

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

WRIT PETITION NO.7783 OF 2014

1. Sharda w/o Rajendra Gaikwad,
Age; 61 years, Occ; Agricultural,
2. Sachin s/o Rajendra Gaikwad,
Age; 36 years, Occ; Agricultural,
3. Nitin s/o Rajendra Gaikwad,
Age; 34 years, Occ; Agricultural,
4. Umesh s/o Rajendra Gaikwad,
Age; 32 years, Occ; Agricultural,
5. Arun s/o Narayanrao Gaikwad, (Died)
Thorough his legal heirs :
- 5-A. Meerabai w/o Arun Gaikwad,
Age; 54 years, Occ; Agricultural,
- 5-B. Avinash s/o Arun Gaikwad,
Age; 30 years, Occ; Agricultural,
- 5-C. Abhijeet s/o Arun Gaikwad,
Age; 28 years, Occ; Agricultural,
6. Ganesh s/o Ramesh Gaikwad,
Age; 34 years, Occ; Agricultural,

All resident of Raviwar Peth, Beed,
Taluka and District; Beed.

PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Through its Secretary, Public

Works Department,
Mantralaya, Mumbai- 32.

2. The Collector, Beed
District; Beed.
3. The Special Land Acquisition Officer,
Jaikwad Project, Beed.
4. The Executive Engineer,
Public Works Division, Beed.
5. The Superintending Engineer,
Public Works Mandal,
Osmanabad, District; Osmanabad.
6. The Chief Engineer,
Public Works Department,
Adalat Road, Aurangabad.

RESPONDENTS

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Shri. Ajit B. Kale, Advocate for Petitioners
Shri. M.M. Nerlikar, AGP for Respondents
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**CORAM : T.V. NALWADE &
SUNIL K. KOTWAL, JJ.**

Date of Judgment : 11.01,2019

ORAL JUDGMENT (Per T.V. NALWADE, J]

Rule. Rule made returnable forthwith.

2. By consent heard both the sides for final disposal.

3. The petition is filed for giving directions to respondents to pay interest on the amount of rental compensation to the petitioners.

4. Heard both sides.

5. The submissions made show that the land of the petitioners was acquired on 1.1.1974. Subsequently, the award came to be passed. The compensation amount was paid on 20.3.2007. It appears that no rental compensation was calculated, and so, Writ Petition bearing No. 1050 of 2009 was filed. In that proceeding, relief was claimed that the respondents be directed to decide the application filed for rental compensation on 24.10.2008. Order was made after giving directions by this Court in Writ Petition. The rental compensation was fixed and it was actually paid on 2.11.2010.

6. It is the contention and submission of the petitioners that as the rental compensation was not

paid after taking possession and it was not even ascertained they were entitled to get interest on the rental amount. It was submitted that within a year from the date of possession, the rental compensation ought to have been calculated by the authority.

7. Learned counsel for petitioners placed reliance on the observations made by the Apex Court and directions given in the case reported in **State of Maharashtra and others vs. Maimuma Banu and others AIR 2003 SUPREME COURT 3698)** and in **Civil Appeal Nos. 10387 of 2014 and 10388 of 2014 Exe. Eng. Minor Irrigation Division vs Dinkar and Ors.**

8. In the aforesaid decisions the Apex Court has considered the scheme of the Land Acquisition Act. It is observed that though under the scheme, there is no provision to make payment of interest on rental compensation, the concerned authority the acquiring body is liable to make payment of interest. Those observations can be found in paragraphs Nos. 10

and 11 of the case decided in State of Maharashtra and others vs. Maimuma Banu and others (cited supra).

"10. The crucial question is whether there can be any direction for interest on rental compensation once it is held that the same has to be paid within the time frame, notwithstanding the fact that there is no statutory obligation.

11. It is not in dispute that in certain cases payments have already been made. Though the inevitable conclusion is that the High Court is not justified in directing grant of interest on the logic of various provisions contained in the Act, yet there is an element of equity in favour of the land owners. It is, however, seen that the writ applications were filed long after the possession was taken. This factor cannot be lost sight of while working out the equities. It would therefore be appropriate if appellants pay interest @6% from 1.4.2000 till amounts payable as rental compensation are paid to the concerned land owners. This direction shall not apply to those cases where the payments have already been made prior to 1.4.2000. Appeals are allowed to the extent indicated without any stipulation of costs."

9. In the subsequently decided case by the Apex

Court the rate of interest was increased to make it 9% and the direction was given to make the payment from defaulted date.

10. Learned AGP submitted that while deciding the first representation, reasons were given that there was no government policy to make payment of interest, therefore, that decision ought to have been challenged. Learned AGP submitted that on the ground of laches and limitation the interest is not payable to the petitioners. This Court holds that such submission is not acceptable. Firstly, for the reason of equity given by the Apex Court, acquiring body cannot be allowed to say that it has the right to prepare policy and to take decision and deny the payment of interest on the rental compensation. If that contention of the acquiring body or State is accepted, then in the case of persons who have lost the lands, there will be no time limit for the State to make payment of rental compensation, which is not permissible as per the statutory provisions. Within

one year from the date of possession, the rental compensation needs to be determined and this provision itself is sufficient to infer that limitation is fixed by the statute itself. That policy of the Government can be seen in the Government Resoluton dated 1.12.1972. The said Government Resolution itself states that in advance, rental compensation needs to be paid @ 5% of estimated value and the final rental payment will be @ 6.5% of the award value.

11. In view of aforesaid circumstances, this Court has no hesitation to hold and declare that the petitioners are entitled to get interest from 1.1.1975 at the rate given by the Apex Court and the submissions made by the learned AGP in that regard cannot be accepted. In the result, we pass the following order:

ORDER

(i) Respondent Acquiring Body is hereby directed to pay interest on the

rental compensation already calculated by the authority from 1.1.1975 to 18.8.2006 @ 6% per annum and from 18.8.2006 to 2.11.2010 @ 9% per annum.

(ii) Respondents to ascertain as to how much amount actually has been paid and how much amount is to be paid. If the amount is already deposited, then only calculated amount be paid.

(iii) Rule is made absolute in above terms.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

mahajansb/