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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4235 OF 2022

Maharashtra State Electricity Board
 (Now MSEDCL)
 Through its Executive Engineer
 (Civil) Osmanabad, District – Osmanabad
 Present the Office is at Latur

PETITIONER

VERSUS

1. The State of Maharashtra
 Through District Collector,
 Latur, District – Latur

RESPONDENTS

2. Prabhuappa Sivanappa Garthe,
 (Died through its LRs)

2A. Smt. Shobha Arun Garthe
 Age – 73 years, Occ – Household

2B Sagar Arun Garthe
 Age – 48 years, Occ – Agriculture

2C Rajabahau Prabhuappa Garthe
 Age – 76 years, Occ – Agriculture

2D Sudhir Prabhuappa Garthe
 Age – 73 years, Occ – Agriculture

2E Narendra Prabhuappa Garthe
 Age – 66 years, Occ – Agriculture

Respondents No.2A to 2E are
 R/o Ghatnandur
 Taluka – Ambajogai, District - Beed

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Mr. A. S. Bajaj, Advocate for the petitioner
 Mr. S. N. Kendre, AGP for respondent - State
 Mr. Kedar Warad, Advocate for respondents No.2A to 2E

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 4th SEPTEMBER, 2023
PRONOUNCED ON : 27th SEPTEMBER, 2023

ORDER :

1. This petition, filed under Article 227 of the Constitution of India, challenges orders passed by the learned Civil Judge, Senior Division, Latur below Exhibits-60 and 62 in Regular Darkhast No. 57 of 1998.

2. Land Survey No. 261, situated at village Kingaon, to the extent of 1 Hectare 10 R, owned by the second respondent / claimant, was acquired by petitioner for 33/11 KV sub station. Land Acquisition Officer passed award on 31st May, 1989. The second respondent filed reference under section 18 of the Land Acquisition Act, seeking enhancement of compensation. By order dated 19th December, 1997, the Reference was partly allowed in following terms :

“1. Claimant do recover compensation for his acquired land @ Rs.7/- per Sq. ft, subject to deduction of 25% of acquired land and do recovery 30% solatium, 12% increase from the date of possession i.e. 7.12.85 til the date of award i.e. 31.5.89 and entitled to claim 9% interest for the first year from the date of possession and 15% interest subsequent year till depositing the amount by L.A.O. in the court.

2. Respondent do bear their own costs and pay the costs of the claimant.

3. *Deficit court-fees be recovered from the claimant, if any,*
4. *Decree be drawn accordingly.”*

3. Petitioner challenged the Award by filing First Appeal No. 570 of 1998 in this Court. Civil Application No. 3348 of 1998 filed by petitioner for stay to the execution of the Award was allowed by this Court, by order dated 2nd June, 1998, on condition that petitioner to deposit decretal amount. Accordingly, petitioner deposited amount of Rs.10,45,900/- (i.e. principal amount) on 23rd March, 2000. By order dated 25th October, 2000, the second respondent / claimant was permitted to withdraw an amount of Rs.5 lakh, remaining amount of Rs.5,45,900/- was directed to be deposited in fixed deposit. By order dated 31st August, 2016 the First Appeal was dismissed. Claimant thereafter withdrew amount of Rs.5,45,900/- kept in fixed deposit along with interest of Rs.78,541/-.

4. The second respondent / claimant had filed Regular Darkhast No. 57 of 1998 for execution of award passed in Land Acquisition Reference No. 712 of 1991. Claimant filed application Exhibit-54 in execution proceeding claiming that as per the judgment and Award passed by the Reference Court, total amount of compensation was to be paid, along with interest @

9% p.a. from 7th December, 1985 to 6th December, 1986 i.e. Rs.94,131/- and 15% p.a. interest from 7th December, 1986 to 23rd April, 2018 i.e. Rs.49,15,730/- plus principal amount of Rs.10,45,900/-. Thus total amount of Rs.60,55,671/- is liable to be deposited by petitioner. Out of the said amount, the claimants have withdrawn an amount of Rs.32,27,246/-, therefore, an amount of Rs.28,28,515/- is due from petitioner. They therefore, prayed for issuance of warrant of attachment.

5. Petitioner filed application Exhibit-60, contending that it had challenged the Award of Reference Court, by filing First Appeal No. 570 of 1998 in this Court. In that matter, initially, petitioner deposited Rs.10,45,900/-. Thereafter, on 10th April, 2018, remaining amount of Rs.21,81,346/- was deposited, which is withdrawn by claimants. Calculation given by claimants at Exhibit-54 is wrong. Petitioner, therefore, claimed that execution proceedings is liable to be disposed of, as the Award is fully satisfied.

6. Claimants opposed the application. The Executing Court has rejected the application Exhibit-60 on the ground that petitioner has failed to give proper and correct calculation of the compensation amount and on perusal of Exhibits-1 and 54, it was held that there was no major miscalculation in the amount

claimed and petitioner has failed to convince the Court that the calculation given by claimants is wrong.

7. Petitioner then filed application Exhibit-62 thereby giving calculations stating that as on 10th April, 2018, calculations of total interest amount comes to Rs.21,81,346/-, which is deposited by petitioner. Petitioner also submitted calculations along with said application and prayed that claimants be directed to verify the same. Claimants opposed this application, by filing detail say. Executing Court rejected this application, by a detail order. This order is also impugned in the present petition.

8. Heard learned advocate for petitioner and the learned advocate for claimants. Perused the memo of writ petition, its annexures and the impugned orders.

9. Admittedly, on 23rd March, 2000, petitioner has deposited only the principal amount of Rs.10,45,900/-. The First Appeal is dismissed on 31st August, 2016. Claimants appear to have given correct calculations of interest, which is rightly relied on by the Executing Court. In this view of the matter, contention of petitioner that claimants are not entitled for interest from 23rd March, 2000 is liable to be rejected. In fact, on 23rd March, 2000, claimants were entitled to amount of interest of Rs.21,81,346/-.

Since petitioner has deposited only principal amount of Rs.10,45,900/- on that date, claimants were deprived of interest amount. Indisputably, interest amount of Rs.21,81,346/- is deposited by petitioner after a period of 18 years. Since view of the Executing Court is in consonance with aforestated ratio, no fault can be found with the reasoning adopted by the Executing Court.

10. In ***Gurpreet Singh v/S Union of India***” (2006) 8 SCC 457, it is held

“The mandate of Section 34 and Section 28 that interest would run from the date the Collector takes possession till the particular amount is deposited as provided in those sections, ensures that the claimant is recompensed adequately. Section 28 ensures such recompense at each stage of enhancement or compensation. This clearly indicates that a claimant or decree-holder who has received the entire amount awarded by the Reference Court or who had notice of the deposit of the entire amount so awarded cannot claim interest on the amount he has already received merely because the appellate court has enhanced the compensation and has made payable additional compensation. Such blanket reopening of the transaction is not warranted even in respect of a money decree. Section 28 of the Act indicates that the award of interest is confined to the excess compensation awarded and it is to be paid from the daet of dispossession. This is in consonance with the position that a fresh re-appropriation is not contemplated or warranted by the scheme of the Act.”

By relying on ***Prem Nath Kapur V/s National Fertilizers***

Corporation of India Ltd. (1996) 2 SCC 71, it is held that

“on appropriation being at different stages is justified though if at a particular stage there is a shortfall, the awardee/ decree-holder would be entitled to appropriate the same on the general principle of appropriation, first towards interest, then towards costs and then towards principal, unless, of course, the decree otherwise directs. Thus the ratio of Prem Nath Kapur is approved on the aspect of appropriation.”

The above ratio is applicable to the facts of the present case.

11. The Executing Court has passed a reasoned order observing that -

“In the present matter, if simple banking rule is applied, then bank never deducted principal amount, but always interest amount is deducted by the bank and then if more than interest amount is deposited then and then only principal amount is deducted. Though amount of Rs.10,45,900/- was deposited on 23/03/2000, still that can be only adjusted firstly to the interest and, therefore, on 23/03/2000 the JD was liable to pay pay Rs.10,45,900/- principal amount alongwith future interest. Hence, the calculation submitted by the JD acquiring body is not acceptable. The calculation submitted vide Exh.54 is proper and deserved to be accepted.”

12. There is no illegality or perversity in the order impugned in the present writ petition. No case is made out by petitioner to warrant interference in the impugned order, in exercise of extraordinary writ jurisdiction. There is no merit in the writ petition. Writ Petition is, therefore, dismissed.

13. At this stage, learned advocate for petitioner seeks extension of stay granted earlier. For the reasons stated in this order, the request is rejected.

**[NITIN B. SURYAWANSHI]
JUDGE**