

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**REVIEW APPLICATION NO. 223 OF 2019
IN
WRIT PETITION NO. 3544 OF 2004**

The Executive Engineer Minor
Irrigation Division, Zilla Parishad,
Parbhani

.. Applicant

Versus

The State of Maharashtra and others .. Respondents

Shri Eknath P. Sawant, Advocate for the Applicant.

Shri S. G. Sangle, A.G.P. for the Respondent Nos. 1 and 2.

Shri Sonaji K. Adkine, Advocate for the Respondent Nos. 3 to 16.

CORAM : NITIN W. SAMBRE, J.

DATE : 17TH APRIL, 2023.

FINAL ORDER :

. This review application is taken out seeking review of the order of this Court passed on 13th November, 2017 in Writ Petition No. 3544 of 2004.

2. By the order under review, this Court has directed the respondents therein to award compensation to the writ petitioners as reflected in the report of the Divisional Soil Conservation Officer drawn on September 11, 1989. It was directed that the compensation be paid within six months with 12% interest per annum.

3. The review is sought by the Executive Engineer, Minor Irrigation Division, Zilla Parishad, Parbhani, who was respondent No. 3 to the said petition. Amongst other grounds for review are in earlier round of litigation i. e. Writ Petition No. 1774 of 1997 - Narhari Munjaji and others Vs. State of Maharashtra and others, the Division Bench of this Court has taken note of the damage suffered by the writ petitioners to their lands because of the poor quality of work executed by the department of Water Resources, which has resulted into collapsing of Suppa No. 2 percolation tank thereby causing damage to the agricultural lands of the writ petitioners. The Division Bench was of the view that the report of Divisional Soil Conservation Officer dated September 11, 1989 can not be the only document to be relied for the purpose of awarding damages. According to the learned counsel for the applicant, the Collector was directed to consider the applications of the farmers whose names are reflected in the aforesaid report of the Divisional Soil Conservation Officer and after assessing damage, was required to pass an order. According to him, once the Division Bench has discarded the report of the Soil Conservation Officer, which is drawn on September 11, 1989, this Court is in error accepting and relying on very same report for awarding compensation.

4. The next contention of Mr. Sawant, learned counsel is, report of the Executive Engineer and the District Superintendent Agriculture Officer was formed to be basis by the Collector for passing an order awarding compensation. According to him the said material is germane to the cause, which this Court has

failed to consider while passing the order under review. According to him the nature of damage suffered by the farmers was only to the extent of their land and not to the standing crop or water wells located within their lands. In such an eventuality the Collector was justified in awarding damages based on the report of the Executive Engineer and the District Superintendent Agricultural Officer.

5. According to Mr. Sawant as per Section 41 of the Bombay Irrigation Act, 1879, (for the sake of brevity hereinafter referred as to the “Act of 1879”) the interest to be awarded is at 6% per annum, whereas this Court is in error in awarding interest at the rate of 12% per annum.

6. Mr. Adkine, learned counsel for the writ petitioner/non applicant to the review application would support the order impugned. According to him award of interest can be reduced from 12% per annum to 6% per annum as has been provided U/Sec. 41 of the Act of 1879. However, he would urge that the issues which are sought to be canvased were never brought to the notice of this Court when the order under review was passed.

7. Mr. Sangle, learned Assistant Government Pleader for respondent Nos. 1 and 2 would support the arguments canvased by the review applicant Mr. Sawant. Mr. Sangle, learned A. G. P. would urge that for discarding report of the District Superintendent Agricultural Officer and the Executive Engineer from the Irrigation Department, this Court has not recorded any

reasons and as such the claim for review must be allowed.

8. I have appreciated the aforesaid submissions.

9. The fact remains that order delivered by the Division Bench of this Court in Writ Petition No. 1774 of 1997 was not brought to the notice of this Court, whereby the Division Bench has refused to grant compensation based on the solitary piece of evidence viz report of the Divisional Soil Conservation Officer, Maharashtra State, Parbhani as same was not produced on record by either of the parties. However, the Court was of the view that the farmers whose names are reflected in the aforesaid report can make applications with the Collector with entire details and the Collector after considering rival claims and after assessing the damages was to pass an order of awarding compensation under Section 39(1) of the Act of 1879. It appears that bursting of the percolation tank namely Suppa No. 02 was because of inferior quality of work in the execution of the same by the irrigation department. Same can be inferred from the order of the Collector awarding compensation on 17th August, 1998 by which officials of the irrigation department informed to have been already proceeded with departmental enquiry.

10. As far as the claim put forth by the applicant in support of the review application is concerned, Section 31 of the Act of 1879 is required to be taken into consideration. The compensation payable because of the damages suffered has to be capable of being ascertained and estimated at the time of awarding such

compensation.

11. Based on aforesaid, it appears that the Collector had called for report from the Executive Engineer and the District Superintendent Agricultural Officer which is of 06th August, 1998 i. e. almost ten years subsequent to the incident of 24th July, 1989. The report of the Divisional Soil Conservation Officer was of September 11, 1989 i. e. immediately after the incident of bursting of the percolation tank and damage being suffered by the writ petitioners. As such the evidence immediate in point of time after the incident of damage being caused to the lands of the petitioner available for the purpose of assessing the damage suffered was the report of the Divisional Soil Conservation Officer. It which was never demonstrated before this Court as to why report of the Divisional Soil Conservation Officer was discarded by the Collector and the report of District Superintendent Agriculture Officer and the Executive Engineer was accepted. Rather the Collector was of the view that the report of the Divisional Soil Conservation Officer is more appropriate to assess the damages suffered. Apart from the above, the provisions of Section 31 of the Irrigation Act was not brought to the notice of the Division Bench while passing the order in earlier round.

12. In view of above, no error could be noticed in the order under review particularly when the same is based on the report of an expert officer namely Divisional Soil Conservation Officer. It is not that only report of Divisional Soil Conservation Officer is

taken into account, but other material i. e. application, nature of damage suffered to the extent of 36.15 Hectors of land and the cost to be incurred for the repairs of the said land to the extent of Rs. 31.15 Lacs was taken into consideration.

13. In this background, it is to be held that this Court was justified in awarding compensation based on the report of the Divisional Soil Conservation Officer dated September 11, 1989.

14. As far as grant of interest is concerned, Mr. Sawant, learned counsel appearing for the applicant is justified in seeking reduction in the amount of interest from 12% per annum to 6% per annum. However, said amount of interest has to be paid within a period of three months as has been provided under Section 41 of the Act of 1879 from the date of such claim made. As such in the case in hand, I deem it appropriate to award compensation to be due and payable by 15th November, 1989 as the writ petitioners appear to have taken out applications to the Collector on 16th August, 1989 and U/Sec. 41 of the Act of 1879 the amount has to be paid within a period of three (03) months from the date of application.

15. The review application as such stands dismissed only by modification as to the extent of rate of interest.

[NITIN W. SAMBRE , J.]