

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10390 OF 2018

Hemantkumar Krushnaji Charegaonkar	]	
Age 60 Years, Occ. Business,	]	
Quarter No. TQ3, Gaur Nagar University, Sagar,	]	
Madhya Pradesh – 470 003.	]	
	]	
Through his Power of Attorney Holder :	]	
Shri Govind Sakharam Kadam	]	
Age 48 Years, Occ. Business,	]	
Shriramnagari, Flat No.B-14,	]	
Shahu Colony, Galli No.11,	]	
Karvenagar – 411 052.	]	... Petitioner

Versus

1.	State of Maharashtra	]	
	Through Chief Secretary	]	
	Mantralaya, Mumbai – 400 032.	]	
2.	The Special Land Acquisition Officer No.2	]	
	Behind Dhananjayrao Gadgil College,	]	
	Opp. Anti-Corruption Bureau Office,	]	
	District Satara.	]	
3.	The Collector	]	
	Land Acquisition Department,	]	
	Collectorate Administrative Building,	]	
	Pawai Naka, District Satara.	]	
	Satara – 415 001.	]	
4.	The Executive Engineer	]	
	P. W. Division, Opp. BSNL Office,	]	
	Pawai Naka, District – Satara,	]	
	Satara – 415 002.	]	... Respondents

Mr.Gaurav Potnis i/b. Mrs.Pallavi Potnis for Petitioner.
Mr.S.L. Babar, A.G.P for Respondents (State).

CORAM : R. D. DHANUKA &
S. M. MODAK, JJ.

RESERVED ON : 15th FEBRUARY 2022.

PRONOUNCED ON : 2nd MARCH 2022.

JUDGMENT (Per : S. M. MODAK, J.) :-

1. Rule. Rule made returnable forthwith. Mr.Babar, learned counsel for the Respondents waives notice.

2. Considering the narrow controversy involved in this Petition, by consent of learned counsel for the parties, we have taken it for final hearing.

3. When the present Petition was filed, there was a view prevailing as expressed by Hon'ble Supreme Court in the case of *Pune Municipal Corporation Vs. Harakchand Misirimal Solanki & Others*¹. It was on the point of interpretation of Section 24 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (For short, "The 2013 Act"). The wording "physical possession of the land has not been taken" and the wording "the compensation has not been paid" are

¹ (2014) 3 SCC 183

separated by the word “or”. In *Pune Municipal Corporation* (supra), it has been held that if one of the contingency has not happened, the land acquisition proceedings deem to have been lapsed. On the basis of this interpretation, the Petitioner has filed this Petition.

4. However, in view of diversions of the opinion, the issue was referred to the Constitutional Bench of the Hon’ble Supreme Court and the decision was given on 6th March 2020 in *Indore Development Authority Vs. Manoharlal & Others*². The word “or” appearing in between two contingencies as expressed above was interpreted not as “disjunctively” but it was interpreted that the land acquisition proceedings deem to have been lapsed when there is failure to fulfill both these conditions. In view of that, the Petitioner had chosen not to claim the relief of lapsing of reservation.

5. Accordingly, we have heard Mr.Gaurav Potnis for the Petitioner and Mr.S.L. Babar, Asst. Government Pleader for Respondent Nos.1 to 4 (State).

6. There is no doubt that possession was not taken immediately. Even copy of the Award (para 21) also says about not taking advance

² AIR 2020 SC 1496

possession, in view of non availability of the grant. Hence, the possession was taken on 20th April 2007 after the award is declared.

7. Few relevant facts are as follows :-

- (a) **Description of Land** :- Land bearing Gat No. 72A/2, admeasuring 02H-14.78Ares, situated at Village-Madha, Taluka-Jawali, District-Satara (for short, 'the said land')
- (b) **Purpose of acquisition** :- Land was acquired for use of the District Court, Satara.
- (c) **Award** :- Award was declared on 7th January 2005.
- (d) **Possession** :- Possession was handed over on 20th April 2007.
- (e) **Compensation** :- Not accepted.

8. So the dispute is about payment of compensation. According to the Petitioner from Gat No. 72A/2, other owners as described in para (4) of the Petition have been paid compensation. Whereas, he was not being paid the compensation. Whereas the Respondents contend that a notice to receive the compensation was issued under Section 12(2) of The Land Acquisition Act, 1894 (for short, "the Old Act") on 26th March 2007 and it was received by the Petitioner but he has not accepted the amount. Accordingly, the amount of

compensation was deposited in P.L.A. Account. Fact remains that, the amount of compensation is not paid to the Petitioner. However, in view of the pronouncement in the case of *Indore Development Authority* (supra), non receipt of the compensation by the Petitioner is no more of any consequence. So far as lapsing of reservation is concerned, Constitutional Bench observed that the acquisition proceedings does not lapse under Section 24(2) due to non deposit of compensation in Court or deposit in treasury as per the Rules as standing or applicable. The consequence of non deposit may be awarding higher compensation or interest. Assailing higher compensation as per proviso to Section 24(2) of the 2013 Act or the interest as envisaged under Section 34 of the Old Act will be the remedy.

9. Learned Advocate Mr.Potnis also invited our attention to the said proviso and contended that if compensation has not been deposited in respect of majority of the land holdings, then all the beneficiaries are entitled to compensation, as per the 2013 Act. However, when the details given in the Chart at para No.4 of the Petition are perused, one may find that except the Petitioner, all others from the said Gat No. 72A/2 have been paid with the compensation. He has not shown any material to show what has happened to other land holders.

10. In view of that, there is only option left for the Petitioner and that is to claim interest. Though the Petitioner has been granted leave to amend the Petition, as per the Order dated 10th January 2019, nothing is pointed out from these amendments, as to, whether they survive after the pronouncement in the case of *Indore Development Authority* (supra).

11. Section 72 of 2013 Act talks about interest by Authority and Section 80 talks about payment of interest by Collector. These provisions are in pari-materia to the provisions of Sections 28 and 34 of the Old Act. If we read the provisions of Section 24(1) of the 2013 Act, we may find that there is a provision for application of the Rules. After passing of the 2013 Act, when the award is declared as per the Old Act, the provisions of the Old Act will continue to apply. In the present case, the award has been declared on 7th January 2005. So the provisions of the Old Act will be applicable.

12. In case of happening of the contingency under Section 31(2) of the Old Act, the Collector is bound to deposit the amount of compensation in the Court (to which reference under Section 18 would be submitted). Herein the Petitioner has not accepted the compensation, even though the notice is issued. The requirement of making a reference under Section 18 is not mandatory. The Collector instead of depositing the amount in Court has

deposited in P.L.A. Account. Sections 28 and 34 say about payment of interest of 9% and 15%. Section 34 talks about payment of interest by the Collector & Section 28 talks about ordering Collector by the reference Court.

13. The liability to pay interest :-

- (a) Starts when the amount is neither paid nor deposited.*
- (b) This amount has to be paid at the time of taking possession or before taking possession.*
- (c) The rate of interest is 9% for one year starting from the date of taking possession till the time payment is made.*
- (d) Rate of interest increases to 15% if amount is not paid within a period of one year from the date of possession.*

14. Possession was taken on 20th April 2007. It is admitted fact that the amount is not accepted by the Petitioner. Deposit in Court will suffice the purpose or whether the deposit in P.L.A. Account can be considered as sufficient compliance of Section 31 of the Old Act is an issue.

15. In ***Indore Development Authority*** (supra), this issue had also arisen. That is to say whether deposit in Court is required or whether deposit in treasury is sufficient so as to continue with acquisition proceedings (and not resulting into lapsing of reservation). This discussion finds place in para

No.232 of the said judgment.

“232. Deposit in treasury in place of deposit in court causes no prejudice to the landowner or any other stakeholder as their interest is adequately safeguarded by the provisions contained in Section 34 of the 1894 Act, as it ensures higher rate of interest than any other government securities. Their money is safe and credited in the earmarked quantified amount and can be made available for disbursement to him/them. There is no prejudice caused and every infraction of law would not vitiate the act.”

16. It is true that, if the payment is not accepted by the interested person, the Collector has to deposit it in the Court to whom reference would be submitted. So deposit in treasury is not at all contemplated. The details when it is deposited in treasury are not given. There is an insistence on deposit in Court. Because that amount has to be disbursed to the person interested. Even Section 32 & 33 of the Old Act deals with the investment of money deposited to concerned person. So we are not inclined to accept the deposit of money in P.L.A. as sufficient compliance of Section 31(2) of the Old Act. In that sense of the matter, the Respondents are liable to pay interest from the date of taking possession that is from 20th April 2007, till the time the payment will be disbursed to the Petitioner. For one year the Petitioner is

entitled to get interest @ 9% and for rest of the period interest @15%.

17. We have passed this Order on the assumption that no reference is filed by the Petitioners. There may be different reasons for that. Because if reference is filed, the amount of interest will depend upon the amount of compensation to be enhanced or modified by the reference Court. In the Writ Petition calculation cannot made. So we left that issue for the parties.

18. When the hearing took place on 27th January 2022, learned A.G.P. tendered a copy of a letter dated 25th January 2022 addressed by the Deputy Collector to the learned A.G.P, thereby annexing a copy of letter dated 25th January 2022 written by Executive Engineer, Satara to learned Principal District Judge. There is a request to send opinion about payment of interest. It is true that, it is for the acquiring body to make provision for that amount. Hence, direction to that effect is required to be given to the Respondent No.1- State of Maharashtra. In this Petition, High Court administration is not made as a party. It is true that, High Court administration through learned Registrar Legal and Research can make correspondence with the State of Maharashtra through Department of Law and Justice. Direction to that effect can also be given.

19. In view of that, following Order is passed.

- (i) The Petition is partly allowed.
- (ii) Respondents are directed to pay interest @9% on the amount of compensation, as determined by the award dated 7th January 2005 from 20th April 2007 till the time payment is made.
- (iii) The Respondents are further directed to pay interest @15% on the said amount of compensation, after the expiry of one year from 20th April 2007.
- (iv) The Respondents are further directed to make the calculation of the amount of interest and give it to the Petitioner within 3 weeks from today.
- (v) The Petitioner to verify that calculation and if they are having any objection, then to inform the Collector within a week and then the Collector is directed to pass necessary Order within 2 weeks.
- (vi) Petitioner to furnish bank account details to the Office of the Collector, Satara.
- (vii) After this procedure is over, the Collector is directed to pay the amount of compensation along with interest and ancillary benefits by transferring the amount in Petitioner's bank account.
- (viii) The Administration of this Court through learned Registrar, Legal and Research is directed to make a correspondence with Principal Law Secretary, Department of Law and Justice, so as to get the amount disbursed from the State of Maharashtra.

(ix) Petition is disposed off in above terms. Rule is made absolute.

No Order as to costs.

[S. M. MODAK, J.]

[R. D. DHANUKA, J.]