

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6273 OF 2020

Maharashtra State Electricity Board
Now, Maharashtra State Electricity
Distribution Co. Ltd., Aurangabad
Through its Executive Engineer,
CCCM Division, Vidyut Bhavan,
Dr. Ambedkar Road, Aurangabad

... PETITIONER
(Original Applicant/
Judgment Debtor)

Versus

- 1] The State of Maharashtra
Through Special Land Acquisition Officer,
Special Unit, Aurangabad

- 2] S. B. @ Gulabrao Balbhimrao Deshmukh
Age: 72 years, Occupation: Agriculturist,
R/o. "Gajendra" 118, Shreyanagar,
Aurangabad

- 3] Rajeshwar Satishrao Deshmukh
Age: 50 years, Occupation: Agriculturist,
R/o. "Gajendra 118, Shreyanagar,
Aurangabad

... RESPONDENTS
(Respondent No. 2 & 3 are Original
Non-Applicants/Decree Holders)

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Mr. Indraneel S. Godsay, Advocate for the petitioner
Mr. S. N. Morampalle, AGP for respondent No.1
Mr. A. P. Bhandari, Advocate for respondent Nos. 2 and 3

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CORAM : R. G. AVACHAT, J.

**RESERVED ON : 11th FEBRUARY, 2021
PRONOUNCED ON : 19th JULY, 2021**

JUDGMENT:-

. Rule. Rule made returnable forthwith and heard finally with consent of learned counsel for the parties.

2. The challenge in this writ petition is to the order dated 17.02.2020, passed by the Civil Judge, Senior Division, Aurangabad in Regular Darkhast (Execution Proceeding) No.210 of 2014. By the impugned order, the application moved by the petitioner (for short, 'the Judgment Debtor) for recall of the order of issuance of warrant of attachment of movable properties of the Judgment Debtor on account of failure to clear/pay the decretal amount, came to be rejected.

3. Heard.

The Judgment Debtor is the Maharashtra State Electricity Distribution Company Limited, Aurangabad. For establishment of 33 K.V. sub-station, the land admeasuring 1600.36 square meters belonging to respondent Nos. 2 and 3 (Decree Holders), came to be acquired. The Special Land Acquisition Officer (S.L.A.O.) had determined the value of the land at Rs.3097/- per square meter vide award dated 10.07.2002.

Feeling aggrieved by and dissatisfied with the award passed by the S.L.A.O., the Decree Holders preferred Land Acquisition Reference (L.A.R.). The Reference Court passed the award on 21.03.2014 enhancing the value of the land from Rs.3097/- to Rs.4,555/- per square meter. The Judgment Debtor challenged the said award in First Appeal. The appeal came to be dismissed. The Special Leave Petition preferred thereagainst, has also been dismissed by the Hon'ble Apex Court.

4. Since the Judgment Debtor did not pay the entire amount of compensation determined in L.A.R., the Decree Holders filed Execution Proceedings, No.210 of 2014. The Executing Court issued warrant of attachment of movable properties of the Judgment Debtor on account of its failure to pay the outstanding amount of Rs.30,93,299/-. The Judgment Debtor preferred the application (Exhibit-18) for recall of the said order. It is their case that nothing was due against them and the Decree Holders have, in fact, been overpaid. The Executing Court, on hearing the Judgment Debtor and Decree Holders passed the impugned order in the following terms:-

“5] On the perusal of calculation submitted by D. H. as well as Judgment Debtor, it appears that, J. D. while submitting the calculation not considered that the L.A.R.

No.309/2002 allowed with proportionate costs, also not considered and in that calculation amount Rs.2,40,000/- of material cost is not included as a land value as per Section 23(1) Fourth and Fifth clause of the Land Acquisition Act not considered in that calculation, therefore, the calculation submitted by J. D. along with list Exh.20 is not just and proper. As per calculation submitted by J.D. in application Exh.15, it appears that, total remaining amount is Rs.30,93,299/-, therefore, amount of Rs.30,93,299/- is yet to be recovered, therefore, application is liable to be rejected. Hence, application is rejected, J.D. is directed to pay an amount of Rs.30,93,299/-."

5. Shri Indraneel S. Godsay, learned Advocate for the Judgment Debtor would submit that the calculations made by the Decree Holders are incorrect. He referred to the details of the amount deposited by the Judgment Debtor towards payment of the amount of compensation. According to the learned Advocate, the S.L.A.O. and the Reference Court did not correctly interpret provisions of Section 23 of the Land Acquisition Act, 1894 (for short 'the Act'). According to him, additional compensation under Section 23(1-A) of the Act is to be calculated from the date of publication of notification under Section 4(1) of the Act to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. In the case in hand, the date of notification is 25.08.1999. The Collector's award is dated 10.07.2002. The possession has, however, been taken on 29.01.2000 i.e. before the award was

passed. Moreover, grant of Rs.2,40,000/- by the Reference Court towards the material cost has wrongly been included in the amount of compensation determined in terms of Section 23 of the Act. The learned Advocate would further submit that the Decree Holders have added interest on interest, which resulted the Judgment Debtor paying them more amount than they were entitled to. The learned Advocate has placed on record the calculations made by the Judgment Debtor and submitted for setting aside of the impugned order rejecting application Exhibit-18. The learned Advocate has relied on the following authorities.

- (i) National Textile Corporation Ltd. v. Nareshkumar Badrikumar Jagad and Ors. - 2011 AIR SCW 6180;
- (ii) Yeshwant Deorao v. Walchand Ramchand – AIR 1951 SC 16;
- (iii) State of U.P. and Ors v. Jeet S. Bisht and Anr – 2007 AIR SCW 3427;
- (iv) Commissioner of Income Tax, Faridabad v. Ghanshyam (HUF) – AIR 2009 SC (SUPP) 2353.

6. Shri A. P. Bhandari, learned Advocate for the Decree Holders would, on the other hand, submit that the sum of Rs.2,40,000/- awarded by the Reference Court towards the material cost is the part of the amount of compensation determined in terms of Section 23 of the Act. The learned Advocate took me through the

provision of the said Section and relied on the judgment of the Apex Court in the case of ***Sunder vs. Union of India – AIR 2001 SC 3516***. The learned Advocate also took me through the chronology of events. According to him, the Decree Holders have not challenged the order passed by the Executing Court on 15.10.2018 below Exhibit-15 and therefore, the Judgment Debtor is now estopped to challenge the impugned order. Learned Advocate has also placed on record the calculation sheet indicating what is due from the Judgment Debtor as on the date, the application for issue of attachment warrant was preferred.

7. Without detaining myself to the submissions of learned Advocate for the Decree Holders, it would be apposite to turn to the merits of the matter.

8. The land admeasuring 1600.36 square meters belonging to the Decree Holders came to be acquired for establishment of substation, at Aurangabad. The S.L.A.O. passed the award dated 10.07.2002 and thereby determined the value of the land at Rs.3097/- per square meter. The details of valuation made by the S.L.A.O. for determining compensation for the land acquired, is as under:-

Details of Valuation:-

a)	The land under acquisition	CTS No.9233/1 Pt of Baijipura
b)	Area of the land under acquisition	1600.36 Sq.Meter
c)	Value of the land under acquisition in its open state @ Rs.3097/- sq.meter (i.e. 1600.36 Sq.meter x Rs.3097/- sq.meter).	Rs. 49,56,387.00
d)	Total Market value	Rs. 49,56,387.00
e)	Solatum @ 30% over & above the market value	Rs. 14,86,916.00
f)	Addl. Component @ 12% over & above the market value for a period (from the date 25 th August, 99 to the date 10 th July, 2002, the probable date of declaration of Award i.e. for a period of 1049 days) (0.0328 per day) (34.40%)	Rs.17,09,342.00
	Total :-	Rs. 81,52,645.00

9. The S.L.A.O., thus, determined the amount of compensation to Rs.81,52,645.00. Having not been satisfied with the award passed by the S.L.A.O., the Decree Holders filed L.A.R. No.309 of 2002. The Reference Court passed the award on 21.03.2014 in terms of the following order :-

- “1. *Reference Petition No.309/2002 is hereby partly allowed with proportionate costs as under:-*
2. *Claimants are entitled to have enhancement in the amount of compensation at the rate of Rs.4555/- per Sq.Meter along with all statutory benefits after deducting the amount of compensation which they have accepted pertaining to their acquired land under protest.*
3. *The respondents shall also pay claimants 30% solatium and 12% component on enhanced compensation with effect from the date of notification under Section 4 of the Land Acquisition Act, till the date of Award.*
4. *Respondents shall pay the claimants interest at the rate of 9% per annum on enhanced compensation from the date of Notification under Sec.4, for first one year and interest @ 15% per annum for the subsequent years till realization of entire amount in accordance with Section 28 of the L.A. Act.*
5. *Respondents shall pay the claimants the amount of Rs.2,40,000/- (Rs. Two Lakhs Forty Thousand only) towards material costs of 19 shops in lumpsum i.e. damage sustained.*
- . *.....*
- . *.....”*

10. Section 23 of the Act speaks of matters to be considered

in determining compensation. Section 23 of the Act reads thus:-

“23. Matters to be considered in determining compensation. - (1) *In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration –*

first, the market value of the land at the date of the publication of the notification under section 4, sub-section (1);

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

[(1-A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation. – In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.]

(2) In addition to the market value of the land as above provided, the Court shall in every case award a sum of thirty per centum on such market value, in consideration of compulsory nature of the acquisition."

11. As per the fourth clause above, the damage sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, in any other manner or his earnings, have to be considered. In the present case, the Reference Court awarded Rs.2,40,000/- under this clause. This amount would necessarily be a part/component of the amount of compensation to be awarded for the land acquired under the Act. In the case of ***Sunder*** (supra), it has been held, thus:

“The question referred to this Bench of five Judges is a simple one. Is the State liable to pay interest on the amount envisaged under Section 23(2) of the Land Acquisition Act, 1894 (for short ‘the Act’)? The sum contemplated in the aforesaid sub-section can conveniently be called “solatium” as that expression has been used plentifully in almost all land acquisition proceedings in India. The reference of the aforesaid question to this larger Bench was necessitated on account of a seeming conflict as between the decision of a three Judge Bench of this Court in Union of India vs. Shri Ram Mehar and ors. {1973(1) SCC 109} on the one hand and a few later decisions of co-equal Benches of this Court on the other hand.

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Thus interest has to accrue as per Section 34 and Section 28 of the Act on the compensation awarded, whether it is as per the award initially passed by the Collector or by the

Court later. What is meant by “the compensation” awarded? Both sides cited different definitions for the word “compensation” as contained in different lexicographys. In “Words and Phrases” (Permanent Edn.) different connotations of the word “compensation” have been delineated. One of them relates to the law of eminent domain, where compensation means recompense in value, a quid pro quo, and must be in money. Another is relating to the property taken for public use. Then it is the fair market value at the time of taking it. From the Constitutional perspective the word ‘compensation’ for the property taken was understood as the just equivalent of the value of the property. But when compensation is regarded as a statutory obligation the afore-cited definitions need not detract the courts in fathoming the real import of it. The exercise can be done with the aid of the provisions in the statutes. So what the Court, in the context of land acquisition, has to decide is how the Act has designed the compensation vis-a-vis the liability to pay interest. In this context we have to read Section 23 of the Act.

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In deciding the question as to what amount would bear interest under Section 34 of the Act a peep into Section 31(1) of the Act would be advantageous. The sub-section says: “On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.” The remaining sub-sections in the provisions only deal with the contingencies in which the Collector has to deposit the amount instead of paying it to the party concerned. It is the legal obligation of the Collector to pay “the compensation awarded by him” to the party entitled thereto. We make it clear that the compensation awarded would include not only the total sum arrived at as per sub-section (1) of

Section 23 but the remaining sub-sections thereof as well. It is thus clear from Section 34 that the expression “awarded amount” would mean the amount of compensation worked out in accordance with the provisions contained in Section 23, including all the sub-sections thereof.

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Once it is held as it inevitably must be that the solatium provided for under Section 23(2) of the Act forms an integral and statutory part of the compensation awarded to a landowner, then from the plain terms of section 28 of the act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of S.28 does not even remotely refer to market value alone and in terms talks of compensation or the sum equivalent thereto. The interest awardable under Section 28 therefore would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of Section 28 in terms warrant and authorise the grant of interest on solatium as well.”

12. In view of the above, the sum of Rs.2,40,000/- awarded towards material cost, shall form integral part of the amount of compensation determined under Section 23 of the Act and interest would be liable to be paid on the entire amount of compensation fixed in terms of Section 23 of the Act.

13. Learned Advocate for the Judgment Debtor would submit that the date of publication of notification is 25.08.1999 and not 05.08.1999. According to him, reading of Section

23(1-A) makes it clear that the additional compensation @ 12% is to be calculated from the date of publication of the notification under Section 4 to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

14. The learned Advocate may be correct in his submissions. It is also true that the possession had already been taken before the award was passed. The learned Civil Judge, Senior Division, Aurangabad vide Clause 3 of the award directed to pay 30% solatium and 12% interest component on enhanced compensation from the date of notification to the date of award. Vide Clause 4 of the award dated 21.03.2014, it has been directed to pay 9% interest for first year and 15% interest thereafter from the date of notification under Section 4 to the date of payment of the entire amount. Needless to mention, the Judgment Debtor has been unsuccessful in his challenge to the award, first in First Appeal before this Court and then in S.L.P before the Hon'ble Apex Court. As such, the award has attained finality. The Judgment Debtor now, therefore, cannot take a plea that the amount of interest shall be payable for the period from

the date of notification under Section 4 of the Act to the date of taking possession of the land. The reliance placed on the judgment in the case of National Textile Corporation Ltd. (supra), would be of no assistance to the Judgment Debtor.

15. Let us advert to the calculations and the chronology of events.

The area of the land acquired is 1600.36 square meters. Notification under Section 4 of the Act had been published on 25.08.1999 (this date has been confirmed upto the Apex Court). The S.L.A.O. passed the award on 10.07.2002. The amount of compensation determined by the S.L.A.O. Rs.81,52,645 (Rs.49,56,314.92 + additional compensation + Solatium + interest under Section 34 of the Act). The amount under the said award has been paid on or before 15.01.2003. There is no dispute about this amount. After the dismissal of S.L.P No.6245 of 2018 on 28.03.2018, the Judgment Debtor deposited in Executing Court a sum of Rs.83,90,669/- on 05.05.2018.

16. The market value of the land determined by the S.L.A.O. is Rs.49,56,314/-. The market value determined by the Reference Court is Rs.72,89,640/-. As such, the difference in enhanced compensation is Rs.23,33,325/-. Rs.2,40,000/- awarded towards material cost would be included in this amount. Then, it would come to Rs.25,73,325/-. The additional component @ Rs.12% p.a. and solatium @ 30% under Section 23(1-A) and (2), respectively would be calculated on this amount of Rs.25,73,325/-. Additional component @ 12% from the date of notification to the date of award (25.08.1999 to 10.07.2002 = total days 1050) would come to Rs.8,88,326/-. Solatium @ 30% would come to Rs.7,71,997/-. Total of these three figures comes to Rs.42,33,648/-.

17. Now, interest under Section 28 of the Act @ 9% for first one year from the date of notification and 15% for rest of the period till the deposit of the amount would be as under:-

(A)

9% interest for one year from the date of Notification viz. 25.08.1999 to 24.08.2000 on the amount of Rs.42,33,648/-. Total 365 days	Rs.3,81,028
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(B)

<u>I-slab for 15% interest -</u> 15% interest from 25.08.2000 to 13.10.2014. Total : 5162 days. The Judgment Debtor has deposited Rs.62,81,772/- in the High Court on 13.10.2014. So, break-up is made till 13.10.2014	Rs.89,81,133/-
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(C)

(A)

(B)

Total : 42,33,648 + 3,81,028 + 89,81,133 = **Rs.1,35,95,809/-**
Amount deposited in High Court (-)Rs. 62,81,772/-

Rs. 73,14,037/-

18. The balance amount comes to Rs.73,14,037/-.

Hence, interest @ 15% needs to be calculated on this amount.

(D)

<u>II Slab for 15% interest</u> 14.10.2014 to 05.05.2018 Total = 1300 days	Rs.39,07,499/-
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[Date 05.05.2018 is taken as last amount of Rs.83,90,669/- deposited on 05.05.2018.

(E)

Total due amount

Rs.73,14,037+Rs.39,07,499 = **Rs.1,12,21,536/-**
(Amount Deposited on 5.5.2018) (-) **Rs. 83,90,669/-**

Rs. 28,30,867/-
Cost: + **Rs. 60,790/-**

Total Due: **Rs. 28,91,657/-**

19. In view of the aforesaid calculations and the reasons given above, it cannot be said that nothing was due from the Judgment Debtor and it has in fact overpaid the Decree Holders.

20. No interference with the impugned order, is therefore called for. The writ petition, therefore, fails. The same is dismissed. Rule discharged.

21. It appears that pursuant to the order passed by this Court on 16.09. 2020, the Judgment Debtor has deposited a sum of Rs.15,00,000/- in this Court on 16.10.2020. The said amount be transferred with interest accrued thereon, to the Executing Court for being paid to the Decree Holders. The Judgment Debtor is expected to pay the balance amount within a period of eight weeks from the date of this order, failing which, the Executing Court shall proceed with the execution proceeding.

[R. G. AVACHAT, J.]

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