

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

FIRST APPEAL NO. 850 OF 2009

Deorao Ragho Kilbile,
since dead through L.Rs.

1. Anusayabai Deorao Kilbile,
Aged about 70 years,
Occupation-Agriculturist.
2. Bhavrao Deorao Kilbile,
Aged about 48 years,
Occupation-Agriculturist.
3. Chandrabhaga Ganpatrao Patil,
Aged about 46 years,
Occupation-Agriculturist.

Nos.1 to 3 R/o. Ruikhed, Mayamba,
Tq. and Distt. Buldana.

4. Sau. Gayabai Maroti Chikte,
Aged about 42 years,
Occupation-Agriculturist,
R/o. Sindkhedmatla,
Tahsil and District-Buldana.
5. Sau. Dwarkabai Sadashiv Patil,
Aged about 39 years,
Occupation-Agriculturist,
R/o. Deulgaon Raja,
Tah. Deulgaon Raja, Distt.Buldana.

.. **APPELLANTS**

.. **Versus** ..

State of Maharashtra,
through Collector,
Buldana.

.. **RESPONDENT**

Shri Pushkar Deshpande, Advocate holding for Shri R.L. Khapre, Senior
Advocate for the appellants
Shri M.A. Kadu, Assistant Govt. Pleader for the respondent-State.

CORAM : SMT. M.S. JAWALKAR, J.

DATE OF RESERVING THE JUDGMENT : 05/09/2022

DATE OF PRONOUNCING THE JUDGMENT :14/10/2022

JUDGMENT :

Present appeal is filed by the appellants as the Referral Court failed to grant solatium as per Section 23 (2), as also additional component in view of Section 23 (1-A) of the Land Acquisition Act, 1894 (for the sake of brevity “the said Act”). It is also the submission of the appellant that he is entitled for interest in view of Section 28 of the said Act. The Notification under Section 4 came to be issued on 30.11.1991 for acquisition of Gat No.43, area 2.78 HR. Award under Section 11 of the said Act came to be passed on 07.03.1994. The Special Land Acquisition Officer granted compensation at the rate of Rs.24,000/- per hectare.

2. As the appellant was not satisfied with the amount of compensation awarded, he filed Reference under Section 18 of the said Act. The Civil Court enhanced the compensation and awarded Rs.2,78,000/-. However, while passing order, it appears that only

interest was granted and learned Referral Court failed to consider the provisions Section 23 (1-A) and (2), so also the provisions of Section 28 of the said Act. In view of Section 23 (1-A) of the said Act, the claimants are entitled in addition to the market value of the land, an amount calculated at the rate of 12% per annum on such market value for the period commencing on and from the date of the publication of the Notification under Section 4(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.

3. Learned Counsel for appellants relied on following citations :

1. *Gurpreet Singh Vs. Union of India, reported in (2006) 8 SCC 457.*
2. *Sunder .vs. Union of India, reported in (2001) 7 SCC 211.*
3. *Tamil Nadu Housing Board .vs. Abdul Salam Sarkar and others, reported in 2021 SCC Online SC 23,*

4. Admittedly, in the present matter, the date of Award is earlier to the date of possession. The date of Award is 07.03.1994. In addition to the market value of the land referred above, in view of Clause (2) of Section 23 of the said Act, the Court is bound to pay a sum of 30% on such market value, in consideration of compulsory

nature of the acquisition. Section 28 further provides that if the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of 9% per annum from the date on which he took possession of the land to the date of payment of such excess into Court and if the said amount is paid after the date of expiry of a period of one year, interest at the rate of 15% per annum shall be payable from the date of expiry of the said period of one year.

5. Up to this position of law the respondent has not disputed the claim. At this stage, the learned Assistant Government Pleader for the respondent-State submitted that the solatium will not carry interest as claimed by the appellants from the date of Notification under Section 4 dated 30.11.1991.

6. The learned Counsel for the appellants relied on the judgment of the Hon'ble Apex Court in the case of **Sunder** (supra), wherein it is held that the amount awarded in Section 34, means the aggregate amount of compensation calculated in accordance with the provisions of all the sub-sections of Section 23 and hence includes solatium. Intention of Legislature is to ensure that the amount calculated under Section 23 reaches the person concerned at the time

of passing of award or taking over possession of the land.

7. The learned Assistant Government Pleader for the respondent-State relied on the judgment of the Hon'ble Apex Court in the case of **Tamil Nadu** (supra), wherein it is held that :

“If, therefore, the claim for interest on solatium had been made and the same has been negated either expressly or by necessary implication by the judgment or decree of the Reference Court or of the appellate court, the execution court will have to necessarily to reject the claim for interest on solatium based on Sunder [(2001) 7 SCC 211 : 2001 Supp (3) SCR 176] on the ground that the execution court cannot go behind the decree. But if the award of the Reference Court or that of the appellate court does not specifically refer to the question of interest on solatium or in cases where claim had not been made and rejected either expressly or impliedly by the Reference Court or the appellate court, and merely interest on compensation is awarded, then it would be open to the execution court to apply the ratio of Sunder [(2001) 7 SCC 211 : 2001 Supp (3) SCR 176] and say that the compensation awarded includes solatium and in such an event interest on the amount could be directed to be deposited in execution. Otherwise, not. We also clarify that such interest on solatium can be claimed only in pending executions and not in closed executions and the execution court will be entitled to permit its recovery.”

It is further clarified that in terms of the judgment of the Constitution Bench in **Sunder** (supra), interest on solatium will not be payable with effect from the date of the judgment.

8. After considering the principle laid down in ***Sunder*** (supra) and ***Gurpreet Singh*** (supra), the petitioner is entitled for interest on solatium also but in view of the judgment in ***Gurpreet Singh*** (supra) it has to be awarded from the date of judgment i.e. 19/09/2001 in ***Sunder*** (supra). Hence I proceed to pass the following order :

ORDER

- 1] Appeal is allowed.
- 2] The respondent is directed to pay 12% per annum on market value for the period commencing from the date of notification under Section 4 to the date of award of the Collector. The respondent further directed to pay 30% on such market value in consideration of compulsory nature of acquisition.
- 3] The respondent shall further pay interest on enhanced amount @ 9% per annum from the date on which Collector took possession of the land till the date of payment of such enhanced amount including amount of solatium. If not paid within one

year, the respondent is directed to pay 15% per annum from the date of expiry of said period of one year. Interest on solatium will be paid from 19/09/2001, in view of judgment in ***Gurpreet Singh Vs. Union of India, reported in (2006) 8 SCC 457.***

4] Decree be drawn accordingly.

(SMT. M.S. JAWALKAR, J.)

Jayashree..