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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2887 OF 2021
ALONGWITH
WRIT PETITION NO.2888 OF 2021

Davalmalik Dev]
Through its Maulana/Priest/Trustee]
Mr.Abbas A Gani] .. Petitioner
vs.
The State of Maharashtra & Ors.] .. Respondents

Dr.Ramdas P. Sabban a/w Mr.Praveen Sabban, Mr.Shrikanth Kompelli
and Ms.Arundhati Sabban for Petitioner.

Mr.Abdul H. Kotwala for Respondent No.4 in both Petitions.

Mr.N.K. Rajpurohit, AGP for State in both Petitions.

**CORAM : R.D. DHANUKA &
M.G.SEWLIKAR, JJ**

DATE : 7TH JULY, 2022.

P.C.

1] Rule. Rule is made returnable forthwith with the consent of parties. The learned counsel for Respondent No.4 waives service of notice. The learned AGP for State waives service of notice.

2] By these Petitions filed under Article 226 of the Constitution of India the Petitioner-Trust seeks writ of mandamus against Authorities

to forthwith make the remaining 50% land acquisition compensation amount of Rs.34,81,825 to the Petitioner as provided under Government Resolution dated 26th June, 2006 alongwith statutory interest in accordance with law from the date of possession i.e. 20th November, 2012 till the date of actual payment at the rate of 9% for the first year and 15% thereafter under Section 34 of the Land Acquisition Act, 1894.

3] Dr. Sabban, the learned counsel for the Petitioner submits that note dated 24th December, 2012 annexed as Exhibit 2 to the Affidavit in Reply filed by Respondent No.1 to 3 indicates that the Petitioner-Trust is entitled to compensation of Rs.34,81,875/-. He submits that in the said note it is observed that 50% amount is already paid and Petitioner-Trust is demanding remaining 50% of compensation amount.

4] It is submitted that the Collector has not deposited any amount in Court insofar as 50% share of the Petitioner is concerned. He submits that under Section 34 of the Land Acquisition Act, Collector is under obligation to pay the amount awarded with interest at the rate of 9% p.a. from the date of taking possession until it is paid or deposited and at the rate of 15% p.a. from the date of expiry of one year till the date of deposit of amount.

5] The learned counsel for the Petitioner-Trust invited our attention to the order dated 19th April, 2022 passed by this Court taking on record communication received by the learned AGP stating that the amount of Rs.66,03,750/- and Rs.34,81,825/- are deposited in the PLA Account. This Court accordingly directed the learned AGP to take instructions as to whether the amount of interest under Section 34 of the Land

Acquisition Act has been deposited in the Court or in the Civil Court. Pursuant to the said order, the learned AGP made a statement that the amount deposited earlier is inclusive of interest under Section 34 of the Land Acquisition Act. This Court accordingly, directed the State Government to file an Affidavit bifurcating the principle amount and interest amount. Pursuant to the said order, the State Government has filed Affidavit dated 5th July, 2022.

6] Mr.Rajpurohit, the learned AGP invited our attention to the averments made in Para 3 to 6 of the said Affidavit and would submit that insofar as Petitioner-Trust is concerned, Special Land Acquisition Officer has already deposited 50% compensation amount with the concerned persons on 30th October, 2012 of land bearing Gat No.450 as a possessor/tenant of the said land on the basis of Government Resolution dated 26th June, 2006. Insofar as Petitioner-trust is concerned, it is submitted that amount of Rs.10,98,46,689/- was deposited in PLA Account on 10th October, 2012.

7] It is submitted that since the Petitioner-Trust did not demand any amount till date, the said amount was deposited in the PLA account and thus, the Petitioner-Trust is not entitled to demand any interest under Section 34 of the Land Acquisition Act, 1894.

8] In rejoinder, the learned counsel for the Petitioner invited our attention to the internal note annexed to the Affidavit in Reply filed by the State Government which clearly states that the Petitioner-Trust had been demanding compensation for the acquisition of land.

9] The fact remains that till date the Petitioner-Trust has not been

paid any compensation from the date of possession till date under Section 34 of the Land Resolution Act nor the said amount is deposited in Court. Since the amount of compensation is not paid or deposited, on or before taking possession of the land, by the Collector, the Collector is liable to award rate of interest at the rate of 9% p.a. for the first year from the date of taking possession, and thereafter at the rate of 15% till the date of deposit of amount.

10] In our view, the learned counsel for the Petitioner-Trust is correct in submitting that the Collector is under obligation to consider the payment of 9% p.a. for the first year from the date of taking possession and at the rate of 15% after expiry of one year.

11] The learned counsel for the Petitioner has placed reliance in the Judgment of this Court, in the case of ***Kamgar Mahar Nandur & Others vs. State of Maharashtra & Others reported in 2018(4)Mh.L.J. 419***, more particularly, Para 13. The facts of the present case are similar. We are respectfully bound by the principles laid down in the said Judgment and do not propose to take different view in this matter.

12] We, therefore, direct the Collector to deposit 50% of the amount of compensation with interest at the rate of 9% from the date of taking possession for the first year and thereafter at the rate of 15% after expiry of one year till the date of deposit with the Civil Court under Section 30 of the Land Acquisition Act, 1894.

13] The learned counsel for the Respondent No.4 states that his client has no objection if the amount of interest is paid.

14] The Collector shall inform the Petitioner-Trust about the factum of such deposit within one week from the date of such deposit.

15] The Collector is directed to make reference to the Civil Court in pursuance to application dated 2nd May, 2022 in WP No.2887/2021 and in pursuance to the application dated 27th April, 2022 in WP No.2888/2022 under Section 30 of the Land Acquisition Act, 1894 within one week from the date of deposit of the amount.

16] Writ Petition is allowed in abovesaid terms. No order as to costs.

17] Rule is made absolute.

18] All concerned to act on an authenticated copy of this order.

19] It is made clear that this Court has not expressed any view on the issue as to whether Petitioner-Trust or Respondent No.4 would be entitled to any part of compensation. This issue can be decided in the Civil Court.

[M.G.SEWLIKAR, J]

[R.D.DHANUKA,J]