

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12347 OF 2019**

Union of India,
Ministry of Defense,
Through Defense Estates Officer Petitioners.

V/s
Smt. Lilaben Bharatbhat Patel
and Others Respondents.

Mr. Yogeshwar Bhate a/w Mr. Yashodeep Deshmukh i/b Vaidehi P.
Deshmukh for the Petitioners.

Ms. Gauri Godse for Respondent No.1.

Mr. A.B. Kadam, AGP for Respondent Nos. 2 and 3.

CORAM: NITIN W. SAMBRE, J.

DATE: JANUARY 04, 2022

P.C.:-

1] Defense Estates Officer, Mumbai has questioned the legality of the impugned order dated March 18, 2019 passed by 5th Joint Civil Judge, Senior Division, Thane, whereby calculation sheet – Exhibit-52 tendered by the Respondent-land owner came to be accepted and the Petitioners were directed to deposit an amount of Rs 41,17,903/- within a period of three months from the date of the order.

2] Petitioners were also directed to pay interest at the rate of 15% on the amount of Rs 20,35,255/- as mentioned in column No.32 of

calculation sheet - Exhibit-52 from October 20, 2018 till realization of the entire amount.

3] Few facts necessary for deciding the present Petition are as under:-

4] Petitioners suffered an award after Notification under Section 4 of the Land Acquisition Act dated June 11, 1984. Since the urgency clause under the Land Acquisition Act was invoked, Respondent-land owner lost possession way back in 1984.

5] Since the amount awarded by the Land Acquisition Officer was insufficient, a reference under Section 18 of the Land Acquisition Act was decided by Joint District Judge, Thane on July 20, 2002 whereby claim was partly allowed, granting enhanced compensation. Respondent-land owner feeling aggrieved, preferred First Appeal No.270 of 2004 under Section 54 of the Land Acquisition Act which came to be allowed vide Judgment dated June 21, 2007. The First Appellate Court in para 9 of its Judgment has made the following observations:-

“9. On the basis of the evidence on record, which is to be examined in the light of the above principles, we are of the considered view that the claimant would be entitled to seek higher compensation than the one awarded to him. The sale transaction at Exhibit-54 cannot be a guiding factor but some amount of deduction has to be made for the purpose of determining the fair market value of the land. The land was sold at the rate of Rs 20/- per sq. mtr. in terms of Exhibit-54. The said land is located beyond the acquired land. As such and even after making certain deductions it will be just fair and proper that we would determine compensation at the rate of Rs 15/- per sq. mtr. The claimant would, obviously, be entitled to the statutory benefits as contemplated under Section 23(1A) and (2) of the Act.”

6] Since the Petitioners herein failed to comply with the said order of the First Appellate Court, Respondent-land owner was prompted to take out Darkhast Proceedings being Darkhast No.22 of 2012 which

was accompanied with calculation sheet. Respondent-land owner claimed enhanced compensation which was not deposited by the Petitioners. Petitioners, vide Exhibit-10, objected the claim put-forth. Said objection Exhibit-10 came to be decided by the Executing Court on November 08, 2016, thereby directing the Petitioners and Respondent-land owner to submit calculation sheet containing enhanced compensation, interest, solatium amount etc. as per the Judgment of the Reference Court and also Division Bench of this Court. In compliance with the same, Respondent-land owner appears to have submitted calculation on October 15, 2018, whereas present Petitioners have failed to submit the calculation. As a consequence, the Executing Court appears to have considered the calculation sheet submitted by Respondent-land owner in the light of the observations made in the order dated November 08, 2016 while deciding objection of the Petitioner at Exhibit-10 and accepted calculation at Exhibit-52 vide impugned order dated March 18, 2019.

7] Mr. Bhate, learned Counsel for the Petitioners would strenuously urge that the Executing Court has travelled beyond the decree. According to him, total land acquired as notified under Section 4 from

Old Gat No.44/1 at Taluka and District Thane was 12.41.9 Hectares. According to him, 2.02 Hectares of land was abandoned from acquisition and as such only 10.39.9 Hectares of land was acquired. He would claim that award of enhanced compensation by Reference Court and this court in First Appeal was duly honoured and calculation sheet-Exhibit-52 contains such calculations which are contrary to the provisions of Section 28, 34 and 23(1-A) and (2) of the Land Acquisition Act. He would claim that the matter needs to be remanded to the Executing Court so as to give fresh opportunity to the Petitioners to submit calculations and the Executing Court can re-adjudicate the rival claim of the parties.

8] While countering the aforesaid submissions, Ms. Gauri Godse, learned Counsel appearing for the Respondent-land owner would strenuously urge that the present case is a glaring example of misuse of public money by the Petitioners. According to her, Respondent-land owner is yet to get entire compensation, though they have lost possession of their land way back in 1984-85. She would further claim that the Petitioners have never cooperated with the Executing Court in finding out exact amount of compensation payable, as in spite

of numerous chances granted to the Petitioners, Petitioners have failed to submit their calculations. That being so, the order passed below Exhibit-1 which is impugned herein does not warrant any interference and Petition is liable to be dismissed.

9] Considered rival submissions.

10] Fact remains that land of the Respondent-land owner was acquired vide award dated December 30, 1986 and enhanced compensation admittedly is not received by the Respondent-land owner for last about 35 years as Section 4 was invoked on June 11, 1984 and pursuant to the urgency clause under the Land Acquisition Act, possession was taken in advance. This Court while dealing with the claim for enhancement in First Appeal No. 270 of 2004 granted enhanced compensation at the rate of Rs 15/- per sq. meter with statutory benefits under Section 23(1-A) and (2) of the Land Acquisition Act. The said Judgment was delivered on June 21, 2007. The said Judgment was not honoured by the Petitioners for considerable period of about four years which has prompted the Respondent-land owner to take out proceedings being Darkhast No.22

of 2012 which was accompanied with calculation sheet. Petitioners objected to the said calculation in Darkhast Proceedings vide Objection-Exhibit-10. While dealing with the claim, the Executing Court considered the amount of enhanced compensation claimed by the Respondent-land owner at Exhibits-22, 25 and 33. The Executing Court was conscious of the fact that only land admeasuring 10 Hectare 39.9 R was acquired. It has further considered the enhancement ordered by this Court at the rate of Rs 15/- per sq. meter and noted that the Petitioners deposited an amount of Rs 22,14,163 under protest on December 31, 2011. It further observed that benefits to which land owner was entitled under Section 28, 34 and 33 were not honoured and as such directed the parties to submit their respective calculations.

11] It appears that thereafter again, court adjudicated the claim of the rival parties by passing the order below Exhibit-1 on October 05, 2018 and observed that the enhanced compensation calculated by the Petitioners at the rate of Rs 15/- per sq. meter was on 10, 324 sq. meter land as against the acquisition of 10.32.9 Hectares of land (i.e. 103290 sq. meters of land). As such, the Court has noted that the

Petitioners have given erroneous calculation, including the calculation of the compensation to which Respondent-land owner was entitled pursuant to the provisions of Section 23(1-A) and (2) of the Land Acquisition Act. The Court further observed that the calculations given by the Respondent-land owner at Exhibit-34 were also erroneous, as Respondents have added amount under Section 23(1-A) and 23(1) for calculating solatium under Section 23(2) of the Act. As a consequence of certain clarification, Court gave an opportunity to the parties to the Petition to place on record fresh calculation sheet in accordance with the observations made in the said order and as per Judgment delivered by the Reference Court and Bombay High Court on/or before October 19, 2018.

12] It appears that the Petitioners have failed to furnish their calculations in accordance with the observations made in the order dated October 05, 2018. As a consequence, the Executing Court proceeded to consider fresh calculations furnished by the Respondent-land owner and proceeded to pass the order impugned. The Executing Court has considered conduct of the Petitioners of neither assailing the order dated October 05, 2018 nor complying with the said order,

thereby placing on record calculation sheet. Rather, Petitioners have tried to overreach the authority of the Executing Court and vide Pursis-Exhibit-54 adversely commented on merits of the order dated October 05, 2018. Petitioners have not cooperated with the Executing Court in demonstrating as to how calculations submitted by the Respondent-land owner are erroneous. Rather, the Executing Court has noted that it has examined the calculations given by the decree holder at Exhibit-52 in the light of the Judgment of the Reference Court and the First Appellate Court so also Judgment of the Apex Court in the matter of *Gurpreet Singh vs. Union of India (2006) 8 SCC 457* and proceeded to accept the said calculations with directions to the Petitioners to deposit the amount.

13] As such, the Petitioners for the first time has come out with unsigned/ uncertified calculations so as to assail the calculation sheet- Exhibit-52 which was accepted vide impugned order. I have perused the said calculation sheet tendered by the Petitioners. It is difficult to accept the calculations tendered by the Petitioners in the said calculation sheet as the said calculation sheet is not tuned with the order of the Executing Court dated October 05, 2018, the order of

Division Bench of this Court passed in First Appeal on June 21, 2007 so also Judgment of the Reference Court delivered on July 20, 2002.

14] Perusal of Exhibit-54 (Pursis) tendered by the Petitioners speaks of arrogant and non-cooperative attitude of the Petitioners in execution proceedings. Though, the Order dated October 05, 2018 has attained finality, Petitioners have shown complete disrespect and disregard to the said order dated October 05, 2018 and reiterated their stand that earlier calculations furnished by them were correct and there were only certain typographical errors in measurements.

15] The law laid down by the Apex Court in the matter of *Gurpreet Singh* cited supra is worth relying on while rejecting the contentions of the Petitioners. The scheme of the Land Acquisition Act, 1894 contemplates award of compensation at different stages viz **(a)** the award passed under Section 11 which includes the amount contemplated under Section 23 and 23(1-A), 23(2) and interest contemplated under Section 34, **(b)** the second stage occurs on a Reference under Section 18 of the Act when the necessary note of enhanced amount payable under Section 23(1) and 23(1-A) and costs

in terms of Section 27 of the Land Acquisition Act is required to be considered, and (c) the third stage occurs when an appeal is decided by the High Court wherein enhanced compensation is awarded. Enhanced compensation bears interest on the enhanced portion of the compensation.

16] The scheme of Section 34 and 28 contemplates that interest is payable from the date Collector takes possession till a particular amount is deposited so as to ensure that adequate compensation is paid to the claimant. As such, what can be contemplated is, the award of interest under Section 28 is confined to excess compensation awarded and the same is required to be paid from the date of dispossession. Paras 28, 30 and 36 of the judgment in the matter of *Gurpreet Singh* cited supra are worth referring to. Furthermore, obligation of the Petitioners/judgment debtor to intimate the decree holder about his entitlement to get the amount of compensation, interest and other benefits also can be inferred from para 51 of the said judgment. Petitioners have conceded that enhanced compensation is payable on the area of 103240 sq. meters and not on 103290 sq. meters, as it is claimed that there is a dispute about 75 sq. meters. As

far as dispute about 75 sq. meters is concerned, apportionment will be decided independently. However, that by itself will not entitle the Petitioners to claim that Respondent-land owner is not entitled to compensation as claimed. Rather, calculation sheet placed on record by the land owner primarily speaks of the calculations of the compensation to which land owner is entitled in tune with the stages prescribed in the judgment in the matter of *Gurpreet Singh* cited supra. As such, it is quite apparent that calculations of the Respondent-land owner for award of enhanced compensation is in tune with the provisions of Section 28 and 34 of the Land Acquisition Act. Petitioners have failed to demonstrate any error of calculation in the same as they have neither submitted any correct calculation before the Executing Court nor assisted the Court in forming an opinion that calculations submitted by the Respondent-land owner are incorrect.

17] No error of law therefore could not be noticed which warrants interference in the order impugned in accepting the calculation sheet of the Respondent-land owner tendered at Exhibit-52 with directions to the Petitioners to deposit the amount of difference in compensation with accrued interest and other benefits.

18] While parting, it is worth to observe that attempt on the part of the Petitioners in not cooperating with the Executing Court in deciding the issue in execution proceedings prima facie speaks of its arrogant and non-cooperative attitude. This Court needs to be sensitive to the fact that the Respondent-land owner having lost possession of the property in acquisition proceedings in 1984-85 have yet to get final benefit of the compensation in the acquisition proceedings for the default of the Petitioners.

19] In the aforesaid backdrop, no case for interference in extraordinary jurisdiction is made out. As such, Petition fails and same stands dismissed.

(NITIN W. SAMBRE, J.)