

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.5544 OF 2017

Samudrabai wd/o Sudhakar Rao Thokal,
through Power of Attorney Holder
Omprakash S/o Sudhakar Rao Thokal,
aged about 45 years, Occ. Agriculturist,
r/o At Post Kamatwada (Channi),
Tq. Darwaha, Dist. Yavatmal

.. Petitioner

-vs-

1. State of Maharashtra,
Through Secretary,
Irrigation Department,
Mantralaya, Mumbai

2. The Executive Engineer,
Zilla Parishad, Irrigation Department,
Yavatmal, District Yavatmal

3. The Land Acquisition Officer,
Road Project, Z.P. Yavatmal
District Yavatmal

... Respondents

Shri P. S. Gawai, Advocate for petitioner.

Ms N. P. Mehta, Assistant Government Pleader for respondents.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

DATE : July 22, 2022.

Oral Judgment : (Per : Urmila Joshi-Phalke, J.)

By this petition the petitioner has claimed interest under Section 34 of the Land Acquisition Act, 1894 (for short, the said Act) at the rate of 9% per annum for the first year and thereafter at the rate of 15% per annum till deposit of the amount of compensation.

It is submitted by the petitioner that respondent No.3-

Acquiring Body made a proposal for construction of percolation tank (Pazar talao), Warjai and the petitioner's lands from Survey No.9/1 admeasuring 3H 90R and from Survey No.10 admeasuring 1H 55 R were ought to be acquired. Notice under Section 4(1) of the said Act was issued on 08/12/1991. Subsequent notice under Section 9(1) and (2) of the said Act in respect of acquisition of the said lands was issued. It is submitted that possession of the lands of the petitioner was taken on 15/01/1992. The respondent No.3 granted compensation of Rs.50,497/- for field Survey No.9/1 admeasuring 3H 90R and Rs.20,069/- for field Survey No.10/1 admeasuring 1H 55R. The copy of the award passed by respondent No.3 is annexed to the petition. The dispute of apportionment under Section 30 of the said Act was referred to the Civil Judge (Senior Division) Darwha for deciding the title in respect of Survey No.9/1. The Old Land Acquisition Case No.275/1997 was renumbered as Land Acquisition Case No.2122/2004 filed before the Civil Judge (S.D.) Darwha. The said case was decided in favour of the petitioner in respect of title of filed Survey No.9/1 which was acquired in Land Acquisition No.08/47/1988-89 vide order dated 10/09/2014. It is the further contention of the petitioner that one Narmadabai Vasantrao Lohakare raised an objection on the title of the petitioner in respect of Survey No.10. In that dispute before the Civil Judge (SD) Darwha

Narmadabai was defendant No.3. She settled the said dispute by filing pursis of settlement dated 23/10/2008. It is further contention of the petitioner that possession of both the lands were taken by the respondents in the year 1992. On 15/01/1992 the possession certificate was also issued by the Land Acquisition Officer. As dispute of title between the petitioner and Narayanrao Thokal was in respect of field Survey No.9/1 admeasuring 3H 90R and the respondents failed to give compensation in respect of field Survey No.10/1 to the petitioner in respect of which there was no dispute of title, the petitioner moved an application with the respondent No.3 for getting compensation in respect of field Survey No.10/1. He also made a representation dated 23/12/2015 to the respondent No.3 to determine compensation of the land acquired. The petitioner also moved an application on 15/04/2017 to the Deputy Registrar and Public Information Officer Bombay High Court, Nagpur under Right to Information Act, 2005 for seeking information as to whether any dispute is pending in respect of the fields of the petitioner which were acquired. He also moved an application on 07/02/2017 to respondent No.3 under the Act of 2005 seeking information in respect of the amount deposited by the respondents which was replied by the respondent No.3.

2. The respondent No.3 took possession of the acquired land of the petitioner bearing Survey Nos.9/1 and 10 on 15/01/1992 and the award was passed on 21/03/1995. It is submitted that prior to passing of award, possession of lands of the petitioner was taken. However, the respondents have not paid interest in view of Section 34 of the said Act to the petitioner and therefore the petitioner has claimed the interest on the amount of compensation.

3. State Government has raised strong objection about the same and submitted that the petitioner is not entitled for interest as per Section 34 of the said Act and hence the writ petition deserves to be dismissed.

4. Heard the learned counsel for the petitioner and the learned Assistant Government Pleader for the State. The learned counsel for the petitioner submitted that in view of Section 34 of the said Act the petitioner is entitled for interest at the rate of 9% per annum for the first year after taking possession of land and thereafter at the rate of 15% per annum till deposit of the amount of compensation. He submitted that respondent No.2-Executive Engineer, Zilla Parishad, Irrigation Department, Yavatmal moved a proposal dated 31/08/1988. Accordingly land bearing Survey Nos.9/1 and 10/1 were acquired for

construction of percolation tank (Pazar Talao), Warjai. Notification under Section 4 of the said Act was issued on 08/12/1991. Thereafter notice under Section 9 of the said Act was issued and possession of the acquired land bearing Survey Nos.9/1 admeasuring 3H 90R and 10/1 admeasuring 1H 55 R was taken on 15/01/1992. Award was passed on 21/03/1995. Compensation of Rs.50,497/- was awarded for Survey No.9/1 and Rs.20,069/- was awarded for Survey No.10/1. Thus total compensation of Rs.70,566/- was awarded for the acquired lands. Civil Court decided the dispute in respect of Survey No.9/1 on 10/09/2014. Compensation amount was deposited on 09/03/2020. The petitioner is entitled for interest 9% per annum for the first year and thereafter 15% per annum for rest of the years till deposit of the awarded amount. He also referred to Section 34 of the said Act which reads thus :

34. Payment of interest :

When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of (nine per centum) per annum from the time of so taking possession until it shall have been so paid or deposited:

(Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the

date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.

5. Learned counsel for the petitioner also placed reliance on the decisions in *Indore Development Authority vs. Manoharlal and ors. (2020) 8 SCC 129* and *Vasant Balkrishna Wale vs. Vithal Mahadeo Deshmukh and ors. 2005(4) Mh.L.J. 957* wherein this Court has held that statutory provision comprised under Section 34 of the Land Acquisition Act, 1894 makes it clear that it is the duty of the Collector to deposit the interest amount along with the amount awarded under Section 11 when the matter is referred for adjudication in terms of the provisions of Section 30 of the said Act. In case such amount is deposited within a period of one year from the date of taking over the possession of the land, the interest rate would be 9% per annum. It is further held by this Court that the Collector's duty to pay interest on the awarded amount relates to statutory obligation of the public authority and failure to perform such obligation and consequently the right of the petitioner in that regard being affected. Despite availability of alternate remedy of appeal, the Court has held the writ petition to be maintainable.

6. On the basis of aforesaid judgment and the provisions of

Section 34 of the said Act, the petitioner has established his right of entitlement of interest on the amount of compensation at the rate of 9% per annum for the first year and at the rate of 15% per annum thereafter till depositing the amount that is till 04/03/2020. Hence we proceed to pass the following order :

- (a) The petitioner is entitled for interest at the rate of 9% per annum from 15/01/1992 to 14/01/1993.
- (b) The petitioner is entitled for interest at the rate of 15% per annum from 15/01/1993 to 04/03/2020.
- (c) The petitioner is also entitled for accrued interest on the aforesaid interest amount as per interest rate on fixed deposit in Nationalized Bank.
- (d) The amount towards interest as per calculations shall be deposited within period of four weeks from the date of receipt of copy of this judgment.

Rule is made absolute in aforesaid terms with no order as to costs.

(Urmila Joshi-Phalke, J.)

(A. S. Chandurkar, J.)