IN THE HIGH COURT OF JUDICATURE AT B0MBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8631 OF 2009

1. The Godawari Marathwada Irrigation Development Corporation, having its Office at 'Sinchan Bhawan',Jalna Road, Aurangabad, through the Executive Engineer, Nandur Madhmeshwar Canal Division, Vaijapur, Dist. Aurangabad .. Petitioner

versus

1. The State of Maharashtra, through the Secretary, Irrigation Department, Mantralaya, Mumbai – 32,

2. The Collector, Collector Office, Aurangabad

3. The Special Land Acquisition Officer, Jaikwadi Project No. 2, Collector Office, Aurangabad

4. Shri Maniksing Kisansing Pardeshi, Age : 65 years, occup. Agril., R/o Opp. Somani Building, Station Road, Vaijapur, Tq. Vaijapur, Dist. Aurangabad

5. The General Manager, District Industrial Center, Railway Station, MIDC, Aurangabad. .. Respondents

WITH

WRIT PETITION NO. 10436 OF 2010

1. Shri Maniksisng Kisansing Pardeshi
Age-68 years, occup. Agril.,
R/o Opp. Somani Building,
Station Road, Vaijapur,
Tq. Vaijapur, Dist. Aurangabad

versus

1. The State of Maharashtra,
Through the Secretary,
Irrigation Department,
Mantralaya, Mumbai – 32

2. The Collector,
Collector Office, Aurangabad

3. The S. L. A. O.
Jaikwadi Project No. II,
Collector Office, Aurangabad

4. The Executive Engineer,
Nandur Madhemeshwar Cannel,
Division, Vaijapur, Tq. Vaijapur,
Dist. Aurangabad .. Respondents

Mr. S. P. Sonpawale, Advocate for petitioner in writ petition no. 8631 of 2009 and respondent no. 4 in writ petition no. 10436 of 2010

Mr. S. N. Morampalle, Assistant Government Pleader for respondents no. 1 to 3 in both writ petitions

Mr. Nandakishor J. Pahune Patil, Advocate for respondent no. 4 in writ petition no. 8631 of 2009 and petitioner in writ petition no. 10436 of 2010

CORAM : SUNIL P. DESHMUKH AND
SANGITRAO S. PATIL, JJ.

DATE : 7th November, 2017

ORAL JUDGMENT (PER : SUNIL P. DESHMUKH, J.)

Heard learned counsel Mr. Sonpawale appearing on behalf of Godawari Marathwada Irrigation Development Corporation (GMIDC), petitioner in writ petition no. 8631 of 2009, learned Assistant Government Pleader Mr. Morampalle for respondents no. 1 to 3 and Mr. N. J. Pahune Patil, learned Counsel for respondent no. 4. Respondent no.4 has also filed writ petition no. 10436 of 2010 seeking direction for payment of interest pursuant to section 34 of the Land Acquisition Act, 1894 and a further direction for payment of interest over interest amount under section 34 of the Land Acquisition Act, 1894.

02. Writ petition no. 8631 of 2009 proceeds on the footing that the land of respondent no. 4 had once been acquired in 1982 for District Industrial Centre and an award had been passed in the same and the compensation amount had also been received by respondent no. 4. It is the case of the

petitioner, the revenue record had been prepared pursuant to acquisition of land and the District Industrial Centre was being shown as owner in occupation of land survey no.24/2/1.

3. Subsequently around 1994, another acquisition proceedings were proceeded with for Narangi Irrigation Project acquiring various lands for submergence including land bearing survey number 24/2/1. GMIDC pursuant to the award passed in the said land acquisition proceedings had deposited amount with Special Land Acquisition Officer in respect of said land bearing survey no. 24/2/1. In the circumstances, having regard to revenue record, a notice under section 4 of the Land Acquisition Act had been issued to District Industrial Centre and subsequent land acquisition proceedings were also proceeded with accordingly and award in the same came to be passed.

4. It appears to be the case of the petitioner that respondent no. 4 (petitioner in writ petition no. 10436 of 2010) had no concern with land bearing survey no.24/2/1 since his said land had already been acquired way-back in 1982 for District Industrial Centre.

5. Learned counsel Mr. Sonpawale submits that subsequently, however, respondent no. 4 had moved revenue authorities and got revenue entries changed and wrongly and incorrectly started claiming compensation for acquisition of 94 are from land survey number 24/2/1. The said compensation deposited by petitioner - GMIDC had been wrongly paid upon correction of revenue entries to respondent no. 4.

6. Mr. Sonpawale submits that once the land was acquired for District Industrial Centre, respondent no. 4 had lost his ownership over the same and the land vested in the Government and subsequently another land acquisition proceedings had been proceeded with in respect of the said land. He submits that respondent no. 4 has doubly received compensation for acquisition of his land which is patently illegal. He, therefore, submits that interest as claimed by respondent no. 4 is not at all liable to be paid. On the contrary, he submits it gives occasion to petitioner – GMIDC to claim back the land acquisition compensation along with interest from respondent no. 4.

7. Countering the aforesaid submissions, learned counsel Mr. N. J. Pahune Patil appearing for present respondent no. 4 – petitioner in writ petition no. 10436 of 2010 submits that while the land acquisition proceedings in 1982 had been in respect of land bearing survey number 24/2/2 and an award accordingly had been passed and about 3 hectare and 17 are land from the said survey number had been acquired. Thereafter, an error had crept in while recording the event of acquisition of land as instead of showing acquisition of land survey number 24/2/2, revenue record erroneously started showing acquisition of land survey number 24/2/1. He submits that the land acquired for District Industrial Centre i.e. survey number 24/2/2 is different from the land acquired from survey number 24/1/1. He submits, from the two lands, land acquisition for District Industrial Centre in 1982 and one in 1994 for Narangi project for submergence are separated by a long distance. A huge tract of land belonging to respondent no. 4 from land survey no. 24/2/1 intervenes between the two lands. Mistake occurring in the revenue record having been realized by revenue authorities, upon steps being taken and accordingly the mistake had been rectified in the

proceedings initiated therefor. He submits, in the interregnum, respondent no. 4 had been deprived of receipt of legitimate compensation in respect of acquisition of 94 aar portion from land survey number 24/2/1. The amount of compensation for the said area of 94 are came to be paid only upon rectification of record which took about a decade from initiation of land acquisition proceedings i.e. from 1994 to 2006.

8. Mr. Pahune Patil refers to affidavit in reply filed on behalf of State by respondent no. 3 referring to the error in maintaining revenue record and its subsequent correction and further emphasizes that affidavit categorically clarifies and highlights the position that acquisition of land in 1982 did not pertain at all to land survey number 24/2/1. He submits that it is due to the error in maintenance of record by revenue authorities, respondent no. 4 has been deprived of his legitimate entitlement to receive compensation for quite a long time and, therefore, he had made a demand to the authorities, for payment of interest pursuant to section 34 of the Land Acquisition Act which has not been considered. As such, Respondent no.4's request for directions to authorities concerned for consideration of and decision on respondent no.

4's application for payment of interest had been granted after the high court had directed to decide the application for interest filed by respondent no. 4 and accordingly under impugned order the same has been decided holding respondent no. 4 to be entitled to interest pursuant to section 34 of the Land Acquisition Act and thereafter GMIDC is before this court under writ petition no. 8631 OF 2009. He submits, in the circumstances, having regard to the aforesaid factual position, order passed holding respondent no. 4 entitled to interest can seldom be faulted with.

9. Learned Assistant Government Pleader Mr. Morampalle draws attention to affidavit in reply filed by respondent no. 3 - Deputy Collector. He refers to paragraphs no. 5, 6, 7 and 8 of the same and submits that averments therein make the factual position amply clear. In the circumstances, impugned order passed may not be faulted with on legal aspects. However, he goes on to submit that looking at the laxity of respondent no. 4 in having correction made in the revenue record, respondent no. 4 may not be said to be legitimately claiming interest for the entire period pursuant to section 34 of the Act. He submits that respondent no. 4 for his laxity,

shall have to suffer and submits that he leaves rest of the things to the discretion of this court.

10. Having regard to aforesaid submissions, it would be worthwhile to refer to and reproduce contents from paragraphs no. 5 to 9 of the affidavit in reply filed by respondent no. 3, reading thus;

> *"**5.** I respectfully submit that, petitioner thereafter, filed proceeding before the S.D.O. Vaijapur for correction of 7/12 extract of survey No. 24/2/1. The S.D.O. Called the report of Tehsildar, Vaijapur in respect of mutation entry. As the same this office was also called report of Tehsildar on the same point. The Tehsildar submitted his report to this office on 10/08/2005 stating that, the mutation entry no. 4086 is wrongly recorded in the 7/12 extract of the survey no. 24/2/1, it ought to have been recorded in 7/12 extract of survey no. 24/2/2 which is owned by Hiralal Kisansingh who is a brother of Maniksingh Kisansingh. In the said report the Tahsildar also mentioned that, the land owner of survey no. 24/2/2 Hiralal also admitted this fact that his land from survey No. 24/2/2 is acquired for D.I.C. and not the land of maniksing from 24/2/1.*
>
> **6.** *I respectfully submits that, meanwhile this office was also called explanation from the office of Special Land Acquisition Officer, Aurangabad whether the land from survey no. 24/2/1 is acquired by the award No. 33/82 for D.I.C. or not ? By later Dtd. 27/07/2005, the SLAO have informed to this office that, the land survey no. 24/2/1 have not been acquired by their office by award No. 33/82 for DIC, nor paid any compensation for this land. The*

copy of this letter Dtd. 27/07/2005 is annexed herewith and marked as ***"EXHIBIT R-3"*** *for kind perusal of the Hon'ble High Court.*

7. *I respectfully submits that, by considering the record, the S.D.O. Allowed the appeal of the present respondent no. 4 and directed to correct 7/12 extract of survey no. 24/2/1. The copy of order passed by S.D.O. is already on record at page no. 66 of the reply filed by Resp. No. 4. Accordingly 7/12 extract is corrected. The copy of this report by Tehsildar dtd. 10/08/2005 is annexed herewith and marked as* ***"EXHIBIT R-4"*** *for kind perusal of the Hon'ble High Court.*

8. *I respectfully submit that, as per the Order of S.D.O., Tahsildar by passing mutation entry No. 14268 corrected the 7/12 extract of survey No. 24/2/1. Then after getting corrected 7/12 extract and getting all the reports, this office got it confirmed that, the land survey no. 24/2/1 was never acquired hence before for D.I.C., The then SLAO did a spot visit and get it reconfirm that this 94 R land is acquired from the Western side of the land survey no. 24/2/1, whereas the D.I.C have acquired the land up to survey no. 24/2/1 which is situated at the Eastern side of the suit land survey no. 24/2/1. Thus in between the land acquired by D.I.C. and land acquired for Narangi project, there is a remaining land of the present respondent No. 4. There is no any double acquisition in respect of the suit land Survey No. 24/2/1. After all these confirmations this office paid compensation to the present respondent during pendency of W.P. No. 2555/2006 on 29/06/2006. I further submit that, during this long period, there was no any stay of any Court to disburse the compensation amount and nobody was claimed this compensation amount, except the present respondent*

No. 4. After payment of this compensation before The Hon'ble High Court, the present petitioner also did not raised any objection for the same though, he was a party to the said proceeding. Copy of mutation entry No. 14268 is annexed herewith and marked at ***"EXHIBIT R-5"*** *for kind perusal of the Hon'ble High Court.*

9. *I respectfully submit that, the letter dtd. 27/03/2006 submitted by the then SLAO is seems that, the said letter was prepared without verifying the office record. Therefore, in the light of all these documents and facts discussed above, this letter dtd. 27/03/2006 is required to be turned down. The present petitioner also knew this factual aspect. However, by taking undue benefit of the recording of mutation entry No. 4086 wrongly on survey no. 24/2/1, the present petitioner was opposing for the payment of compensation and now opposing for payment of interest to the land owner.* "

11. In the background of aforesaid factual position, it appears to be clearly emerging position that land acquired in 1982 for District Industrial Centre, is different piece of land than 94 are land concerned in 1994 acquisition proceedings. An error appears to had crept in, in maintaining revenue record upon acquisition of land in 1982 which continued to be on record for quite a long time. Upon movement by respondent no. 4, it appears, compensation in respect of acquisition of land survey number 24/2/1 had been received by respondent no. 4 only upon rectification of record in 2006.

12. Looking at the facts as would emerge from the affidavit in reply filed on behalf of respondent no. 3 and having regard to sequence of events, claim of petitioner does not appear to carry any force as the land acquired for the District Industrial Centre was not from land bearing survey number 24/2/1. In the circumstances, it does not appear to be a case wherein fault can be found with the order impugned in present writ petition no. 8631 of 2009. The petitioner – GMIDC has disputed the claim of respondent no. 4 for interest.

13. Writ petition no. 8631 of 2009, as such, is dismissed. Rule is discharged.

14. Writ petition no.10436 of 2010, in view of dismissal of writ petition no.8631 of 2009, is allowed in terms of prayer clause (B) and is disposed of. Rule made absolute accordingly.

15. Both the writ petitions stand disposed of.

(SANGITRAO S. PATIL)
JUDGE

(SUNIL P. DESHMUKH)
JUDGE

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