

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

MISC. CIVIL APPLICATION (Review) NO.38 OF 2022 IN
FIRST APPEAL NO.382 OF 1990

{Executive Engineer ..V/s.. Maroti S/o Tonduji Waghmare and Ors.}

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.

Court's or Judge's order

Shri M. A. Kadu, Advocate for the Applicant/Appellant.
Shri S. C. Mehadia, Advocate for LR of the Respondent No.1B.
Ms T. H. Udeshi, AGP for the Respondent No.3.

CORAM : ABHAY AHUJA, J.

DATE : 17th NOVEMBER, 2022.

On 04.10.2022, the following order was passed:

“This is a review application filed by the Acquiring Body/VIDC, seeking review of the order dated 12-01-2006 of this Court in First Appeal No.382/1990. Mr. Mehadia, learned Counsel for the respondents would raise a preliminary objection and states that the application is barred by limitation. Learned Counsel has also filed a reply dated 07-04-2022 to bring out the facts in support of his contentions. He points out that no application for condonation of delay has been preferred and as such the review is not maintainable.

2. *Mr. Kadu, learned Advocate for the Acquiring Body draws the attention of this Court to page 8-A of the review application which is the Note on Limitation. He submits that soon after the Acquiring body was made a party to the execution proceeding pursuant to Special Darkhast No.1/2016 on 15-02-2021, they have moved to file this review application. Mr. Kadu, learned Counsel submits that since the limitation expires during the period excluded by the suo motu order of the Hon'ble Supreme Court, the review application which has been filed on 15-01-2022 is in time.*

3. *Learned Counsel submits that the review is on a short point with respect to paragraph 9 of the judgment and submits that the Court has erroneously allowed the interest at the rate of 12% per annum on the enhanced compensation from the date of issuance of Section 4 Notification till the date of realization, whereas according to Section 23(1-A) of the Land Acquisition Act, 1894, an amount at the rate of 12% on the market value in respect of such land can only be for the period commencing on and from the date of the publication of the Section 4(1) Notification to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.*

4. *He would submit that the Acquiring Body has also deposited an amount of more than Rs. 25 Lakh in accordance with Section 23(1-A) of the Land Acquisition Act, whereas the judgment under review would entail further financial burden of Rs. 33 lakhs. He would submit that this is a mistake apparent on the face of the record and as such liable to be modified in a review.*

5. *Mr. Mehadia, learned Counsel for the respondents no.1 and 2 fairly submits that he does not have any objection or dispute on the point of law raised by Mr. Kadu, Advocate.*

6. *On a query put forth by the Court, whether the Acquiring Body would on the basis of the above discussion seek any refund from his client, Mr. Mehadia seeks some time to take instructions in the matter.*

7. *In this view of the matter, list the Application on 12-10-2022, high on board."*

2. Pursuant to the query raised by this Court as per paragraph 6 above, Mr Kadu, learned counsel for V.I.D.C. had taken instructions on the amounts that would be

refundable from the Claimants to the V.I.D.C. and therefore, on 17.10.2022, the following order was passed :

Mr. Kadu learned counsel for the acquiring body submits that he has already handed over copy of calculation to the VIDC which indicates that Rs.3,69,288/- would be refundable from the claimants to the VIDC.

Ms. Aparna Telange, learned Advocate holding for Mr. Mehadia, submits that Mr. Mehadia, is in personal difficulty and unable to attend the matter.

Let instructions be taken positively by the next date.

List the matter on 20-10-2022.

3. Today when the matter is called out, the learned counsel for the parties are *ad-idem* that paragraph 9 of the judgment under review requires to be modified as in accordance with Section 23(1-A) of the Land Acquisition Act, 1894, 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.

4. Section 23(1-A) of the said Act clearly provides that the amount calculated @ 12% per annum is for the period commencing on and from the date of the publication of the Notification under Section 4(1) to the date of the award of the Collector or the date of taking possession of the land,

whichever is earlier. It is observed from paragraph 9 of the impugned judgment that the amount @ 12% per annum on the enhanced compensation that this Court has held that the Appellants to be further entitled to is stated to be from the date of issuance of the Notification u/s 4 (1) till the date of realization of the amount of enhanced compensation and not to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. This in my view is clearly a mistake apparent on the face of the record, which requires to be corrected.

5. Accordingly, having heard learned counsel and having perused the application, let paragraph 9 of the said judgment be modified as under :

“9. The appeal is, therefore, partly allowed. The appellants are entitled for enhanced compensation for the acquired land @ Rs. 7,500/- per acre along with 30% solatium on the total market value plus 15% interest on the enhanced compensation amount from the date of the award i.e. 08/10/1986 till realisation of the amount. The appellants are also further entitled to an amount @ 12% per annum on the enhanced compensation from the date of issuance of the notification under section 4 of the Act to the date of the award of the Collector or the date of taking possession on the land, whichever is earlier. However, in the facts of the case, there would be no orders as to the costs.”

6. Rest of the judgment remains as it is.

7. Review application stands allowed in the above terms.
8. Parties to act on an authenticated copy of this order.

(JUDGE)

TAMBE