

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4347 OF 2014

The State of Maharashtra,
Through the Special Land Acquisition
Officer & Ors.

.. Petitioners

v/s.

City and Industrial Development Corporation
& Ors.

.. Respondents

Ms. Jyoti Jadhav, AGP for the petitioners
Mr. Gopal S. Hegde, for respondent no.1
Mr. Drupad D. Patil for respondent no.9

**CORAM : M.S. SANKLECHA, J.
DATED : 26th SEPTEMBER, 2017**

P.C.

1. This petition has been filed by the State under Article 227 of the Constitution of India challenging the order dated 19th October, 2013 passed by the Civil Judge, Senior Division, Thane. The impugned order dated 19th October, 2013 is passed in Execution proceedings, arising out of land acquisition under the Land Acquisition Act, 1894 (Act).

2. The execution proceedings were filed by the respondent nos. 2 to 12A before the trial Court, Thane on 28th February, 2011. This

was consequent to the Award (upheld by the High Court order dated 16th June, 2009) in their favour under the Act. The application describes the respondent nos. 2 to 12A as applicants / Award holders (decree holders) and the State as well as the City and Industrial Development Corporation (CIDCO) amongst others are described as Judgment Debtors (JD).

3. The impugned order dated 19th October, 2013 disposes of three applications being Exhibits – 16, 21 and 25 filed by the respondent nos. 2 to 12A herein. The impugned order records the fact that at every stage of the land acquisition proceedings, the compensation along with solatium and interest has been enhanced i.e. the Land Acquisition Officer has awarded compensation at Rs.5/- per Sq.M. On Reference under Section 18 of the Act the District Court had enhanced it to Rs.10/- per Sq.M. and this Court had enhanced the compensation at Rs.15/- per Sq.M. along with solatium and interest in accordance with the provisions of Section 28 and 34 of the Act.

4. Consequent to the Execution Application filed by the

respondents (D.H.) dated 28th February, 2011, the respondent no.1 herein (J.D.) filed its reply on 17th February, 2012. In its reply, the respondent no.1 disputed the amount of Rs.90.04 lakhs computed as the amount payable under the Award by the respondents in their Execution Application. Further, in its reply, the respondent no.1 – CIDCO justified the deposit of Rs.53,89,200/- made by it in Court, as the amount payable under the Award. However, the impugned order rejects the contention of the judgment debtors i.e. the State and CIDCO while upholding the calculation of the decree holders and directed enhanced compensation of Rs.87.74 lakhs to be awarded to the decree holders as on 19th October, 2013.

5. Learned Counsel for the Judgment Debtors i.e. petitioner and respondent no.1 submit that the impugned order displays a complete non-application of mind inasmuch as it proceeds on the basis that the judgment debtors have neither rebutted the amount claimed by the decree holders nor led any evidence to show how the amounts calculated by the decree holders are not justified / proper. This according to the judgment debtors is contrary to the respondent no.1's reply on 17th February, 2012 to the execution application dated

28th February, 2011 filed by them. In its reply, respondent no.1 had disputed the amount claimed by the decree holders of Rs.90.04 lakhs as on 28th February, 2011 being recoverable along with interest from the judgment debtors and set out their own calculation to indicate that the amount payable is at Rs.53.89 lakhs. This it is submitted has been ignored. It is further submitted that the manner in which the interest is to be computed would now settled by the Apex Court in *Gurpreet Singh Vs. Union of India, (2006) 8 SCC 457* and on its application the amount payable would be as computed by it and not as computed by the respondent nos. 2 to 12A i.e. Decree Holders.

6. On the other hand, Mr. Patil, appearing for respondent no.9 supports the impugned order. Mr. Patil points out that the impugned order deal with the three applications filed by the decree holders being Exhibits-16, 21 and 25. In response to those applications, the judgment debtors (petitioners and respondent no.1) had not challenged the computation of decree holders and thus, no fault could be found with the impugned order. The reply dated 17th February, 2012 filed by CIDCO was filed in respect of the main execution application and not to the three applications which were

subject matter of consideration by the impugned order. Thus, no interference is warranted.

7. It is true that the reply filed on 17th February, 2012 by the judgment debtor – CIDCO was in response to the execution application dated 28th February, 2011. However, in its above reply, the judgment debtor – CIDCO has set out their mode of computation and also disputed the amount of Rs.90.04 lakhs being claimed by the respondents herein (decree holders). Mr. Patil is also correct when he states that no separate reply is filed by the judgment debtors in reply to the applications made in respect of Exhibits-16, 21 and 25 by the decree holders. However, on perusal of the papers, it is noticed that in response to application made under Exhibit-21, the advocate on behalf of the judgment debtor-CIDCO had filed a say which reads as under :-

“The application is nothing but repetition of the earlier application. CIDCO has filed a reply to the said application. t today. nothing is to be added to the same”.

8. It is also pertinent to note that the respondent nos. 2 to 12A (decree holders) themselves had in their application at Exh.16

enclosed the calculations of the amounts payable according to the judgment debtors at Rs.53.89 lakhs. This in support of their prayer that the Court should go through both the calculations and determine the amount payable.

9. I find that the impugned order has proceeded on the basis that the judgment debtors has accepted the amounts payable on the acquisition of land under the Act as computed by the respondents - decree holders. This is evident by it recording the fact that the judgment debtors have not rebutted the amounts computed by the decree holders nor shown that the same is not correct. This finding is not in consonance with the papers and proceedings on the record. The judgment debtors have in response to the application for execution made on 28th February, 2011 filed its reply dated 17th February, 2017 and disputed the claim of the decree holders and set out its detailed calculations justifying the compensation payable at Rs.53.89 lakhs as on that date. Further, the say on behalf of the judgment debtors to the application at Exh.21 as reproduced hereinabove reiterates that the amounts payable according to them are as computed in reply dated 17th February, 2012.

10. Thus, the impugned order dated 15th October, 2013 suffers from the vice of non-consideration of the stand of the decree holders (the petitioners and the respondent no.1) on the basis that it is not objecting to the same. This is as pointed above contrary to the facts on record.

11. In the above view, it would be in the interest of justice that the impugned order dated 19th October, 2013 is quashed and set aside. The Applications at Exhibits – 16, 21 and 25 are restored to the file of Civil Judge, Senior Division, Thane for fresh consideration. In view of the fact that these proceedings have been pending in this Court from 2014 and the lands involved were acquired in the year 1986, it would be appropriate that the executing Court decides the execution proceedings as expeditiously as possible.

12. The parties would be at liberty to file detailed calculations of the amounts due as on the date of filing of the calculations. The Executing Court would decide after considering the facts and also the law applicable to the awarding of compensation including

interest thereon in case of land acquisition as arising in the present facts.

In the above view, the petition is disposed of in the above terms. No order as to costs.

(M.S. SANKLECHA, J.)