

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

**CIVIL APPLICATION NO. 11775 OF 2016
IN
WRIT PETITION NO. 10989 OF 2016**

**THE EXECUTIVE ENGINEER,
MINOR IRRIGATION PROJECT
DIVISION, JALGAON**

VERSUS

SANJAY RAMESH GUJRATHI & ORS.

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Mrs. C.R.Choudhary - Kutti, Advocate for Applicant.

Mr. A.R.Devkate, Advocate for R – 1 to 4.

Mrs. M.A.Deshpande, A.G.P. for R – 5 to 7 - State.

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

DATE : 26th AUGUST, 2016

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PER COURT :

1. The applicant seeks recall of the Order dated 22/02/2016 passed in Writ Petition No. 10989 of 2015, thereby directing the applicant to deposit 50 % of the rental compensation as awarded by the Special Land Acquisition Officer [for short, 'S.L.A.O.'].

2. Mrs. Kutti, learned counsel for the applicant submits that at the time when the order was passed by this Court directing the present applicant to deposit 50 % of the rental compensation as awarded by the S.L.A.O., present applicant had not challenged the order passed by the S.L.A.O. granting rental compensation, but now the situation is different. The applicant has challenged the order of the S.L.A.O. granting rental compensation by filing substantive Writ Petition. The same is pending.

3. Learned counsel for the applicant further submits that the S.L.A.O. has calculated rental compensation from the date of possession till the year 2014. According to the learned counsel, when interest is directed to be paid on the amount awarded since beginning, which is illegal, the rental compensation can be awarded from the date of possession till the date of notification u/s 4 of the Land Acquisition Act. Learned counsel relies on the Judgment of the Apex Court in the case of Executive Engineer, Minor Irrigation Division Vs. Dinkar & Ors. in S.L.P. No. 31222 - 31223/2009. Learned counsel also submits that the interest can be awarded only on the delayed payment. For the said purpose, learned counsel placed reliance on the Judgment of the Division Bench of this Court in the case of Bhagwat s/o Nathu Patil Vs. State of Maharashtra & Ors. reported in 2009 (3) Mh.L.J. - 413.

4. Mr. Devkate, learned counsel for the non applicant Nos. 1 to 4 submits that the rental compensation has been awarded by the S.L.A.O. from the date of possession till

Award is passed in the year 2001. The interest is also awarded only on delayed payment i.e. from 01/04/2000 till 10/02/2014.

5. We have considered the submissions. The fact that now the applicant has challenged the order of the S.L.A.O. by filing Writ Petition, can not be a ground to recall the order passed. The order is passed on the basis of the facts existing then. Even otherwise, there is no impediment for the applicant to seek the relief in the proceeding filed by him.

6. This Court had only directed the applicant herein to deposit 50 % amount of the rental compensation. Even if the arguments of the learned counsel for the applicant are accepted in its entirety, still the amount payable by the present applicant would be more than 50 % of the amount as directed by this Court.

7. The amount of rental compensation is demanded from the date of possession till the date of Award. The Award is passed in the year 2001 and the notification u/s 4 of the Land Acquisition Act is issued in May, 1998. The difference would be hardly of 3 years, whereas rental compensation is payable from the year 1974 and the interest which is awarded is for the period from 2000 to 2014, which is the interest on the delayed payment.

8. In view of the above, even accepting the best case for the applicant, the applicant would be liable to pay the

amount more than 50 % as has been awarded by the S.L.A.O. and this Court had directed the applicant to deposit 50 % of the amount. In this view of the matter, no case for recalling the order is made out.

9. Civil Application stands rejected and disposed of.
No costs.

[A.M.BADAR, J.]

[S.V.GANGAPURWALA, J.]