IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8525 OF 2009

1] Mr. Vishwanath Kishanrao More
Age 62 years, Occ. Agril.,

2] Bhaskar Vishwanath More,
Age 42 years, Occ. Agril.,

3] Ajit Dagdusaheb Deshmukh
Age 31 years, Occ. Agril.

4] Sunil Dagdusaheb Deshmukh
Age 33 years, Occ. Agril.

5] Atul Dagdusaheb Deshmukh
Age 29 years, Occ. Agril.

6] Mangesh Sadhuram Wakale
Age 33 years, Occ. Agril.

7] Janardhan Dagdusaheb Deshmukh,
Since deceased through L.R.
Sanjivaji Janardhan Deshmukh
Age years, Occ. Agril.

8] Dinkar Vishwanath More,
Age 39 years, Occ. Agril.

9] Gajanan Chandrakant Gabale
Age 35 years, Occ. Agril.

10] Laxmikant Vithalrao Gabale
Age 33 years, Occ. Agril.

11] Vishwanath Rajaram Kondawar
Age 52 years, Occ. Agril.

12] Uddahv Vithalrao Dapakekar
Age 33 years, Occ. Agril.

13] Shakutalabai Maroti Pawar
Age 22 years, Occ. Household.

14] Sunil Maroti Pawar
Age 24 years, Occ. Agril.

15] Anil Maroti Pawar
Age 27 years, Occ. Agril.

16] Kusumbai Vishwanathrao More,
Age 57 years, Occ. Household

17] Gitanjali Bhaskarrao More
Age 37 years, Occ. Agril.

All r/o. Chera Tq. Jalkot,
Dist. Latur.

…..Petitioners

Versus

1] The State of Maharashtra
through its Secretary,
Irrigation Department,
Mantralaya, Mumbai-32

2] The Divisional Commissioner,
Aurangabad Division,
Aurangabad.

3] The Collector,
Latur.

4] The Chief Engineer,
Irrigation Department,
Sinchan Bhavan,
Jalna Road, Aurangabad.

5] The Executive Engineer,
Minor Irrigation Division,
Latur.

6] The Special Land Acquisition
Officer (Purna Project)
Latur.

…..Respondents

Shri. P. G. Gunale Advocate h/f Satish Deshmukh
Advocate for Petitioners.
Shri. S. S. Thombre Advocate for Acquiring body.

with

WRIT PETITION NO. 8117 OF 2013

1] Mr. Nagorao Ganapati Mane
Age 54 years,

2] Balaji Nagorao Mane,
Age 29 years,

3] Ganesh Nagorao Mane
Age 29 years,

Occupation of all Agril.
All r/o. Chera, Tq. Jalkot, Dist. Latur.

4] Bayanabai w/o. Maruti Devpuje,
Age 63 years, Occ. Household and Agril.,
r/o. Chera, Tq. Jalkot, Dist. Latur.

5] Kishan Santrao Gadme,
Age 73 years, Occ. Household and Agril.,
r/o. Chera, Tq. Jalkot, Dist. Latur.

6] Narayan Rajaram More,
Age 68 years, Occ. Household and Agril.,
r/o. Chera, Tq. Jalkot, Dist. Latur.

7] Vithal Rama Marewad,
Age 58 years, Occ. Household and Agril.,
r/o. Chera, Tq. Jalkot, Dist. Latur.

8] Govind Madhav Jarikote,
Age 48 years,

9] Venkat Madhav Jarikote,
Age 43 years

10] Sambha Madhav Jarikote,
Age 38 years,

11] Nagnath Pandurang Saudagar,
Age 38 years,

12] Madhav Kishan Janapure,
Age 33 years,

13] Manohar Ramkrishna Bhure,
Age 63 years,

14] Sangam Manohar Bhure,
Age 34 years,

Occup. of petitioner Nos. 8 to 14
Agril., Petitioner Nos. 8 to 14
All r/o. Wanjarwada, Tq. Jalkot,
Dist. Latur.

…..Petitioners

Versus

1] The State of Maharashtra
through its Secretary,
Irrigation Department,
Mantralaya, Mumbai-32

2] The Divisional Commissioner,
Aurangabad Division,
Aurangabad.

3] The Collector,
Latur.

4] The Chief Engineer,
Irrigation Department,
Sinchan Bhavan,
Jalna Road, Aurangabad.

5] The Executive Engineer,
Minor Irrigation Division,
Latur.

6] The Special Land Acquisition
Officer (Purna Project),
Latur.

…..Respondents

Shri. P. G. Gunale Advocate Advocate for Petitioners.
Shri. P. R. Tandale Advocate for Acquiring body.
Mrs. A. V. Gondhalekar AGP For State

CORAM : S.V. GANGAPURWALA
& K.K. SONAWANE, JJ.

DATE OF RESERVING THE JUDGMENT : 05TH AUGUST , 2016.
DATE OF PRONOUNCING THE JUDGMENT :10TH AUGUST, 2016.

JUDGMENT [PER S.V. GANGAPURWALA, J} :-

1] Mr. Gunale, learned counsel submits that trees were standing in the land of the petitioner. Land was acquired by the respondents for construction of Irrigation Tank at Chera Jalkot, District Latur. Learned counsel submits that in order to complete the said construction expeditiously, respondent Nos. 4 and 5 have taken over possession of the acquired land of the petitioners alongwith standing fruit trees and forest trees, temporary and permanent structures by private negotiations. Panchanama in respect of the standing trees was conducted by the office of Horticulture Department. Respondent No.6 also carried out spot inspection of the land of the petitioner on 18.4.2000 in the presence of the Agricultural Officer. Thereafter, valuation report of the fruit trees and forest trees, respectively, were submitted by the Taluka Agricultural Officer. Learned counsel for petitioner submits that Notification under Section 4 of the Land Acquisition Act came to be issued on 18.5.2001 and trees were removed prior to section 4 notification. Said trees were not found in the Joint Measurement report though said trees were mentioned in the draft award.

Valuation of the trees was deleted in the final award. Reference filed under Section 18 of the Land Acquisition Act was against the compensation determined for land. No award was passed in respect of trees. The respondents subsequently paid the amount of compensation towards trees. However, did not pay any interest on the said amount, the petitioners are entitled for interest on the said amount of compensation for the trees.

2] Learned counsel to substantiate his submissions, relies on the judgments of the Division Bench of this Court in case of ***Madhav Gopalrao Sanap Vs. State reported in 1985 Mh.L.J. 636,*** so also, judgment of the Division Bench of this Court in the case of ***Basant Balkrishna Wale Vs. Vitthal Mahadeo Deshmukh, reported in 2006(1) Bom.C.R. 669***. Learned counsel for petitioner also relies on the judgment of this Court in the case of ***Anand Vs. State reported in 2014(3) Bom.C.R. 397, and Surinder Singh vs. Umrao Singh reported in 1961 AIR (SC) 908, Nadirsha Shapurji Patel by LRs and others Vs. Deputy Collector & LA and another, reported in 2010 (7) Supreme 825.***

3] Learned counsel for petitioners, relying on the ratio in all these cases, submits that interest under Section 34 of the Land Acquisition Act has to be paid on the amount of compensation , so also, solatium and component under Section 23(1)(a). It is the duty of the SLAO and the Acquiring Body to pay interest under Section 34 of the Land Acquisition Act and the amount of interest under Section 34 is payable till the amount of compensation is paid. In the present case, though compensation for trees is

paid, interest under Section 34 has not been paid to the petitioners. The respondents are duty bound to pay the same.

4] Learned AGP submits that those trees which were destroyed prior to section 4 notification are not included in the award declared on 17.3.2003. The Collector, Latur has directed respondent No.5 to pay compensation of those trees which are destroyed at the time of project work, prior to publication of Section 4 notification. Learned AGP further submits that petitioners and others had filed W.P. Nos. 2540 of 2003 and 2542 of 2003. However, those were dismissed and the petitioners had availed the remedy under Section 18 of the Land Acquisition Act. The Acquiring Body had granted compensation to the petitioners in respect of trees. As such, the State is not responsible to pay the interest.

5] Mr. Thombre and Mr. Tandale, learned counsel for the Acquiring Body submit that no award has been passed in respect of the trees, however, ex-gratia payment has been made as on the date of section 4 notification trees were not in existence. Acquisition of said trees was not pursuant to the Land Acquisition award and hence, petitioner is not entitled for interest. It is further submitted that the said trees, of which subsequently compensation has been paid, were not existing as on the date of notification under Section 4 of the Land Acquisition Act. Same were already destroyed. The possession was taken by the respondents by private negotiations prior to the notification under Section 4 of the Land Acquisition Act . No award has been passed in respect of the said trees for which ex-gratia payment has

been made to the petitioners. As no award is passed, and the payment is an ex-gratia payment, the question of payment of interest under Section 34 does not arise. It is further submitted that petitioners have executed bond in favour of the respondents, stating that they have received the entire amount of compensation for the trees, which were not part of the award and had also agreed to withdraw the references under Section 18 of the Land Acquisition Act. After executing the said bond, now the petitioners cannot turn around and claim further amount. Bonds were executed in the year 2009 and W.P. No. 8117 of 2013 has been filed after 4 years. On the ground of delay and laches also, the petitioners are not entitled for the benefit. Learned counsel for the respondents rely upon the judgment of the Apex Court, in the case of ***Dhirendra Nath Gorai Vs. Sudhir Chandra Ghosh, reported in 1964 AIR (SC) 1300***, so also, the judgment of the Apex Court, in the case of ***Union Vs. Shrikrishna Reddi reported in (2003) 12 SCC 627***. Learned counsel, relying upon the said judgment submit that unless there is legal duty and the aggrieved party has a legal right, under the statute, to enforce its performance, Mandamus cannot be issued, so also, writ of mandamus cannot be issued when it is a case of purely ex-gratia payment.

6] Upon hearing the learned counsel for respective parties, following facts are undisputed.

[I] The possession has been taken by the Acquiring Body of the petitioners' land by private negotiations prior to the notification under Section 4 of the Land Acquisition Act

[ii] As on the date of notification under Section 4 of the Land Acquisition Act, trees in question, of which ex-gratia payment of

compensation is made, were not existing;

[iii] The trees which were standing at the time of taking possession and were subsequently cut, were not in existence on the date of section 4 notification and as such, no compensation was paid at the time the award was passed. The said trees were not made subject matter of the award, passed in the year 2003.

[iv] Representations were made. Thereafter, in the year 2009, respondent Acquiring Body made payment of compensation of these trees, which were not in existence as on the date of notification, as an ex-gratia payment. However, though the payment was termed as ex-gratia payment, the respondent Acquiring Body, made said payment, keeping in mind the valuation of the said trees, solatium and component of 12% interest.

[v] The interest under Section 34 of the Land Acquisition Act was not paid.

7] The petitioners in the present petition have claimed interest under section 34 of the Land Acquisition Act on the amount of compensation of the trees, for which no award is passed and which were not in existence as on the date of section 4 notification.

8] The Land Acquisition Act, no doubt, is a beneficial piece of legislation. When the award is passed under the said Act, the claimant is entitled for solatium, 12% component and interest under Section 34. However, in the present case, no award has been passed. An ex-gratia payment has been made to the petitioners in respect of the said trees. Petitioners had not insisted, at the relevant time, for the authorities to pass award in respect of the trees, which were cut prior to notification under

section 4 and for which, no award was passed. Although award for the land and the trees in existence at the time of section 4 notification was passed in the year 2003.

9] The only question would be, whether the petitioners would be entitled for interest under Section 34 of the Land Acquisition Act though no award has been passed. The Full Bench of this Court, in First Appeal No.251 of 2003, vide judgment dated 18.4.2016, has held that if the possession is taken before the notification under section 4 of the Land Acquisition Act is published, and/or before the award is passed, the land owners would be entitled for the interest as per Section 34 of the Land Acquisition Act necessarily from the date of passing of the award under Section 11 of the said Act. Except in case, where possession is taken in accordance with Section 17 of the said Act and in that situation only, provision of Section 34 of the said Act shall start operating from the date of possession.

10] It would be seen that Full Bench of this Court, has categorically laid down the law that if the possession is taken prior to notification under Section 4 of the Land Acquisition Act interest under Section 34 would be awarded only from the date of the award and not from any date prior to the award. In the present case, the possession has been taken by private negotiations and not under Section 17 of the Land Acquisition Act, nor it is the case of the petitioners that possession of the land and the trees was taken resorting to Section 17 of the Land Acquisition Act. It is also a matter of fact that no award has been passed in respect of the trees for which ex-

gratia payment has been made by the Acquiring Body to the petitioners. When no award has been passed in respect of the said trees and ex-gratia payment is made, then in such circumstance, payment of interest under Section 34 would not arise, because interest under Section 34, as per the judgment of the Full Bench (referred to supra) would be payable in respect of the land taken in possession prior to notification under section 4 of the Land Acquisition Act from the date of passing the award.

11] Considering the aforesaid, as no award is passed and the petitioners have accepted the ex-gratia payment, and possession has been taken prior to Section 4 notification, it will not be possible to award interest under Section 34 of the Land Acquisition Act, on the amount, for which ex-gratia payment was made.

12] In the light of above, both the writ petitions are dismissed. Rule is discharged in W.P. No. 8525 of 2009. However, with no orders as to costs.

[K.K. SONAWANE]
JUDGE

[S.V. GANGAPURWALA]
JUDGE.

grt/-