

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 WRIT PETITION NO. 3079 OF 2013

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

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Advocate for Petitioner : Mrs. Chaitali Kutti Choudhary R.
AGP for Respondents/State : Mr. D.R. Kale
Advocate for Respondents : Mr. C.V. Thombre h/f. G.S. Patil

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CORAM : S.V. GANGAPURWALA, J.
DATE : 29.08.2017

P.C. :

1. Mrs. Kutti, the learned counsel for the petitioner submits that earlier the respondent had filed writ petition before this Court bearing writ petition no. 2587 of 2006. The respondents had only claimed the benefit of rental compensation and the benefit of interest under Section 34 of the Land Acquisition Act, 1894 so also the interest component under Section 23(1-A) was not at all claimed nor this Court while disposing of the writ petition granted liberty to the respondents to claim the said amount, as this Court never directed the S.L.A.O. to consider the claim under Section 23(1-A). The S.L.A.O. could not have considered the said claim. The S.L.A.O. ought to have restricted its adjudication to the extent of rental compensation only.

2. The learned counsel further submits that even interest under Section 34 has not been properly awarded. The interest

under Section 34 has to be awarded only from the date of award and not prior to the said date. Whereas, in the present case the S.L.A.O. has awarded interest under Section 34 from the date of issuance of notification under Section 4, the same is illegal. The learned counsel relies on the judgment of the Full Bench of this Court in a case of ***State of Maharashtra V/s. Kailash Shiva Rangari*** reported in ***2016 (3) Mh.L.J. 457***.

3. The learned counsel further submits that the rental compensation has been awarded from the date of possession till the date of award. The learned counsel relies on the judgment and order of the Apex Court in a case of ***Executive Engineer Minor Irrigation Division V/s. Dinkar & Ors.*** dated 19.11.2014 and submits that rental compensation is to be awarded only from the date of dispossession till the notification under Section 4.

4. Mr. Thombre, the learned counsel holding for Mr. Patil submits that interest under Section 34 has to be awarded by the S.L.A.O. so also the component under Section 23(1-A). According to the learned counsel, even rental compensation has been properly awarded. No error has been committed by the S.L.A.O.

5. It is the obligation of the S.L.A.O. at the time of passing the award, to properly award the interest under Section 34 of the Land Acquisition Act, 1894 so also component under Section 23 (1-A). The said provisions are beneficial provisions, the same will have

to be construed liberally in favour of the claimants.

6. The High Court while disposing of the writ petition no. 2587/2006 had not given any directions, however, had granted liberty to the claimants to approach the S.L.A.O. and make a claim for rental compensation. The said order in no way would be an impediment for the claimants to stake claim of their statutory rights. To get the component under Section 23(1-A) and interest under Section 34 of the Land Acquisition Act is the statutory right of the claimants which cannot be abrogated and abridged. In fact the statute casts an obligation on the S.L.A.O. to grant such benefit, the acquiring body cannot claim advantage in the statutory authority not discharging its obligation. The S.L.A.O. has properly considered grant of component under Section 23 (1-A). As far as interest under Section 34 is concerned, the same certainly could not have been awarded from the date of notification under Section 4 of the Land Acquisition Act, in view of the judgment of the Full Bench of this Court in a case of **State of Maharashtra V/s. Kailash (supra)**, the said interest component under Section 34 can be awarded from the date of award.

7. As far as rental compensation is concerned, in view of the judgment of the Apex Court in a case of **Executive Engineer V/s. Dinkar (supra)**, the same can be awarded from the date of possession till the date of notification under Section 4.

8. In the result, I pass the following order:

ORDER

- i) The impugned order is modified to the extent of clause 3 and 4.
- ii) In addition to the claim granted under clause 1 and 2 the respondent-claimants shall be entitled for rental compensation from the date of dispossession till the date of notification under Section 4 @ 8% per annum including 6% interest on it.
- iii) The claimants will also be entitled for interest under Section 34 from the date of award i.e. for the first year @ 9% per annum from the date of award and for subsequent years @ 15% per annum.
- iv) Save and except this modification the rest of the order passed by the S.L.A.O. is confirmed.
- v) Writ petition is accordingly partly allowed. No costs.

(S.V. GANGAPURWALA)
JUDGE