

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9908 OF 2018

...
Jana alias Janya Balya alias Balaram KothPetitioner
V/S
The Deputy Collector (Land Acquisition) & Ors.Respondents
...

Ms. Deepa Punde I/b Mr. Sachin S. Punde for the Petitioners.
Ms.P.N. Diwan, AGP for Respondent Nos.1, 2 and 5/State.
Mr. Ashutosh M. Kulkarni for Respondent Nos.3 and 4/CIDCO.
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**CORAM : A.A. SAYED &
SANDEEP K. SHINDE, JJ.**

DATE : 31 OCTOBER 2018

ORDER:

1 Invoking Articles 226 & 227 of the Constitution, this Petition is filed by the Petitioner, seeking directions against Respondents to forthwith pay the re-determined amount of compensation as per the Award dated 10/05/2016 (Exhibit `A' to the Petition) together with all benefits to the Petitioner.

2. The Petitioner is owner of agricultural land situated at Village Vahal, Taluka Panvel, District Raigad, more particularly described in paragraph 2 of the Petition (hereinafter referred to as "the said land"). The said land came to be acquired for public purpose of Navi Mumbai Project under the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act"). The preliminary Notification was published under section 4 of the said Act which

culminated into Award dated 22.07.1986 under Section 11 of the said Act. According to the Petitioner, though the amount of compensation awarded was very meager, they did not prefer Land Acquisition Reference on account of their illiteracy and financial difficulties. In the Land Acquisition Reference No.63 of 1987 initiated at the instance of adjoining landowners covered under the same Notification, the Civil Judge Senior Division, Raigad at Alibag by judgment and order dated 28.02.1990 awarded enhanced compensation.

3. On 31.05.1990 the Petitioner preferred Application under section 28-A of the said Act for re-determination of the amount of compensation awarded under Award dated 22.07.1986. On 10-05-2016 after conducting an inquiry the Respondent No.1-Deputy Collector (Land Acquisition) re-determined the amount of compensation under Section 28-A(2) of the said Act, on the basis of the judgment and order dated 28.02.1990 passed in Land Acquisition Reference No.63 of 1987. On 30-05-2016, the Respondent No.1-Deputy Collector (Land Acquisition) issued notices under section 12(2) of the said Act informing the Petitioner that the amount of compensation of Rs.13,48,971/- will be disbursed once it is received from Respondent Nos.3 and 4-CIDCO. The grievance of the Petitioner is that till date compensation as re-determined is not paid to them.

4. An Affidavit-in-Reply dated 15.10.2018 has been filed on behalf of Respondent Nos.3 and 4-CIDCO, wherein it stated in paragraphs 8 and 9 as follows:

“8. It is a matter of practice that after the award is passed by the amount as per the award is checked and assessed by the Special Land Acquisition Officer/Deputy Collector (Land Acquisition) Metro centre and thereafter the proposals for the payment are forwarded to office of CIDCO through the office of Collector. After the receipt of proposal along-with the award as aforesaid the same is again checked/verified by Accounts Department of the CIDCO and thereafter the further process for payment is done by the CIDCO by making available the amount under award to the designated Special Land Acquisition Officer/Deputy Collector (Land Acquisition) Metro Centre. It is a matter of record that in the present case the CIDCO has received the proposals from the office of Collector Raigad and thereafter the same are under consideration of the Accounts Department of the CIDCO. It is also a matter of record that further process for the purpose of disbursing the amount is going on. I say that after the completion of the entire process as aforesaid the amount under award will be made available award to the Office of Special Land Acquisition Officer. I say that the Hon'ble Court may grant us 6 months time to release the payment.

9. I deny that there is delay on the part of this Respondent in making payments, in this regard it is required to be appreciated that unless and until the proposals are received from the office of Collector the same can't be processed by this Respondent and in this matter the proposals were not received at the earliest.”

(emphasis supplied)

5. It is thus an admitted position that the amount as re-determined is payable to the Petitioners and the Respondent Nos.3 and 4-CIDCO has merely stated that unless and until the proposals are received from the office of Collector the same cannot be processed. It is not in dispute that neither the order dated 28-02-1990 of the Civil Judge Senior Division, Raigad in Land Acquisition Reference No.63 of 1987 awarding enhanced compensation under section 18 of the said Act, nor the re-determined Award dated 10-05-2016 of the Respondent No.1-Deputy Collector (Land Acquisition) has been challenged by the Respondents.

6. Learned Counsel for the Petitioners has placed reliance on the judgment of the Division Bench of this Court (Coram: A.S.Oka & M.S.Sonak, JJ.) in **Ananda Baburao Pawagi & ors. v/s. The State of Maharashtra & ors., 2014 (3) Mah.L.J. 886** to contend that the Petitioner would also be entitled to interest on the re-determined Award dated 10 May 2016. The Division Bench in the said case has held in paragraph 21 as follows:

“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.”

The Division Bench accordingly directed that interest be paid as provided under section 34 of the said Act till the date of deposit of compensation amount. The Division Bench held that even in exercise of equitable jurisdiction, this Court can always award interest by way of compensation and the Court would be guided by Section 34 of the said Act and the Petitioner would be entitled to interest under the said section. We respectfully agree with the view of the Division Bench. The judgment of the Division Bench would clearly apply to the facts of the present case also.

7. In the present case, despite the re-determined Award dated 10 May 2016 of the Respondent No.1-Deputy Collector (Land Acquisition), the compensation amount, as re-determined, has not been paid to the Petitioner and the Petitioner has been deprived of enjoying the said amount for more than two years. The Petitioner was legitimately and lawfully entitled to said amount immediately upon the re-determined Award being made on 10 May 2016. The Petitioner would thus be entitled to interest @ 15% p.a. as per section 34 of the said Act on the re-determined Award, on account of gross delay on part of Respondent Nos.3 and 4-CIDCO and Respondent

Nos.1 and 2-State in paying the said amounts. Hence, we pass the following order:

ORDER

(i) We direct the Respondents to pay compensation to the Petitioner in terms of re-determined Award dated 10-05-2016 together with interest as per Section 34 of the Land Acquisition Act, 1894.

(ii) The interest shall be awarded at the rate of 15% p.a., which shall be payable from the date of re-determined Award dated 10-05-2016 until payment.

(iii) The aforesaid amounts shall be paid by the Respondents to the Petitioner within three months from today.

(iv) Respondent No.1-Deputy Collector (Land Acquisition) shall send the proposal of payment of compensation alongwith interest to Respondent Nos.3 and 4-CIDCO within four weeks from today. Upon Respondent Nos.3 and 4-CIDCO receiving the proposal, payment shall be made to the Respondent No.1-Deputy Collector (Land Acquisition), within four weeks from the receipt of the proposal.

(v) As soon as the aforesaid amount is received by the Office of the Respondent No.1-Deputy Collector (Land Acquisition), an intimation of the date fixed for receipt of the amount shall be issued to the Petitioner to receive the aforesaid amount.

8. The Petition is allowed in the above terms.

(SANDEEP K. SHINDE, J.)

(A.A. SAYED, J.)

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