

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Writ Petition No.5563 of 2015
(The Executive Engineer, Bembla Project Division, VIDC, Yavatmal .vs.
Jaichand Trilokchand Borundiya and ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders.

Mr. J.B. Kasat, Advocate for Petitioner.
Mr. A. H. Lohiya, Advocate for Respondent No.1.
Mr. Nikhil Joshi, AGP for Respondent Nos. 2 & 3.

CORAM : Manish Pitale, J.
DATED : October 31, 2018.

Heard counsel for the parties.

2. There is a serious dispute between the petitioner-acquiring body and the respondent no.1-claimant as regards the exact amount payable to the claimant-respondent no.1 in terms of compromise dated 12.04.2014, on the basis of which First Appeal No. 340 of 2012 was disposed of by this Court. Upon a specific direction given by this Court by order dated 29.06.2017, the executing Court passed its order on 10.10.2017 calculating balance amount payable by the petitioner to the respondent no.1-claimant. In this regard, it was submitted on behalf of the petitioner that an amount of Rs.1 crore deposited in this Court was inadvertently not taken into consideration by the executing Court while arriving at the figure of the amount as stated in the order dated 10.10.2017. The learned counsel for the respondent no.1-claimant does not dispute the fact that the aforesaid amount of Rs.1 crore was also deposited by

the petitioner in this Court during the pendency of the present writ petition.

3. The real dispute between the parties is on the point as to whether the petitioner would be liable to pay interest at the rate of 9% P.A. for the first year from the date of taking possession of the land in question or from the date of the award or as submitted on behalf of the respondent no.1-claimant, such interest would be payable from the date of notification under Section 4 of the Land Acquisition Act, 1894 in view of the compromise dated 12.04.2014 entered into between the parties. The submission made in this regard with reference to liability of paying interest from the date of notification under Section 4 of the said Act, is seriously disputed by the learned counsel for the petitioner. Reliance is placed on behalf of the petitioner on Full Bench judgment of this Court in the case of **State of Maharashtra .vs. Kailash - 2016 (3) Mh.L.J. 457**, to contend that the calculation made by the executing Court by order dated 10.10.2017 by directing payment of interest at 9 % P.A. for the first year from the date of the award is correct. On the other hand, the learned counsel for the respondent has placed reliance on the judgments of the Hon'ble Supreme Court in the case of **Gurupreet Singh .vs. Union of India - 2006(8) Supreme Court Cases 457** and in the case of **State of Punjab .vs. Amarjit Singh and another- (2011) 4 Supreme Court Cases 734**, to contend that interest would be paid from the date of taking possession and not from the date of the award.

4. The learned counsel for the respondent does not dispute the fact that the petitioner till date has deposited a total amount of Rs.8,57,41,240/-, in accordance with the claim of the petitioner regarding total amount payable to the respondent no.1 -claimant even as per the compromise. It is contended on behalf of the respondent no.1-claimant that the said amount is not the amount that was payable to him under the compromise and that further amount is payable by calculating interest from the date of taking possession and not from the date of award. It is also submitted that the compromise was entered into between the parties on an understanding that the interest would be payable from the date of notification issued under Section 4 of the said Act. Needless to say that this submission is disputed by the petitioner.

5. A significant question arises for determination in this writ petition which involves interpretation of the aforesaid Full Bench judgment of this Court and the judgment of the Hon'ble Supreme Court.

6. Hence **Rule.**

7. It is made clear that both parties are not disputing the compromise dated 12.04.2014 arrived at between the parties before the Maha Lokadalat. It is also made clear that no contention to the contrary raised by any of the parties shall be entertained by this Court while deciding this writ petition finally.

8. The petitioner has already deposited entire balance amount, which according to it is payable in terms of the compromise to the respondent. The respondent no.1-claimant is permitted to withdraw the balance amount that has been deposited by the petitioner in this Court along with accrued interest. Let this writ petition be listed for final hearing in its own turn.

9. In view of the above order, Civil Application No. 2203 of 2018 stands disposed of.

10. Civil Application Nos. 2201, 2202 and 2204 of 2018 shall be considered at the time of final hearing of the present writ petition.

11. Respective counsel waive service on merits.

JUDGE

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