IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APELLATE SIDE

The Hon'ble **JUSTICE SUVRA GHOSH**

W.P.A. 16818 (W) of 2019

R.B. Dealers Pvt. Ltd. & Incorporated Company
Vs.
Union of India & Ors.

For the Petitioner:	Mr. Amit Kumar Pan, Adv. Ms. T. Santra, Adv.,
For the Railway:	Mr. Debasish Chattopadhyay, Adv.,
Hearing Concluded on:	05.07.2023
Date:	14.07.2023

SUVRA GHOSH, J. :-

1. Facts which are not in dispute are recorded hereunder:-
2. The Notification was published by the Railway Board Ministry of Railways on 25th March, 2013 in the Gazette of India under section 7(1) of the Metro Railway (Construction of Works) Act, 1978 declaring its intention to acquire the plot of land owned by the petitioner measuring about 5 cottahs 9 chittaks 20 sqft. in C.S. Dag No. 106, Mouza- Purba Topsia, Touzi No. 1298/2833, Police Station Tilzala, presently Pragati Maidan, formerly known as Premises No. 40, East Topsia Road, presently renumbered as 1002 Eastern Metropolitan Bypass Kolkata – 700046 within Ward No. 66 in the District of South 24 Parganas for the purpose of construction of Metro

Railway from New Garia to Titumir station in connection with New Garia Dum Dum Airport Project. The petitioner filed an objection to the said notification before the competent authority being the 4th respondent herein praying for exclusion of his land from the aforesaid project which was overruled and a declaration published under section 10 of the Act of 1978. The petitioner applied before the 4th respondent claiming compensation which was registered as claim case no. NGA/32/2014 and by a judgment passed on 16th December, 2016 the competent authority passed an award for Rs. 1,55,04,838/-. The petitioner preferred an appeal against the said judgment, being appeal no. 1 of 2017 which was disposed of by the appellate authority by an order passed on 28th February, 2018, setting aside the order passed by the competent authority and awarding compensation to the petitioner to the tune of Rs. 19,88,37,960/-. On 14th August, 2018, the petitioner filed an application before the competent authority being the 4th respondent herein, interalia praying for interest in terms of section 80 of the Act of 2013 and upon hearing both the parties, the petitioner's prayer was turned down by the authority by an order passed on 17th September, 2018. Revisional application being C.O. No. 1895 of 2018 was preferred by the Metro Railway Authority against the order of the Appellate Forum before this Court and by an order passed on 7th February, 2019, a coordinate bench of this Court set aside the order of the appellate authority and directed the appellate authority to re-assess the amount of compensation payable to the petitioner herein in the light of the observation made in the order. In compliance with the said order, the respondents re-assessed the compensation payable to the petitioner interalia holding that the petitioner was entitled to a sum of Rs. 3,70,92,683/- on account of compensation. The respondents filed an application for review of the order dated 28th February, 2018 passed by the appellate authority which was allowed thereby re-assessing the compensation amount at Rs. 15,35,39,946/- in place and stead of 16,25,48,465/- and the Metro Railways were directed to pay the sum of Rs. 2,80,84,746/- to the petitioner, being the unpaid amount. The said amount was received by the petitioner without prejudice to his rights and contention. The petitioner also received a sum of Rs. 12,54,55,482/- from the authority by a cheque dated 5th September, 2018, as the admitted amount of compensation.

3. Learned counsel for the petitioner submits that by an order being no. S.O. 2368(E) dated 28th August, 2015, the Ministry of Rural Development extended the benefits under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 to similarly placed land owners whose lands were acquired under the 13 enactments specified in the 4th Schedule and beneficial advantage to the land owners was made applicable for determination of compensation, rehabilitation and resettlement and compensation was accordingly assessed in terms of the said Act. Referring to section 80 of the Act of 2013, learned counsel submits that since possession of the plots in question was taken over on 21st February, 2017, long before declaration of the award by the authority, the petitioner is entitled to interest in terms of section 80 of the Act of 2013. It is further submitted that since claim of interest under section

80 of the Act was not subject matter of the revisional application before this Court, the same was not dealt with.

4. Per contra, learned counsel for the respondents submits that possession of the plot in question was taken by the authority only on 6th November, 2019 after disbursement of the entire amount of compensation on 11th June, 2019 and therefore the question of granting interest under section 80 of the Act of 2013 does not arise. The petitioner has failed to substantiate that possession was taken over on 21st February, 2017 as alleged. The final cheque with regard to compensation was made over on 11th June, 2019 and possession taken thereafter.

5. I have considered the submission made on behalf of the parties, material on record and the law on the point.

6. The Ministry of Rural Development, by a notification being no. S.O. 2368(E) dated 28th August, 2015 issued in terms of sub-section (3) of section 105 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 extended the provisions of the Act relating to determination of compensation to all cases of land acquisition under the enactments specified in the 4th Schedule to the said Act and thereby extended the beneficial advantage of the Act to similarly placed land owners whose lands were acquired under the said enactments.

7. The provisions of the Act of 2013 which have been taken into consideration by the respondents in assessing compensation payable to the petitioner are as follows:-

i. Market value of the plots in question has been determined in terms of section 26;

ii. 100% solatium on market value of the land and structures has been determined in terms of section 30(1) read with section 69(3);

iii. In addition to the market value of the land, the amount calculated @12% per annum on such market value has been assessed in terms of section 30(3) read with section 69(2);

The bone of contention between the parties is with regard to payment of interest in terms of section 80 of the Act.

8. Section 80 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act of 2013 is set out.

> "*80. 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 cent. 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 cent. per annum shall be payable from the date or 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."*

9. In other words, in a situation when possession of the acquired land is taken away by the authority before paying/depositing compensation for the same, the claimant is entitled to interest in terms of the provision referred to above. The Hon'ble Supreme Court, in the authority in Indore Development Authority v/s Manohar Lal and Others reported in (2020) 8 Supreme Court Cases 129 has dealt with the word "paid" in section 31 (1) of the Land Acquisition Act, 1894. Paragraph 205 of the judgment is reproduced below:

> *"205. The word "paid" in Section 31(1) to the landowner cannot include in its ambit the expression "deposited" in court. Deposit cannot be said to be payment made to landowners. Deposit is on being prevented from payment. However, in case there is a tender of the amount that is to mean amount is made available to the landowner that would be a discharge of the obligation to make the payment and in that event such a person cannot be penalised for the default in making the payment. In default to deposit in court, the liability is to make the payment of interest under Section 34 of the 1894 Act. Section 32 and 33 (which had been relied upon by the landowners' counsel to say that valuable rights inhere, in the event of deposit with court, thus making deposit under Section 31 mandatory) provide for investing amounts in the*

> *government securities, or seeking alternative lands, in lieu of compensation, etc. Such deposits, cannot fetch higher interest than the 15% contemplated under Section 34 which is in pari materia with Section 80 of the 2013 Act. Section 34 is in pari material with Section 80 of the 2013 Act in which also the similar rate of interest has been specified. Even if the amount is not deposited in Reference Court nor with the treasury as against the name of the person interested who is entitled to receive it, if Collector has been prevented to make the payment due to exigencies provided in Section 31(2), interest is to be paid. However, in case the deposit is made without tendering it to the person interested, the liability to pay the interest under Section 34, shall continue. Even assuming deposit in the Reference Court is taken to be mandatory, in that case too interest has to follow as specified in Section 34. However, acquisition proceeding cannot lapse due to non-deposit."*

10. In the case in hand, the petitioner has urged that the respondents have taken possession of the land in question on 21st February, 2017 though award was declared on 2nd February, 2018 and compensation paid on 6th November, 2019. In refuting such argument, learned counsel for the respondents has submitted that award was declared on 16th December, 2016 and upon payment of entire compensation to the petitioner on 11th

June, 2019 possession of the land in question was taken on 6th November, 2019.

11. It transpires from the judgment of the acquisition claim case that award in lieu of acquisition of the land of the petitioner was declared on 16th December, 2016. The petitioner, by a letter issued to the General Manager, Metro Railway, Kolkata on 22nd February, 2017 informed the latter that on 21st February, 2017 possession of the plot in question was taken over by men and agents of the respondents. This letter was received by the respondents on the same day, i.e., on 22nd February, 2017 and contents of the letter have not been denied or disputed by the respondents. In an order passed on 20th March, 2017 in Claim Appeal No. 1 of 2017, it is recorded that construction work of the Metro Railways is being carried on in the said property as on the date of order. Therefore, admittedly the land was in possession of the respondents authorities on 20th March, 2017 and construction work was being carried out by the authority therein on the said date. So it can be inferred that possession of the plot in question was taken over by the respondents on 21st February, 2017 as alleged in the letter issued by the petitioner to the authority on the very next day. The amount of compensation was assessed and re-assessed by the authority as recorded earlier and the admitted amount of compensation to the tune of Rs. 12,54,55,482/- was paid to the petitioner only on 30th August, 2018. No compensation or any part thereof was paid/deposited by the respondents prior to the said date. Total amount of compensation was finally determined at Rs. 15,35,39,946/- and the balance amount of Rs. 2,80,84,764/- was

paid to the petitioner on 11th June, 2019. Therefore, it is crystal clear that though possession of the land was taken on 21st February, 2017, compensation was paid to the petitioner only on 30th August, 2018 and 11th June, 2019. The petitioner is therefore entitled to interest on the amount awarded, in terms of section 80 of the Act of 2013 @ 9% per annum from 21st February, 2017 to 20th February, 2018 and @15% per annum from 21st February, 2018 to 30th August, 2018 in so far as award amounting to Rs. 12,54,55,482/- is concerned and from 21st February, 2018 till 11th June, 2019 in so far as the award of Rs. 2,80,84,764/- is concerned. The said amount be deposited in the bank account of the petitioner within two months from date. The petitioner shall furnish his bank details to the respondent authority within a week from date.

12. With the above instruction and observations, the writ petition being W.P.A. 16818 (W) of 2019 is disposed of.

13. There shall however be no order as to costs.

14. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)