

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2659 OF 2013

THE EXECUTIVE ENGINEER, MINOR IRRIGATION DIVISION,
JALGAON
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Advocate for Petitioner : Mrs. Kutti Choudhary Chaitali for
Petitioner

AGP for Respondents: Mrs.M.A.Deshpande
Adv.A.B.Kale, for R.2.

CORAM : S.V.GANGAPURWALA &
A.M.BADAR,JJ.

DATED : 16TH FEBRUARY,2016

PER COURT :-

Mrs.Kutti, learned counsel for the petitioner submits that the order passed by S.L.A.O. asking the petitioner to make payment of interest u/s 34 of the Land Acquisition Act in respect of additional trees is illegal. The liability to pay the amount would only arise if the said amount is part of the award. No additional award has been passed by the S.L.A.O. in respect of the trees for which compensation amount to the tune of Rs.37,68,264/- is payable. Further the amount of interest under Section 34 of the Land Acquisition Act is directed to be paid vide impugned order. There is

no award in respect of the amount to be paid in respect of additional trees. The interest under Section 34 could not have been levied. This is patent illegality committed by S.L.A.O.

2] Mr.A.B.Kale, learned counsel submits that in fact the trees were very much shown in the original award, however, the same were shown pursuant to the notice under Section 11(1) it was not considered in the original award. According to the learned counsel, this Court in Writ Petition No.4007/2009 vide order dated 11/11/2009 observed as under :

“Heard learned counsel for the petitioners and learned AGP for respondents.

2] Learned AGP has filed affidavit in reply and para 5 thereof reads as under :

“5] I say that now the additional award is prepared as per decision taken by the Govt. & the same is sent to the acquiring body. I say that the acquiring body will take the necessary steps for releasing the said amount.”

3] Learned AGP further states that in pursuance of additional award so prepared, necessary

steps as regards payment of amounts under the additional award, would be taken at the earliest.

4] In the light of the aforesaid averment made in the affidavit in reply & the statement made by learned AGP the petition stands disposed of.”

3] We have considered the submission. The only ground for challenge in the present Writ Petition with regard to the order passed by S.L.A.O. granting interest under Section 34 of the Land Acquisition Act is that the order to pay amount in respect of the trees after award under Section 11(1) could not have been passed as no additional award was passed. We had asked learned counsel as to whether the amount in respect of said trees i.e. Rs.37,68,264/- is paid to the claimants, the learned counsel for respective parties accept the payment of the said amount being made to the claimants. The present order only is with regard to the payment of interest on the said amount u/s 34 of the Land Acquisition Act. The order directing to pay additional compensation of Rs.37,68,264/- in respect of the additional trees is not assailed and now the order directing payment of interest u/s 34 of the Land Acquisition Act on the said amount is sought to be assailed on the technical ground that no additional award is passed. In fact the SLAO had prepared statement pursuant to the claim of the amount towards the trees under Section

11(1). The SLAO instead of passing separate additional award had considered the said proposal and prepared the statement showing the amount receivable by the claimants. The same is technical fault. It is not the case of the petitioner that the respondent would not be entitled to the said amount on merits.

4] As the payment of amount of Rs.37,68,264/- towards the trees is itself not disputed, there cannot be dispute with regard to the payment of interest. U/s 34 it is payable till the date of payment of the amount. The said payment is already made. As such the order cannot be faulted with. Writ Petition as such is disposed of. No costs.

(A.M.BADAR,J.)

(S.V.GANGAPURWALA,J.)

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