

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6409 OF 2020

City and Industrial Development
Corporation Ltd. Through
Its Administrator, CIDCO, Aurangabad. ... **Petitioner.**

VERSUS

- 1) M/s. Landmark Developers
A registered partnership firm under
the Provision of Indian Partnership Act,
1932, through its partners :
 - A) Lata w/o Arunkumar Jethlia,
Age 58 years, Occ. Business/household,
R/o. A-1/9, Bhosale Paradise,
Range Hills Road, Pune- 411020
 - B) Madhur s/o Arunkumar Jethlia,
Age 34 years, Occ. Business,
R/o. A-1/9, Bhosale Paradise,
Range Hills Road, Pune- 411020
- 2) The State of Maharashtra,
Through Special Land Acquisition Officer,
Aurangabad (Special Unit), Aurangaba ... Respondents.

...

Advocate for the Petitioner : Mr. Anil S. Bajaj.
Advocate for the Respondent No. 1 : Mr. A.P Bhandari.
A.G.P. for the Respondent No. 2 : Mr. S.N. Morampalle.

CORAM : **MANGESH S. PATIL, J.**

RESERVED ON : 04/12/2020

PRONOUNCED ON : 09/12/2020

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. With the consent of both the sides the matter is heard finally at the stage of admission.

2. In this petition under Article 227 of the Constitution of India, the Acquiring Body is impugning the order passed by the Executing Court on the application of the respondent No. 1/awardee (Exhibit 47) and directing it to pay to the respondent No. 1 an additional amount towards satisfaction of the award.

3. I have heard both the sides. Though the learned advocates for both the sides referred to the manner in which the calculations ought to be made and pointed out as to how the other side has erred in calculating the compensation as per the award, in my considered view, everything now boils down to not the entitlement but the calculation aspect.

4. Needless to state that the question as to calculation of interest etc. pursuant to the award under the Land Acquisition Act under various heads as contemplated under the Land Acquisition Act, 1894 have been well settled by the Supreme Court in case of *Sundar Vs. Union of India; AIR 2001 Supreme Court 3516* and *Municipal Council Thanesar and others Vs. Virender Kumar and others; 2019 SCC Online SC 243* and several other judgments. One may merely bear in mind the principles and resort to the calculations in accordance with the award under execution.

5. As can be seen there is not much of dispute as regards the actual amount of compensation enhanced by the Reference Court, additional component, solatium, interest under Section 28 of the Land Acquisition Act and the money already deposited by the petitioner and withdrawn by the respondent No. 1.

6. By making some calculations the respondent No. 1 by its application (Exhibit 47) pointed out that the petitioner is still to pay to it an amount of Rs. 49,51,459/-. The learned Judge while passing the impugned order has resorted to his own calculations and has held the respondent No. 1 to be entitled to recover an amount of Rs. 67,95,036/- plus costs.

7. The petitioner has produced a copy of the application submitted by the respondent No. 1 before the Executing Court which the petitioner has filed along with its affidavit in rejoinder. Going by the calculation made in it, the respondent No. 1 has shown that an amount of Rs. 1,68,56,387/- to be due. It is submitted by the learned advocate Mr. Bajaj for the petitioner that since the respondent No. 1 was allotted 12.5% of the land acquired by it, the respondent No. 1 was obliged to pay double the cost of the acquisition and 25% of the total compensation should have been adjusted.

8. No dispute has been raised on behalf of the respondents in this regard firstly about reallocation of 12.5% of the acquired land to them and their liability to pay double the cost of acquisition to the extent of such portion of the land. Conspicuously, even while submitting the calculation before the Executing Court along with their application (Exhibit 47) they have pointedly deducted 25% of the amount in this respect. Pertinently, while submitting the calculations along with their another application, copy of which is annexed to the affidavit in rejoinder filed by the petitioner, the respondent No. 1 has omitted to make any adjustment in respect of the deduction to be made towards such reallocation of 12.5%.

9. There is not much of a difference between the parties as regards the other calculations. Consequently what transpires can be tabulated in following manner for the sake of understanding :

(A)	Enhanced compensation Total area 2-H 49 Are land : 24,900 sq.mtr. After 30% area deduction area comes to 17440 square meters area x 600 per Square meters and deduction of earlier amount Rs. 8,71,500/-	Rs.	95,92,500/-
(B)	12% on additional compensation for the period dated 12.12.1991 to 23.12.1996 (60 months 11 days)	Rs.	57,90,672/-
(C)	30% Solatium on Additional compensation	Rs.	28,77,750/-
1)	Total compensation amount	Rs.	1,82,60,922/-
2)	Interest u/s. 28 of the Land Acquisition Act on	Rs.	16,43,483/-

	additional compensation @ 9% p.a. for the period dated 10.01.1997 to dated 09.01.1998 (12 months)		
3)	Interest u/s 28 of the Land Acquisition Act on Additional compensation @ 15 % p.a. for the period dated 10.01.1998 to dated 02.11.2018 (249 months 22 days)	Rs.	5,69,81,685/-
4)	Total compensation comes to Sr.No. (1) + (2) + (3)	Rs.	7,68,86,090/-
5)	Cost awarded by the Court	Rs.	68,096/-
6)	Total Sr. No. (4) + (5)	Rs.	7,69,54,186/-
7)	Amount withdrawn by respondent No. 1 on 03.11.2018	Rs.	3,29,25,185/-
8)	Balance amount Sr.No. (6)-(7)	Rs.	4,40,29,001/-
9)	Interest u/sec. 28 of the Land Acquisition Act on balance amount @ 15% p.a. for the period 04.11.2018 to 22.02.2019 (03 months 18 days)	Rs.	19,81,304/-
10)	Balance total Sr. No. (8) + (9)	Rs.	4,60,10,305/-
11)	Amount withdrawn by respondent No. 1 on 22.02.2019 deposited by petitioner on 12.02.2019	Rs.	2,91,53,918/-
	Amount claimed Sr. No. (6) :	Rs.	7,69,54,186/-
	Sr. No. (9) :	Rs.	19,81,304/-
12)	Total Sr. No. (6) + (9)	Rs.	7,89,35,490/-
13)	Deduction of amount against 12.5% allotment of land (12.5 x 2 = 25%) [7,89,35,490 x 25%]	Rs.	1,97,33,873/-
	Total payable amount to respondent No. 1 Sr.No. (12)-(13)	Rs.	5,92,01,617/-
	Amount withdrawn by the respondent No. 1 :		
	On 03.11.2018 shown at Sr. No. 7	Rs.	3,29,25,185/-
	On 22.02.2019 shown at Sr. no. 11	Rs.	2,91,53,918/-
	Total amount withdrawn	Rs.	6,20,79,103/-
	Excess amount received by the respondent No. 1 (Rs. 6,20,79,103 – Rs. 5,92,01,617/-)	Rs.	28,77,486/-

10. Since it is a matter of calculation, one need not delve into the

calculation made by the Executing Court. On an independent scrutiny by resorting to the calculations afresh, as tabulated herein above, it is quite apparent that the respondent No. 1 has withdrawn an excess amount of Rs. 28,77,486/- than to which it is entitled to under the award under execution.

11. The Writ Petition is allowed. The impugned order is quashed and set aside. The respondent No. 1 shall deposit an amount of Rs. 28,77,486/- (Rs. Twenty Eight Lakh Seventy Seven Thousand Four Hundred and Eighty Six only) in the Executing Court within a period of three months. The petitioner shall be entitled to claim it. The petitioner shall be entitled to enforce this direction without resorting to any other proceeding.

12. The rule is accordingly made absolute in above terms.

(MANGESH S. PATIL, J.)

mkd/-