matter shall be made payable to the respondent No.1-claimant from the date of declaration of the award under Section 11 of the Act i.e. from 15/11/2005.
- III) The award be modified accordingly and the appeal thus, stands partly allowed.
- IV) Respondent No.1 - claimant in this appeal, is permitted to withdraw the amount deposited by the appellant-acquiring body in this court to the extent he would be held entitled in view of the modified award alongwith interest accrued thereon.
- V) The balance amount be refunded to the appellant - acquiring body alongwith the interest accrued thereon.