

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11315 OF 2013

Balasaheb Laxman Malshikare and others. ... Petitioners.
V/s.
The State of Maharashtra and others. ... Respondents.

Gaurav Potnis i/b. Mrs.Pallavi Potnis for the petitioners.
A.I.Patel, AGP for respondent Nos.1 to 3.
D.D.Shinde for respondent Nos.4 and 5.

CORAM : A.S. OKA AND C.V.BHADANG, JJ

DATED : 22nd February 2016.

PC. :

Heard the learned counsel for the petitioners, the learned AGP for the respondent Nos.1 to 3 and the learned counsel for respondent Nos.4 and 5. On the earlier date, the parties were put to notice that the petition will be heard finally.

2. This petition under Article 226 of the Constitution of India is filed for implementation of the award dated 22nd May 2012 made by the Special Land Acquisition Officer No.13, Pune under sub-section (2) of section 28A of the Land Acquisition Act, 1894 ("the said Act" for short). The grievance made in the petition is that though the award was made on 22nd May 2012, the amount of compensation has not been paid to the petitioners. The learned counsel appearing for the fourth and fifth

respondents submits that a reasonable time be granted to the said respondents to deposit the said amount of compensation with the Special Land Acquisition Officer. It is not in dispute that the said award has not been challenged and the same has attained finality.

3. The learned counsel appearing for the petitioners relies upon the judgment and order dated 14th January 2014 delivered by this Court in Writ Petition No.1218/2013 (*Ananda Baburao Pawagi and others v. The State of Maharashtra and others*). He submits that the petitioners have been deprived of interest at the rate of 15% per annum payable in accordance with section 28 of the said Act from 22nd May 2012 onwards. Relying upon the said judgment, he submits that in a similar case, this Court directed the payment of interest at the rate of 15% per annum from the date of the award till the date of payment of compensation. The learned counsel appearing for the petitioners submits that the compensation amount may be ordered to be deposited in appropriate District Court.

4. We have considered the submissions. There is no dispute that the award dated 22nd May 2012 made under sub-section (2) of section 28A of the said Act has become final. There was some dispute on the issue whether the fifth respondent is the acquiring body. Nevertheless, the fifth respondent has accepted the liability to pay the amount under the award.

5. In Writ Petition No.1218/2013, a writ of mandamus was sought directing the respondents therein to make the payment under the

award dated 2nd May 2011 which was made under sub-section (2) of section 28A of the said Act. In the said decision, this Court considered the provisions of the said Act and the object for incorporating section 28A. This Court considered section 34 of the said Act. Paragraphs- 20 and 21 of the said decision read thus:

“20. Hence, while making an award under Sub-section (2) of Section 28A of the said Act, the Collector can always invoke Section 34 of the said Act. As stated earlier, in the present case, the Collector has granted interest as provided in Section 34 of the said Act upto the date of the award though he has purported to invoke the power under Section 28 of the said Act. Merely because a Reference is made to a wrong Section, the exercise of power does not become bad. The Land Acquisition Officer was, therefore, justified in granting interest at the rates of 9% per annum and 15% per annum as provided in Section 34 of the said Act. But, he ought to have allowed interest till the date of payment of compensation or the date of deposit.

21. It is true that the statute does not provide for any time limit for payment of compensation in terms of the award made according to Sub-section (2) of Section 28A of the said Act. But in view of applicability of Sub-section (1) of Section 31 of the said Act, it is obvious that the amount has to be offered immediately after the Award is made. Under Section 34 of the said Act, the interest is payable till the date of payment of compensation or the date of deposit of compensation.”

In paragraph- 22, this Court observed that the petitioners therein were legitimately and lawfully entitled to the compensation amount from the

date when the award was made. Therefore, this Court directed payment of interest as provided in section 34 of the said Act i.e. from the date of the award till the actual payment of amount of compensation. In the present case, the petitioners have been deprived of the amount of compensation from 22nd May 2012. Therefore, the interest will be payable on the compensation amount from the date of the award till the date on which the amount is actually paid or offered to the petitioners.

6. In the present case, the award is not a subject matter of challenge and, therefore, the petitioner will be entitled to receive the amount unconditionally. The learned counsel appearing for the petitioners submitted that the amount of compensation may be ordered to be deposited in the Court as provided under the said Act. We have perused the provisions of Part-5 of the said Act and, in particular, section 31. The deposit of the compensation amount can be made in the Court provided the conditions specified in sub-section (2) of section 31 are satisfied. In this case, the same are not satisfied. Therefore, the prayer made by the petitioners cannot be granted.

7. Under the circumstances, we dispose of this petition by passing following order:

ORDER

(i) We direct the respondents to pay the compensation amount payable to the persons entitled to compensation under the award dated 22nd May 2012 (Exh.J to the petition) within a period of three months from today;

(ii) In addition to the amount payable under the award dated 22nd May 2012, the persons who are held entitled to receive the compensation shall be entitled to interest on the amount payable under the said award at the rate of 15% per annum from the date of the award till the date on which the compensation is offered to them;

(iii) As soon as the amount is received by the office of the Special Land Acquisition Officer No.13, Pune, an intimation of the date fixed for receipt of the amount shall be issued to the persons who are held entitled to receive the compensation under the said award. The Special Land Acquisition Officer shall ensure that the amounts are paid to the persons concerned on the date fixed for payment of compensation, subject to the persons concerned establishing their identity and signing necessary receipt;

(iv) The petition is disposed of in the above terms.

(C.V. BHADANG, J)

(A.S.OKA, J)