

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1115/2014
IN
LAND ACQUISITION REFERENCE NO.2/2011
IN
LAQ NO.773/2009

Majas Land Development Corporation	... Applicant
The Dy. Collector (Land Acquisition) No.7. V/s.	... Petitioner
Majas Land Development Corporation	... Respondent

Advocate Shweta Jain for the applicant.
Mr. R. J. Mane, AGP for the State.
Mr. R. Y. Sirsikar for the Acquiring Body.

CORAM: K.K. TATED, J.
DATED : FEBRUARY 15, 2017

P.C. :

1. Heard the learned counsel for the parties. This Notice of Motion is filed by the claimant for direction to the Special Land Acquisition Officer as well as the Acquiring Body - Corporation to pay sum of Rs.23,06,580/- towards the interest u/s.34 of the Land Acquisition Act, 1894 (said Act) with further interest on the said amount @ 15% p.a. or at such other rate as this Hon'ble Court deems fit in the interest of justice till the payment or realization of the said amount.

2. In the present proceedings, the Special Land Acquisition Officer issued Notification u/s.4 of the said Act on 10.08.2006 for acquiring claimants' land for public purpose i.e. Rail Over Bridge at Jogeshwari.

The Special Land Acquisition Officer, before passing the award u/s.11 of the said Act took the possession on 28.12.2007 invoking the urgency clause u/s.17 of the said Act. After following due process of law, the Special Land Acquisition Officer declared the Award u/s.11 of the said Act on 15.01.2007 to the tune of Rs.2,82,53,838/- along with interest upto 15.01.2009. The Special Land Acquisition Officer has given calculations of this amount in the Award on internal page No.62, Sr.No.13, which reads thus:

13	i) Land bearing CTS No.69 pt. area 2886.2 sq.mtrs. of Majas Land valued at Rate of Rs.5400/- p.s.m. as norms laid down in R/R, 2006. It is owned by Doshibai N. B. Jeejibhoy & R.D. Dubhash.	Rs. 1,55,85,450/-
	ii) CTS No.69/3 pt, 4 pt area 19.2 sq. mtrs. CTS No.69/5 to 12 area 171.1 sq. mtrs. CTS No.69/16 to 42 area 436.8 sq. mtrs.	627.1 sq.mtr
	Land owned by Doshibai N.B. Jeejibhoy & R.D. Dubhash valued at the rate of Rs.3450/- p.s.m. Ownership of above said land was claimed by above said owner & claimed TDR. Now they have claimed vide their application dated 14.10.2008 for compensation. After confirmation with MCGM compensation drawn. Possession of lands handed over 28.12.2007	
	Total	Rs.1,77,48,975
	ii) 30% solatium, as per Sec. 23 (I-A) of L.A. Act (amended)	Rs.53,24,693/-

	iii) 12% Additional component, as per Sec. 23 (1-A) Act, (amended) for the period from 27.09.2006 to 28.12.2007 = 1 year 93 days	Rs.26,72,558/-
	Total	Rs.2,57,46,226/-
	iv) i) Interest as per Sec. 34 of L.A. Act amended for the 1 st year at Rs.9% p.a. for 1 st year from 29.12.2007 to 28.12.2008 = 17 year ii) Interest @ 15% p.a. for the remaining period from 29.12.2008 to 15.01.2009 = 18 days	Rs.23,17,160/- Rs.1,90,452/-
	Total	Rs.25,07,612/-
	Grand Total	Rs.2,82,53,838/-

3. The Special Land Acquisition Officer, in clause 13(iv) calculated the interest payable u/s.34 @ 9% p.a. for 1 year from 29.12.2007 to 28.12.2008 and interest @ 15% p.a. for the remaining period from 29.12.2008 till 15.01.2009 i.e. the date of Award.

4. The claimant filed present Notice of Motion on the ground that as per the provisions of Section 34 of the said Act, they are entitled to interest u/s.34 of the said Act till the date of payment.

5. The learned counsel for the claimant submits that the Special Land Acquisition Officer erred in coming to the conclusion that the claimants are entitled to interest u/s.34 of the said Act only upto the date of Award i.e. 15.01.2009. He submits that bare reading of section 34 of the said Act shows that the claimants are entitled to interest till the date of payment. He submits that immediately after the claimants realized this mistake, they immediately sent a letter dated 31.08.2009 to the Special Land Acquisition Officer calling upon him to pay remaining interest of Rs.23,06,580/-. He submits that the Special Land

Acquisition Officer vide his letter dated 31.08.2009 rejected their application only on the ground that they already made payment of interest as per Section 34 of the said Act.

6. The learned counsel for the claimant submits that the claimants, by letter dated 04.12.2009 informed the Special Land Acquisition Officer that without giving any reason they refused to pay interest in the sum of Rs.23,06,580/- u/s.34 of the said Act. He submits that the claimants called upon the Special Land Acquisition Officer to reconsider the request and make the payment of interest according to law.

7. The learned counsel for the claimant submits that the Special Land Acquisition Officer failed and neglected to comply with the said letter. He submits that in same group of matters, one of the claimants filed Writ Petition No.4/2009 claiming interest u/s.34 of the said Act till the date of payment. He submits that this court, directed the Special Land Acquisition Officer to make the payment in that matter as per section 34 of the said Act and that was complied with by the Special Land Acquisition Officer and the Acquiring Body.

8. The learned counsel for the petitioner, in support of his contention, relies on judgment of the Apex Court in the matter of ***Shree Vijay Cotton and Oil Mills Ltd. Vs. State of Gujarat AIR 1991 SC 656***, wherein it is held that the claimants are entitled to interest u/s.34 of the said Act from the date of possession till the payment. Paragraph 14 to 16 thereof, read thus:

“14. The High Court while appreciating the point in issue did not consider the mandatory provisions of Section 34 of the Act. The

said section specifically provides that when the amount of compensation is not paid on or before taking possession of the land the collector shall pay interest at 6% per annum from the date of taking over possession. The payment of interest is not dependent on any claim by the person whose land has been acquired. There can be no controversy or any lis between the parties regarding payment of interest. When once the provision of Section 34 are attracted, it is obligatory for the collector to pay the interest. If he fails to do so the same can be claimed from the Court in proceedings Under Section 18 of the Act or even from the appellate court/courts thereafter.”

“15. We have carefully examined the reasoning of the High Court in reaching the conclusion which we have reproduced in the earlier part of this judgment. We do not agree with the interpretation placed by the High Court on various provisions of the Act. Reading Section 23 with Section 26 of the Act it is clear that the award, which is deemed to be a decree, is the sum total of conclusions reached by the courts in determining compensation Under Section 23 of the Act on appreciation of the evidence between the parties. The costs Under Section 27 and the interest Under Sections 28 and 34 are added to the compensation amount to make it a consolidated award. The costs and interest under the Act if not awarded by the lower court can always be awarded by higher courts in any proceedings under the Act and to any party entitled to the same under the Act.”

“16. There is inherent evidence in the wording of Sections 28 and 34 to show that the framers of the Act intended to assure the payment of interest to the person whose land was acquired and it was not the intention to subject the said payment to procedural hazards. Section 34 lays down that "the Collector shall pay the amount awarded with interest at 6% per annum...." The legislative mandate is clear. It is a directive to the collector to pay the interest in a given circumstance. Section 34 nowhere says that the interest-amount is to be included in the award-decree as prepared Under Section 23(1) read with Section 26 of the Act. Similarly Section 28 provides "the award of the Court may direct that the Collector shall pay interest." Here also the award Under Section 23(1) read with

Section 26 has been kept distinct from the payment of interest under the section. The interest to be paid Under Section 34 and also Under Section 28 is of different character than the compensation amount Under Section 23(1) of the Act. Whereas the interest, if payable under the Act can be claimed at any stage of the proceedings under the Act, the amount of compensation Under Section 23(1) which is an Award-Decree Under Section 26, is subject to the rules of Procedure and Limitation. The rules of procedure are hand maiden of justice. The procedural hassle cannot come in the way of substantive rights of citizens under the Act.”

9. The learned counsel for the petitioner further relies on the judgment of the Apex Court, in the matter of ***Sunder Vs. Union of India 2001 7 SCC 211***. In this case also, the Apex Court held that the claimants are entitled to interest u/s.34 of the said Act from the date of possession if it is taken before passing the Award, till the date of Award. Paragraph 12, 14, 16, 23 and 24 of the said judgment reads thus:

“12. Section 11 of the Act enjoins on the Collector the statutory duty to conduct an inquiry into the value of the land on the date of publication of the notification Under Section 4(1) of the Act and to make an award for the "compensation" which in his opinion should be allowed for the land. Section 31 of the Act casts obligation on the Collector that after making the award Under Section 11 he shall tender payment of "the compensation awarded by him" to the persons entitled to it according to the award. This means that law does not relish any delay in making the payment once the award is made. Thus, making the award shall normally follow payment of compensation as expeditiously as possible.”

“14. Question of payment of interest would arise only when the compensation is not paid or deposited on or before the date or taking possession of the land. It is inequitable that the person who is deprived of the possession of the land, on account of acquisition proceedings is not given the amount which law

demands to be paid to him, any delay thereafter would only be to his detriment, There must be a provision to buffet such iniquity. It is for the purpose of affording relief to the person who is entitled to such compensation when the payment of his money is delayed that the provision is made in Section 34 of the Act. That section is extracted below -

34 Payment of Interest -When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited.

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.”

“16. Thus interest has to accrue as per Section 34 and Section 28 of the Act on the compensation awarded, whether it is as per the award initially passed by the Collector or by the Court later. What is meant by "the compensation" awarded? Both sides cited different definitions for the word "compensation" as contained in different lexicography's . In "Words and Phrases" (permanent Edn.) different connotations of the word "compensation" have been delineated, One of them relates to the law of eminent domain, where compensation means recompense in value, a quid pro quo, and must be in money. Another is relating to the property taken for public use. Then it is the fair market value at the time of taking it. From the Constitutional perspective the word 'compensation' for the property taken was understood as the just equivalent of the value of the property. But when compensation is regarded as a statutory obligation the aforecited definitions need not detract the courts in fathoming the real import of it. The exercise can be done with the aid of the provisions in the statutes, So what the Court, in the context of land acquisition, has to decide is how the Act has designed the compensation vis-a-vis the liability to pay interest, In this context

we have to read Section 23 of the Act, It is extracted below -

23. Matters to be considered in determining compensation -(1) In determining the amount of compensation to be awarded for land acquired under this Act, the court shall take into consideration first, the market value of the land at the date of the publication of the notification Under Section 4, Sub-section (1).

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any, sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration Under Section 6 and the time of the Collector's taking possession of the land.

(1A) In addition to the market value of the land above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification Under Section 4, Sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking

possession of the land, whichever is earlier.

(2) In addition to the market-value of the land, as above provided the court shall in every case award a sum of thirty per centum on such market-value, in consideration of the compulsory nature of the acquisition.”

“23. In deciding the question as to what amount would bear interest Under Section 34 of the Act a peep into Section 31(1) of the Act would be advantageous. That Sub-section says; "On making an award Under Section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next Sub-section." The remaining Sub-sections in that provision only deal with the contingencies in which the Collector has to deposit the amount instead of paying it to the party concerned, It is the legal obligation of the Collector to pay "the compensation awarded by him" to the party entitled thereto. We make it clear that the 'compensation awarded would include not only the total sum arrived at as per Sub-section (1) of Section 23 but the remaining Sub-sections thereof as well. It is thus clear from Section 34 that the expression "awarded amount" would mean the amount of compensation worked out in accordance with the provisions contained in Section 23, including all the Sub-sections thereof.”

“24. The proviso to Section 34 of the Act makes the position further dear. The proviso says that "if such compensation" is not paid within one year from the date of taking possession of the land, interest shall stand escalated to 15% per annum from the date of expiry of the said period of one year "on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry". It is inconceivable that the solatium amount would attract only the escalated rate of interest from the expiry of one year and that there would be no interest on solatium during the preceding period. What the legislature intended was to make the aggregate amount Under Section 23 of the Act to reach the hands of the person as and when the award is passed, at any rate as soon as he is deprived of the possession of his land. Any delay in making payment of the

said sum should enable the party to have interest on the said sum until he receives the payment. Splitting up the compensation into different components for the purpose of payment of interest Under Section 34 was not in the contemplation of the legislature when that section was framed or enacted.”

10. The learned counsel for the claimant also relies on the Apex Court Judgment in the matter of ***Gurpreet Singh Vs. Union of India*** **2006 8 SCC 457** wherein it is held that u/s.34 of the said Act, when the amount of compensation awarded is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon from the date of possession till it shall have been paid or deposited. The portion of paragraph 29 and 30 and paragraph 32 read thus:

“29Under Section 34 of the Act, when the amount of compensation awarded is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per cent per annum from the time of taking possession till it shall have been paid or deposited. But if the compensation or any part thereof is not paid within a period of one year from the date on which possession is taken, interest is payable at the rate of fifteen per cent per annum from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry. It is relevant to notice that on payment of the amounts thus due, the award made by the Collector stands satisfied.”

“30One is that the interest is payable only on the excess amount of compensation awarded by the reference court and the second is that interest on the enhanced amount awarded is payable from the date of taking possession at the rate of 9% per annum for the first year after taking possession and thereafter at 15% per annum till the deposit of the excess is made. This clearly indicates that there is no scope for the re-opening of the

appropriation already made pursuant to the award. The other significant factor is that the award should specify the amount awarded as market value of the land separately and the other amount, if any, awarded under other heads of Section 23(1)."

"32. In the scheme of the Act, it is seen that the award of compensation is at different stages. The first stage occurs when the award is passed. Obviously, the award takes in all the amounts contemplated by Section 23(1) of the Act, Section 23(1A) of the Act, Section 23(2) of the Act and the interest contemplated by Section 34 of the Act. The whole of that amount is paid or deposited by the Collector in terms of Section 31 of the Act. At this stage, no shortfall in deposit is contemplated, since the Collector has to pay or deposit the amount awarded by him. If a shortfall is pointed out, it may have to be made up at that stage and the principle of appropriation may apply, though it is difficult to contemplate a partial deposit at that stage. On the deposit by the Collector under Section 31 of the Act, the first stage comes to an end subject to the right of the claimant to notice of the deposit and withdrawal or acceptance of the amount with or without protest."

11. The learned counsel for the claimants further relies on the judgment of the Apex Court in the matter of **Major General Kapil Mehra and Ors. Vs. Union of India & Anr. 2015 2 SCC 262** in which it is held that the payment of interest u/s.34 is mandatory. He relies on paragraph 42, 43 and 45 which read thus:

"42. Contention of the Appellants is that on the enhanced compensation, the mandatory interest Under Section 34 of the Act has not been awarded to them. Placing reliance upon Commissioner of Income Tax, Faridabad v. Ghanshyam (HUF) (2009) 8 SCC 412, it is contended that the impugned judgment is silent on granting statutory interest Under Section 34 of the Land Acquisition Act and the Appellants pray for award of interest on the enhanced compensation. The Appellants filed C.M. No. 735/2011 before the High Court seeking review for payment of interest which according to the Appellants was omitted to be included and the said application was dismissed by the High

Court.”

“43. The Land Acquisition Act, 1894, provides for payment of interest to the claimants either Under Section 34 or Under Section 28 of the Act. Section 34 of the Act fastens liability on the Collector to pay interest on the amount of compensation to be worked out in accordance with provisions of Section 23(1) and the Sub-section thereof, at the rate of 9% per annum from the date of taking possession until the amount is paid or deposited. As per proviso to Section 34, if the compensation amount or any part thereof is not paid or deposited within a period of one year from the date of taking over possession, interest shall be payable at the rate of 15% per annum from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.”

“45. Award of interest Under Section 34 is mandatory in as much the word used in the Section is 'shall'. The scheme of the Act and the express provisions thereof establish that the interest payable Under Section 34 is statutory. The claim for interest Under Section 28 of the Act proceeds on the basis that due compensation not having been paid, the claimant should be allowed interest on the enhanced compensation amount. The award of interest Under Section 28 is discretionary power vested in the Court and it has to be exercised in a judicious manner and not arbitrarily. The use of the word "may" in Section 28 does not confer any arbitrary discretion on the Court to disallow interest for no valid or proper reasons. Normally, Court awards interest if it enhances the compensation in excess of the amount awarded by the Collector, unless there are exceptional circumstances.”

12. The learned counsel for the claimants submit that the Acquiring Body filed their Affidavit-in-Reply dated 22.12.2016 stating that at the time of acquisition they deposited the sum of Rs.23,86,44,201/- with the Special Land Acquisition Officer-7. In paragraph 4 of their Affidavit-in-Reply stated that the Special Land Acquisition Officer has

refunded sum of Rs.77,91,662/- to the Corporation as excess amount was deposited by them. He submits that the Acquiring Body, by their Affidavit-in-Reply shifted their burden on the Special Land Acquisition Officer only.

13. The learned counsel for the claimants submits that even the Special Land Acquisition Officer -7 filed their Affidavit-in-Reply dated 21.12.2016 without explaining on what basis the Special Land Acquisition Officer is justifying their action for non payment of interest u/s.34 of the said Act. The Special Land Acquisition Officer relied on their reply dated 21.12.2016. Paragraph 5 of the said Affidavit-in-Reply reads thus:

“5. I state the applicant / claimant made an application to this office for awarding interest at the rate of 15% under Section 34 of the Land Acquisition Act for the period from the date of the Award till payment. The Special Land Acquisition Officer by letter dated 31.10.2009 rejected the claim of the payment holding that they are not entitled to interest.”

14. The learned counsel for the claimants submits that bare reading of the Affidavit-in-Reply filed by the Special Land Acquisition Officer shows that the Special Land Acquisition Officer, without applying his mind, rejected their request for payment of Rs.23,06,580/- towards remaining interest u/s.34 of the said Act. He submits that though the Reference is pending before this court, being a statutory amount entitled by the claimant, the claimant can make an application for the same. Hence, in the interest of justice, this Hon'ble Court be pleased to allow the Notice of Motion in terms of prayer clause (a) directing the Special Land Acquisition Officer as well as the Acquiring Body to pay

said amount of Rs.23,06,580/- with further interest.

15. On the other hand, the learned counsel for the Acquiring Body vehemently opposed the Notice of Motion. He submits that in any case the claimant filed the Reference u/s.18 of the said Act which is pending for hearing on merits. He submits that in the Reference Application, the Court can decide whether the claimants are entitled to interest u/s.34 of the said Act till payment of the same. Therefore, there is no question of directing either to the Special Land Acquisition Officer and/or Acquiring Body to pay said amount of Rs.23,06,580/- to the claimants. During the course of the arguments, the learned counsel for the Acquiring Body submits that though in first line of paragraph 6 of the Affidavit-in-Reply dated 22.12.2016, they used the word “paid”, is not correct. He submits that they have deposited the amount with the Special Land Acquisition Officer. He submits that as they deposited the entire amount with the Special Land Acquisition Officer before taking possession, there is no question of granting any interest u/s.34 of the said Act. He further submits that in any case the Acquiring Body is not liable to pay interest u/s.34 of the said Act. Hence, there is no substance in the Notice of Motion. Same is required to be dismissed with costs.

16. The learned AGP for the Special Land Acquisition Officer submits that he is adopting the arguments advanced by the learned counsel for the Acquiring Body. He further submits that the Special Land Acquisition Officer, by letter dated 31.12.2009 rightly rejected the claimants claim u/s.34 of the said Act for sum of Rs.23,06,580/-.

Hence, there is no substance in the Notice of Motion. Same is required to be dismissed with costs.

17. For deciding the Notice of Motion, it is necessary to reproduce section 34 of the Land Acquisition Act, 1894 Act, which is as under:

*“34. **Payment of Interest** : When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of 9% p.a. from the time of so taking possession until it shall have been so paid or deposited.”*

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of 15% p.a. shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.”

18. Bare reading of section 34 of the said Act shows that the claimants are entitled to interest till the date of payment. In the present proceedings, the Special Land Acquisition Officer in his Award calculated the interest u/s.34 of the said Act upto the date of Award i.e. 15.01.2009. The Special Land Acquisition Officer handed over a cheque of Rs.2,82,53,838/- inclusive of interest upto 15.01.2009 to the claimants on 21.08.2009. Bare reading of the Award shows that the Special Land Acquisition Officer calculated the interest u/s.34 of the said Act only upto the date of Award. Considering the authority cited by the claimant as stated hereinabove and reading of section 34 shows that the claimants are entitled to interest u/s.34 of the said Act from the date of possession of the acquired land acquired by the Special Land Acquisition Officer invoking the urgency clause u/s.17 of the said

Act till the date of payment i.e. 21.08.2009. The interest from 16.01.2009 i.e. date of Award upto 21.08.209 i.e. date of payment i.e. 280 days comes to Rs.23,06,580/-. Hence, the Special Land Acquisition Officer is required to be directed to deposit and/or pay the said amount to the claimant within four weeks from today, failing which they will have to pay interest @ 15% p.a. on the said amount.

19. Hence, following order is passed:

- a. The petitioner the Land Acquisition Officer – 7 is directed either to deposit the sum of Rs.23,06,580/- in the Registry of this court within four weeks from today and/or to pay the same to the claimants failing which they will have to pay interest @ 15% p.a. from the due date i.e. 16.01.2009.
- b. If the amount is deposited in the Registry of this court, within stipulated time as stated hereinabove, the claimants are entitled to withdraw the same unconditionally.
- c. If the amount is not deposited within stipulated time as stated hereinabove, the claimants are entitled to execute this order according to law.
- d. The petitioner i.e. Special Land Acquisition Officer to pay cost of Rs.7500/- to the claimants within four weeks from today.
- e. Notice of Motion stands disposed of accordingly.

(K.K. TATED, J.)