IN THE HIGH COURT OF BOMBAY AT GOA

Civil Revision Application 23 of 2012

1. Antonio Almeida, now deceased
through his legal representatives

Fatima Almeida,

2. Jose Almeida,

3. Francisco Almeida,

4. Manuel Almeida,
all major of age,
Petitioners , 3 and 4 through
their attorney Petitioner no.1,
Marchon Building, 1st floor,
Margao Goa. ….. Petitioners

V e r s u s

1. Executive Engineer, W. D. XXI
(PHE), P.W.D Fatorda
Margao Goa.

2. Deputy Collector,
and L. A.O, Quepem, Goa. ….. Respondents

Shri M. B. D'Costa, Senior Advocate with Advocate Ms. K Betquecar for the Applicant.

Shri Pravin Faldessai, Additional Government Advocate for the Respondents.

CORAM: C. V. BHADANG, J.
Reserved on: 12 /3/2019
Pronounced on: 20 /3/2019.

J U D G M E N T:

The challenge in this revision application is to the order dated 29/8/2011 passed by the Executing Court in Execution Application no. 13/2006 arising out of Land Acquisition Case No.115/1992. By the impugned order, the Executing Court has found the appellants/decree holders to be entitled to recover an amount of Rs.7,17,930.64 paise with further interest at the rate of 15% p.a on the aforesaid amount, we.f. 1.2.2011, till realization. According to the applicants, they are entitled to recover an amount of Rs.56,19,877/- along with interest.

2. The brief facts necessary for the disposal of the application may be stated thus:

That by virtue of a Notification dated 22/1/1987 under section 4 of the Land acquisition Act, 1894, (Act, for short), the Government had acquired 6245 sq.mts of land of chalta no.1 P.T. Sheet no.30 of Margao city, belonging to the applicants, for underground drainage scheme. The Land Acquisition Officer (L.A.O) declared the award on 23/1/1990 awarding compensation at the rate of Rs.10/- per sq.mts. On 27/7/1990, an amount of Rs.1,00,330.65 was paid to the applicants which was received by them under protest. Feeling aggrieved by the inadequate compensation granted the applicants raised a reference under section 18 of the Act, which was registered as L.A.C

No.115/1992. The Reference Court partly allowed the reference by a judgment and award dated 4/12/1999 and enhanced the compensation to Rs.45/- per sq.mtrs. along with all statutory benefits.

3. The respondent/State challenged the award in First Appeal no.176/2000 before this Court in which the applicants raised a cross objection no.11/2000 for further enhancement. This Court by a common judgment and order dated 23/6/2004 while dismissing the appeal filed by the State, enhanced the compensation to Rs.66/- per sq.mtrs along with all statutory benefits and interest. That was unsuccessfully challenged by the State before the Hon'ble Supreme Court in SLP (Civil) No.23791/2004, which was dismissed on 13/12/2004 and thus the judgment awarding compensation at the rate of Rs.66/- per sq.mtr with all statutory benefits has attained finality.

4. On 24/1/2006, the applicants filed Execution Application no.13/2006 for execution of the award claiming an amount of Rs.26,72,788.24 as on 6/2/2006. The respondent/State claimed that the petitioners/decree holders were entitled to an amount of Rs.13,71,444/-. The Executing Court by an order dated 27/1/2010 disposed off the application as fully satisfied holding that the applicants were entitled to only Rs.13,71,444/-. Aggrieved by the

same, the petitioners approached this Court in Civil Revision application no.10/2010. During the pendency of the said Revision application, this Court by an order dated 9/7/2010, directed the learned Registrar (Judicial) of this Court to calculate the amount due, in terms of the judgment dated 23/6/2004 passed by this Court. The Registrar computed the amount and found that the applicants were entitled to an amount of R.50,42,029/- after deducting TDS of Rs.5,61,988/- and Rs.16,860/-, towards Education Cess. Be that as it may, this Court disposed of the Civil Revision application by an order dated 18/4/2011 by setting aside the impugned order dated 27/1/2011 and permitting the petitioner to amend the Execution application and directing the Executing Court to decide the execution afresh after hearing both the sides, in accordance with law. After this, the Executing Court has now found the petitioners to be entitled to Rs.7,17,930/-.64. Feeling aggrieved the petitioners are before this Court.

5. I have heard Shri D'Costa, the learned Senior Counsel for the applicants and Mr. Faldessai, the learned Additional Government Advocate for the Respondents, Perused record.

6. On behalf of the applicants, strong reliance is placed on the decision of the Supreme Court in the case of **Commissioner of Income Tax,**

Faridadbad Vs. Ghanyshyam, (HUF), 2009 (8) S.C.C 412, in order to submit that the interest under section 28 of the Act, is part of the compensation. It is thus submitted that the Executing Court was in error in refusing to award interest on the amount arrived at after addition of solatium and component interest under section 23 (1-A) and 23 (2) of the Act. The learned Senior Counsel submitted that the applicants do not dispute the computation as made by the Registrar (Judicial) of this Court on 7/4/2011, except the deduction of Education Cess which is not permissible. In short, the only contention raised is that the interest granted under section 28 i.e. at the rate of 9% p.a for the first year and 15% for the period thereafter, being part for the compensation, the computation made by the learned Registrar (Judicial) of this Court on 7/4/2011 is correct.

7. Mr. Faldessai, the learned Additional Government Advocate has supported the impugned order. It is submitted that the Executing Court has rightly distinguished the decision of the Supreme Court in the case of **Ghanyshyam (supra)** which arose out of the provisions of the Income Tax Act. It is submitted that the interest granted under section 28 of the Act has been held to be part of the compensation only for deciding whether it is chargeable to tax. It is submitted that the applicants cannot claim compound interest i.e interest on interest as has been rightly held by the Executing

Court.

8. I have carefully considered the circumstances and the submissions made.

9. In order to appreciate the rival contentions, it would be worthwhile to set out the computation as made by the Executing Court, which is disputed by the applicants, as against the computation made by the Registrar (Judicial) of this Court on 7/4/2011 which is acceptable to the applicants as under:

Computation by the Executing Court as per the impugned order:

1	Market value 6245 sq.mtrs. Rs.66/-	Rs.	4,12,170.00
2	Solatium @ 30% of market value	Rs.	1,23,651.00
3	12% Addl. Compensation from date of taking possession (30.09.85) till date of Award (23.01.90) (i.e. 1577 days)	Rs.	2,13,696.00
4	Total Amount due (1+2+3)	Rs.	7,49,517.00
5	9% interest for 1st year & 15% interest for subsequent years from date referred in Judgment till the date of deposit.		
	a) 9% int. from 30.9.85 (date of taking possession) to 29.9.1986 (1 year)	Rs.	67,457.00
	b) 15% int. on Rs.7,49,517.00 from 30.9.86 to 27.7.90 (date of payment) i.e. 1397 days	Rs.	4,30,305.00
6	Entitlement of claimant	Rs.	12,47,279.00
7	Less Amount paid by L.A.O	Rs.	1,00,330.61 ps
	Balance Amount due	Rs.	11,46,948.39 ps
8	15% int. on Rs.7,49,517.00 from 28.07.90 to 31.03.01 (date of amt. withdrawn from High Court) (3899 days)	Rs. Rs.	12,00,227.39 ps
	Total Amount due	Rs.	23,47,175.39 ps

9	Less: Amt. Withdrawn from High Court (amt. Dep.890000/- Less Amt. Withdrawn Rs.222500/- bal. Amt. Rs.6,67,500/- (reinvested)	Rs.	2,22,500.00
7	Balance Amount due	Rs.	21,24,675.39 ps
9	Int. @ 15% on Rs.7,49,517.00 from 01.04.01 to 06.10.05 (Date of dep. of Rs.5,21,576.00 in District Court) (i.e 1649 days)	Rs.	5,07,048.25 ps
10	Total Amount due	Rs.	26,31,723.67 ps
11	Less amt. Dep. In District Court on 07.10.05	Rs.	5,21,576.00
12	Balance Amount due	Rs.	21,10,147.64 ps
13	Int. @ 15% on Rs.7,49,517.00 from 8.10.2005 to 26.3.2007 (Date of dep. Of Rs.6,18,614.00 in District Court (i.e. 535 days)	Rs.	1,64,144.23 ps
14	Total Amount due	Rs.	22,74,291.86 ps
15	Less amt. Dept. in District Court on 26.03.07	Rs.	6,18,614.00
16	Balance Amount due	Rs.	16,55,677.86 ps
17	15% int. on Rs.7,49,517.00 from 27.03.07 to 01.09.09 i.e. 889 days	Rs.	2,73,198.94 ps
18	Total Amount due	Rs.	19,28,876.80 ps
19	Less amt. Dept. in District Court on 01.09.09	Rs.	13,71,444.00
20	Balance Amount due	Rs.	5,57,432.84 ps
21	15% int. on Rs.7,49,517.00 from 02.09.09 to 31.01.11 ie. 518 days	Rs.	1,58,522.84 ps
22	Total Amount due	Rs.	7,15,955.64 ps
23	Advocates Fees	Rs.	800.00
24	Court Fees	Rs.	1,175.00
25	Amt. Due to the claimant	Rs.	7,17,930.64 ps

10. Computation made by the Registrar (J) of this Court on 7/4/2011

1	Market value 6245 sq.mtrs x Rs.66/-	Rs.	4,12,170.00
2	Solatium @ 30% of Market value	Rs.	1,23,651.00
3	12% Add. Compensation from date of taking possession (30.09.85) till date of award (23.01.90) (ie 1577 days)	Rs.	2,13,696.00
4	Amount due (1+2+3)	Rs.	7,49,517.00
5	9% interest for 1st year & 15% interest for subsequent years from d ate referred in Judgment till the date of deposit		
	a) 9% int. from 30.09.85 (date of taking possession) to 29.09.86 (1 year)	Rs.	67,457.00
	b) 15% int from 30.09.86 to 27.07.90 (date of payment) ie 1397 days	Rs.	4,30,305.00
6	Entitlement of Claimant	Rs.	12,47,279.00
7	Less: Amount paid by L.A.O	Rs.	1,00,330.61 ps
	Total		11,46,948.39 ps
8	15% int. from 28/7/90 to 31/3/01 on 1146948.39 (date of amt. Withdrawn from High Court) (3899 days)	Rs.	18,37,788.00
		Rs.	29,84,736.39 ps
9	Less amt. Withdrawn from High Court (amt. Dep.890000/- Less amt. withdrawn Rs.222500/- bal amt. Rs.6,67,500/- reinvested)	Rs	2,22,500.00
7	Amount due	Rs.	27,62,236.39 ps
9	Int. @ 15% Rs.27,62,236.39 from 01.04.01 to 06.10.05 (Date of dep. of Rs.5,21,576.00 in District Court) (I.e 1649 days)	Rs	18,71,888.00
10	Balance Amt. due	Rs.	46,34,124.39 ps
11	Less Amt. Dep. In District Court on 07.10.05	Rs.	5,21,576.00
12	Balance Amt. due	Rs.	41,12,548.39 ps
13	Int. @ 15% Rs.41,12548.39 from 08/10/05 to 26.03.07 (Date of dep. of Rs.6,18,614.00 in District Court) I.e 535 days)	Rs.	9,04,197.00
14	Amount due	Rs.	50,16,745.39 ps

15	Less Amt. Dep. In District Court on 26.03.07	Rs.	6,18,614.00
16	Amount due	Rs.	43,98,131.39 ps
17	15% Int. on Rs.43,98,131.39 from 27.03.07 to 01/09/09 i.e. 889 days	Rs.	16,06,824.00
18	Amount due	Rs.	60,04,955.39 ps
19	Less Amt. Dep. In District Court on 01/09/09	Rs.	13,71,444.00
20	Amount due	Rs.	46,33,511.39 ps
21	15% int. on Rs.4633511.39 from 02.09.09 to 31/01/11 i.e 518 days	Rs.	9,86,366.00
22	Balance Amount due	Rs.	56,19,877.39 ps
	Less: TDS Amt.	Rs.	5,61,988.00
	Less: Educ. Cess tax	Rs.	16,860.00
	Amt. Due to the Claimant	Rs.	50,41,029.00

It can thus be seen that up to clause 7, there is no variance between the two computations. The dispute really starts from Clause 8 onwards. While the Executing Court has restricted the application of interest under section 28 of the Act on the amount of Rs.7,49,517/-, the computation by the Registrar (J) of this Court applies the said interest for different periods on the amount arrived after application of 15% interest for the previous period. The question is whether this would be permissible.

11. Section 28 of the Act which is relevant for the purpose reads thus:

> 28. Collector may be directed to pay interest on excess compensation- if the sum which, in the opinion of the Court, the Collector ought to have awarded as

> compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of (nine per centum) per annum from the date on which he took possession of the land to the date of payment of such excess into Court:
>
> [Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of 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 such excess or part thereof which has not been paid into Court before the date of such expiry].

It can thus clearly be seen that under section 28 of the Act, the Reference Court can award interest on 'such excess' at the rate of 9% p.a. from the date of which the Collector took possession of the land to the date of payment of such excess into Court. This is subject to the proviso appended to the said section.

12. In the case of **Ghanshyam (supra)** the controversy pertained to the interpretation of section 45 (5) of the Income Tax Ac 1961, as it stood prior to 1.4.2004. Thus essentially the question was whether the interest awarded under section 28 of the Act is taxable, as being part of compensation. The Hon'ble Apex Court after taking survey of various provisions of the Land

Acquisition Act and in particular sections 28 and 34 drew a distinction between the award of interest under section 28 and the one under section 34 of the Act. The Supreme Court inter alia held that the award of interest under section 28 of the Land Acquisition Act is discretionary and the said section applies when the amount originally awarded has been paid or deposited and when the Court awards excess amount. In such cases, interest on such excess amount is payable under Section 28 of the Act. It has been specifically held that this award of interest is not mandatory but is left to the discretion of the Court. This is what is held in paras 33 to 36 as under:

> 33.The award of interest under Section 28 of the 1894 Act is discretionary. Section 28 applies when the amount originally awarded has been paid or deposited and when the Court awards excess amount. In such cases interest on that excess alone is payable. Section 28 empowers the Court to award interest on the excess amount of compensation awarded by it over the amount awarded by the Collector. The compensation awarded by the Court includes the additional compensation awarded under Section 23(1A) and the solatium under Section 23(2) of the said Act. This award of interest is not mandatory but is left to the discretion of the Court.
>
> 34. Section 28 is applicable only in respect of the excess amount, which is determined by the Court after a reference under Section 18 of the 1894 Act. Section 28 does not apply to cases of undue delay in making award for compensation

(See: Ram Chand v. Union of India). In Shree Vijay Cotton & Oil Mills Ltd. v. State of Gujarat , this Court has held that interest is different from compensation.

35. To sum up, interest is different from compensation. However, interest paid on the excess amount under Section 28 of the 1894 Act depends upon a claim by the person whose land is acquired whereas interest under Section 34 is for delay in making payment. This vital difference needs to be kept in mind in deciding this matter. Interest under Section 28 is part of the amount of compensation whereas interest under Section 34 is only for delay in making payment after the compensation amount is determined. Interest under Section 28 is a part of enhanced value of the land which is not the case in the matter of payment of interest under Section 34.

36. It is clear from reading of Sections 23(1A), 23(2) as also Section 28 of the 1894 Act that additional benefits are available on the market value of the acquired lands under Section 23(1A) and 23(2) whereas Section 28 is available in respect of the entire compensation.

It can thus clearly be seen that although the interest awarded under section 28 is held to be a part of the compensation, it is in the context whether such interest is taxable under section 45(5) of the Income Tax Act as it stood prior to 1.4.2004. The fact remains that such interest is only payable on the excess which is awarded by the Reference Court over and above the amount of compensation granted by the Collector. It is thus clear that the interest under section 28 will have to be applied on the excess/enhanced compensation, as awarded, on the basis of the market value along with the statutory benefits, such as, component interest and solatium under section 23 (1-A) and 23 (2) of the Act.

13. Coming to the present case, a comparison of the statement of computation done by the Reference Court and the computation as claimed by the applicants, it is evident that up to Clause 7 both these computations they match. From Clause 8 onwards while the Executing Court has applied the interest at the rate of 15% p.a. on Rs.7,49,517/- (which represents the enhancement granted by this Court in F.A. No.176/2000 along with statutory benefits), in the computation dated 7/4/2011 done by the Registrar (on which reliance is placed by the applicants), the interest at the rate of 15% p.a. is computed from Clause 9 onwards after applying the said interest on the amount arrived at in the previous item, thus resulting into a situation of interest being applied on a compounding basis. At the cost of repetition it needs to be stressed that under section 28, the interest at the rate of 9% p.a. for the first year and at the rate of 15% p. a. for the subsequent period, has to be applied on the 'excess compensation', granted by the Court. In other words, such interest can only be admissible on the excess or the enhancement

granted by the Reference Court and not otherwise. The learned District Judge in my considered view is right in applying the interest only on Rs.7,49,517/-, which is the excess/enhancement granted along with statutory benefits, such as solatium and compound interest.

14. The amount of Rs.7,17,930/64 paise has been arrived at by the Executing Court as the amount due and payable, as on 31/1/2011. The subsequent interest shall also be calculated in a similar fashion, i.e. on the amount of Rs.7,49,517/- and accordingly the amount which is due and payable shall be calculated by the Executing Court after considering any amount already paid/deposited.

15. At one stage, Shri D'Costa, the learned Senior Counsel for the applicants submitted that when the decree holder is required to withdraw the amount, subject to certain conditions, as to furnishing of security, the interest would not cease.

16. There cannot be any manner of dispute with the proposition and as held by the Hon'ble Supreme Court in the case of **P.S.L. Ramanathan Chettiar and others Vs. O.R.M P.R.M. Ramanathan Chettiar, AIR 1968, 1047** that when the amount is deposited as a condition of stay and the decree

holder is required to withdraw the amount subject to certain conditions, including that of furnishing of a security, the interest would not cease. Thus the interest would continue to accrue on the amount of excess, as per section 28 of the Act. It is necessary to note that the entire claim of the applicants is based on section 28 which in terms provides for the interest being awarded on the amount of excess/enhancement granted by the Court over and above the compensation determined by the L.A.O. The computation made by the Executing Court indeed shows that the interest has continued to accrue at the rate of Rs.15% p.a. on the amount of Rs.7,49,517/- and which would do so even after 31/1/2011, as indicated earlier. Thus, no case for interference is made out. The petition is without any merit and is accordingly dismissed with no order as to costs.

C. V. BHADANG, J.

Ap/