

*Iresh***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 1910 OF 2022**

1. Roshanbi Aziz Motiwala through
power of attorney holder
Mr. Iliyas Aziz Motiwala
Age – 47, Occu. Business
R/o-131, Siddheshwar Peth
Opp. Civil Court, Solapur-413 003
 2. Mr. A. Gaffar Haji Papamiya Shaikh
Age-68 years, Occ. Business
R/o-Shop No. 2, Lokhandwala Complex,
Hyderabad Road, Solapur-413 006
 3. Mr. Shaukatali Kashimsab Haptewale
Age-49 years, Occ. Business
R/o. Shop No. 1, Lokhandwala Complex,
Hyderabad Road, Solapur-413 006
 4. Mr. Abdul Razzak Idris Siddhiqi
Age-51 years, Occ. Business
R/o. Shop No. 13, Lokhandwala
Complex,
Hyderabad Road, Solapur-413 006
 5. Mr. Haji Masoomali Shaikh
Age-62 years, Occ. Business
R/o. Shop No. 12, Lokhandwala
Complex,
Hyderabad Road, Solapur-413 006
 6. Mr. Gafur Maktumsab Shaikh
Age-57 years, Occ. Business
R/o. 130, Railway Line, Solapur-413 001
 7. Mr. Mahemood Ali Pajanigarr
Age-71 years, Occ. Business
- ... Petitioners

R/o. Shop No. 3, Lokhandwala Complex,
Hyderbad Road, Solapur-413 006

vs.

1. The Competent Authority and Deputy
Collector, Land Acquisition Officer No. 11
(CALA)
Krushna Khore, Solapur, New
Administrative Building, 2nd Floor,
Collector Office Compound,
Solapur-413 001
2. The Collector of Solapur,
Solapur-413 001.
- 3 The Project Director,
The National Highway Authority of India
Solapur Plot No. E-2, Jai Jalaram Nagar ... Respondents
Behind Shivdare College
Jule Sholapur-413 004

**WITH
WRIT PETITION NO. 1911 OF 2022**

1. Mr Nagnath Raynarasu Porandla
Partner of M/s. Narmada Developers
Age – 63 years, Occ. Business
R/o. Narmada Complex, Shelagi
Hyderabad Road, Solapur-413 006 ... Petitioner

vs.

1. The Competent Authority and Deputy
Collector, Land Acquisition Officer No. 11
(CALA)
Krushna Khore, Solapur, New
Administrative Building, 2nd Floor,
Collector Office Compound,
Solapur-413 001
2. The Collector of Solapur,

Solapur-413 001.

- 3 The Project Director,
 The National Highway Authority of India
 Solapur Plot No. E-2, Jai Jalaram Nagar ... Respondents
 Behind Shivdare College
 Jule Sholapur-413 004

Dr. Ramdas P. Sabban a/w Mr. Praveen Sabban, Mr. Shrikant Kompelli and Ms. Arundhati Sabban for Petitioners in both Petitions.
Mr. V. S. Gokhale 'B' Panel counsel for Respondent Nos. 1 and 2 in both Petitions.

Mr. Rakesh Singh a/w Ms. Heena Shaikh i/b M. V. Kini and Co. for Respondent No. 3-NHAI in both Petitions.

**CORAM : R. D. DHANUKA AND
GAURI GODSE, JJ.**

RESERVED ON : 08 MARCH, 2023

PRONOUNCED ON : 06 APRIL, 2023

JUDGMENT: (PER: GAURI GODSE, J.)

1. Rule. Mr. Gokhale waives service on behalf of Respondent Nos. 1 and 2, and Mr. Singh waives service on behalf of Respondent No. 3. Rule is made returnable forthwith. By consent of the parties, Petitions are taken up for final disposal. Since the issue involved in both Petitions is the same, both Petitions are disposed of by a common Judgment.

2. Both Petitions are filed under Article 226 of the Constitution of

India, seeking directions for quashing and setting aside the order dated 20th January 2020 passed by Respondent No. 1-Competent Authority under the National Highways Act, 1956 ("said Act of 1956"). Petitioners have further prayed for 15% per annum equitable interest from the date of the Award passed under Section 3(G) of the said Act of 1956 till the date of payment. In the alternative, the Petitioners prayed for grant of statutory interest from the date of possession till the date of actual payment.

3. It is contended by the Petitioners in Writ Petition No. 1910 of 2022 that on 15th July 2017, by a supplementary award/order passed under Section 3(G) of the said Act of 1956, compensation for an amount of Rs. 1,08,92,995/- was awarded with respect to the building/structures of the Petitioners, on the acquired land. Petitioner in Writ Petition No. 1911 of 2022, contended that on 21st April 2015, by an award/order passed under Section 3(G) of the said Act of 1956, compensation for Rs 1,01,88,000/- was awarded for Petitioner's land. It is the grievance of the Petitioners in both the Petitions that though the compensation amount was paid to the Petitioners, they had not been paid interest on the amount determined by the Competent Authority under the Award from the date of declaration of Award till the date of payment of the amount of compensation.

4. The Petitioners in Writ Petition No. 1910 of 2022 had filed Writ Petition No. 6871 of 2018, and Petitioner in Writ Petition No. 1911 of 2022 had filed Writ Petition No. 6894 of 2018. The said Petitions were decided along with other connected Petitions on 14th January 2019. This Court had granted liberty to the Petitioners to file appropriate Application to the Competent Authority for the interest claim. Accordingly, Petitioners in both the Petitions had filed their respective Applications for claiming interest. The said claim for grant of interest is rejected by the Competent Authority by an order dated 20th January 2020. Hence, the Petitioners have filed present Writ Petitions.

5. Learned counsel appearing for the Petitioners submitted that the Petitioners are entitled to interest on the amount awarded under the Award from the date of Award till the date of payment. The Petitioners have also made an alternative prayer for the grant of statutory interest from the date of possession till the date of actual payment. It is further contended that the Competent Authority was under obligation to immediately disburse the amount after passing the Award. In support of the submissions made for grant of interest, the learned Advocate for the Petitioners has relied upon the following decisions:

(i) *Shivkumar Shamrao Atulkar Vs. Union of India thr. the Secretary Ministry of Shipping and Ors.*¹

(ii) *Kisan (Krishnaji) Aba Kamble since deceased through Legal heir and others Vs. The State of Maharashtra through Secretary and another.*²

(iii) *Shri. Uday S. Vaidya and another Vs. State of Goa and another.*³

(iv) *Major General Kapil Mehra and others Vs. Union of India and another.*⁴

(v) *State of Maharashtra Vs. Kailash Shiva Rangari.*⁵

(vi) *Vasant Balkrishna Wale Vs. Vithal Mahadeo Deshmukh & Ors.*⁶

(vii) *Union of India Vs. Tarsem Singh and others.*⁷

(viii) *Delhi Development Authority Vs. Sukhbir*

1 **Writ Petition No. 996 of 2017**, decided on **23/02/2018**, Bombay High Court, Nagpur Bench

2 **Writ Petition No. 624 of 2022**, decided on **04/03/2022**. Bombay High Court

3 **Supreme Today 2003 0 Supreme (Bom) 657**

4 **(2015) 2 Supreme Court Cases 262**

5 **2016 (4) Bom. C.R. 1**

6 **2006 (1) Bom. C.R. 669**

7 **(2019) 9 Supreme Court Cases 304**

*Singh and others.*⁸

6. Learned counsel appearing for the Petitioners by relying upon the aforesaid decisions submitted that the Petitioners are entitled to interest as claimed by them. He further submitted that the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order under section 105 (3) dated 28th August 2015, which came into force from 1st September 2015, provided that the provisions of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (“the said Act of 2013”) relating to the determination of the compensation in accordance with the First Schedule, Rehabilitation and Resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to the enactments relating to land acquisition specified in the Fourth Schedule with effect from 1st January 2015.

7. Learned counsel for the Petitioners submitted that the ratio laid down by this Court and the Hon’ble Supreme Court in the aforesaid decisions squarely applies to the facts of the present case. Hence, the Petitioners are entitled to grant of interest on the

8 AIR 2016 Supreme Court 4275

amount awarded under the Award under Section 3(G) of the said Act of 1956 from the date of the Award till the actual payment.

8. In Writ Petition No. 1910 of 2022, an affidavit-in-reply was filed on behalf of Respondent No. 3-National Highways Authority of India ("NHA"). It is contended that the Award in question is dated 15th July 2017, and the notice to collect the Award amount was issued to the respective owners on 28th September 2017. Subsequently, Petitioners claimed the compensation amount in February/March 2018, and the payment was released in February/March 2018. Thus, it was contended that since the payments were released immediately, Petitioners are not entitled to grant of any interest as prayed. There is an affidavit-in-reply filed on behalf of Respondent Nos. 1 and 2-Competent Authority.

9. It is contended on behalf of Respondent Nos. 1 and 2 that after the passing of the Award, the valuation of the structures on the land was unavailable. Therefore, the Award with respect to the structures on the acquired land was not passed. After receipt of the valuation report, Respondent No. 1 passed the supplementary Award on 15th July 2017 with respect to the building structures on the land under acquisition. After passing the supplementary Award, dated 15th July 2017, Respondent No. 1, by letter dated 17th July

2017, informed Respondent No. 3-acquiring body, regarding the Award and the compensation amount to be deposited in the ledger account. Copy of said letter dated 17th July 2017 and letter dated 27th September 2017 issued by NHAI intimating deposit of the amount are annexed to the affidavit-in-reply filed on behalf of Respondent Nos. 1 and 2.

10. It is further contended that thereafter, Respondent No. 1 issued notice to the respective persons on 28th September 2017, and the Petitioners also received the notice on the same day. It is further contended that the Petitioners had received the compensation amount and 100% solatium regarding the building structures on the acquired land. Hence, Respondents are not liable to pay interest from 15th July 2017 to March 2018 as claimed by the Petitioners.

11. In Writ Petition No. 1911 of 2022, an Affidavit in Reply was filed on behalf of Respondent Nos. 1 and 2. It is contended that after passing an Award on 21st April 2015, notice under Section 3(G)(1) (2), 3(H)(2)(3), and 3(E)(1)(2) of the said Act, 1956 was issued to the Petitioner on 10th August 2015 calling upon him to receive the compensation amount and the Petitioner received the same. It is further contended that on 23rd March 2018, the Petitioner received the compensation amount.

12. It is further contended that by letter dated 21st April 2015, the Competent Authority had informed Respondent No.3-Acquiring Body, regarding the Award and the compensation amount to be deposited in the ledger account and that the same was deposited on the same day. Hence, it is the submission on behalf of Respondent No.1 that the Petitioner is not entitled to claim any interest amount as prayed. Respondent No.3, Acquiring Body, has not filed any affidavit in reply to Writ Petition No. 1910 of 2022.

13. Thus, a short issue involved in these Petitions is about the entitlement of the Petitioners to receive interest on the compensation awarded under the Award from the date of the Award until the actual payment. The date of the Award and the date of the actual payment is not disputed. Learned counsel appearing for the Petitioners has invited our attention to the calculation of interest given in the table submitted on behalf of the Petitioners.

14. We have considered the submissions made on behalf of the parties. The Hon'ble Supreme Court, in the case of *Tarsem Singh*, has held that in view of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015 it is clear that the Central Government has considered it necessary to extend the benefit

available to land owners under the Act of 2013 to the similarly placed land owners whose lands are acquired under the said Act of 1956 being one of the enactments specified in the Fourth Schedule of the said Act of 2013.

15. The Hon'ble Supreme Court, in the said decision of *Tarsem Singh*, has further held that it is clear that even the Government is of the view that it is not possible to discriminate between land owners covered by the said Act of 2013 and land owners covered by the said Act of 1956 when it comes to compensation to be paid for lands secured under either of the enactment. The Hon'ble Supreme Court has, by the said decision, declared that the provisions under the Land Acquisitions Act relating to Solatium and interest contained in Section 23(1-A) and (2) and interest payable in terms of Section 28 proviso will apply to an acquisition made under the said Act of 1956 and consequently declared the proviso of Section 3-J of the said Act of 1956 violative of Article 14 of the Constitution of India to that extent being unconstitutional.

16. So far as the contention of the learned counsel for the Petitioners regarding applicability of the said Act of 2013 to the acquisitions made under the said Act of 1956 is concerned, by the Right to Fair Compensation and Transparency in Land Acquisition,

Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015, the provisions of the said Act of 2013, relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule are made applicable to all cases of land acquisition under the said Act of 1965. Thus, the provisions regarding interest under sections 37, 72 and 80 of the said Act of 2013 are not made applicable to the said Act of 1956.

17. The said Act of 1956 does not lay down a statutory outer limit for the deposit of the compensation amount. However, it must be done within a reasonable time as vesting takes place on a declaration being made under Section 3-D(1) of the said Act of 1956. The unreasonable delay in deposit/payment of the compensation amount to the person interested will attract the vice of arbitrariness which is hit by Article 14 of the Constitution. It cannot be countenanced that a person is deprived of his/her land by compulsory acquisition but does not get compensation though it is already determined. Therefore, in public law remedy under Article 226, Writ Court can always direct the authority to compensate the landowner for the delay by directing payment of a reasonable interest on compensation. In the same situation, a person whose

land is compulsorily acquired either under the said Acts of 1894 or 2013, will get interest at the rate of 9% for one year from the date of dispossession and for the further period, at 15%. Therefore, in the facts of the present case, the petitioner must get at least 9% interest.

18. Learned counsel for the Petitioners has relied upon the decision of this Court in the case of *Shivkumar Shamrao Atulkar*. In the said case, this Court dealt with the provisions of the said Act of 1956. In the said decision, this Court, by relying upon the National Highways (Manner of Depositing the amount by the Central Government with the Competent Authority for Acquisition of land) Rules, 1998, ("said Rules of 1998") held as under:-

"On hearing the learned counsel for the parties and on a perusal of Rule 2 of the Rules of 1998, it appears that a duty is enjoined upon the Central Government to deposit the amount payable to land holder towards compensation with the competent authority. The competent authority, in turn, is enjoined with the duty to deposit the amount received by it from the Central Government or the acquiring body in a separate Public Deposit Account. For any reason like the reason in this case, if the amount cannot be paid to a land holder immediately on the deposit of the same by the Central Government or the acquiring body, the

claimant would be entitled to receive interest on the delayed payment of compensation. In this case, we cannot blame any of the Respondents in the delay in payment of the compensation to the petitioner as there was a dispute in regard to the title to the property between the petitioner and three others. After the dispute was resolved, the petitioner received compensation on 30th January, 2015. The petitioner ought to have received the compensation by November 2012 if there was no dispute about the title to the land.

In this background, considering the fact that the competent authority is required to deposit the amount of compensation in a separate Public Deposit Account, it would be necessary for the respondents to pay interest to the petitioner at least at the rate of interest that is fetched on the fixed deposit accounts in the nationalized bank. According to the petitioner, the interest rate payable by the nationalized banks on the fixed deposits, at the relevant time was approximately 8.75 % per annum. If that is so, in the circumstances of the case it would be necessary to direct the respondents to pay interest to the petitioner on the delayed payment of compensation of Rs 24,78,000/- at the rate of 9% per annum from 1st November, 2012 to 30th January, 2015.

Hence, for the reasons aforesaid, the writ petition is partly allowed. The respondents are directed

to pay interest at the rate of 9% per annum on the amount of compensation of Rs. 24,78,000/- for the period from 1st November, 2012 till 30th January, 2015 as early as possible and positively within three months”.

19. In case of *Shivkumar Atulkar*, this Court has held that for any reason, if the amount cannot be paid to the landholder immediately on depositing of the same by the Central Government or Acquiring Body, the claimant would be entitled to receive interest on the delayed payment of compensation. This Court, by relying upon Rule 2 of the said Rules of 1998, has held that the Claimant would be entitled to interest at the rate of 9 % per annum on the amount of compensation for the delayed payment. Rule 2 of the said Rules of 1998 prescribed the manner of depositing the money with the Competent Authority. In supersession of the said Rules of 1998, except with respect to things done or to be done before such supersession, the Central Government has made similar new Rules being the National Highways (Manner Of Depositing The Amount By Central Government; Making Requisite Funds Available To The Competent Authority For Acquisition Of Land) Rules 2019 (“said Rules of 2019”).

20. Rule 3 of the said Rules of 2019 provides for the manner in

which requisite funds available to the Competent Authority are to be deposited. The said Rules of 2019 came into force on 18th January 2019. Hence, in the present case, the Competent Authority was required to deposit the amount received from the Acquiring Body/NHAI in a separate public deposit account as per the said Rules of 1998. The Affidavit in Reply filed on behalf of Respondent Nos. 1 and 2 shows that in both the Writ Petitions, the amount was deposited in the ledger account. Thus, the view taken by this Court in the case of *Shivkumar Atulkar*, squarely applies to the facts of both Petitions.

21. In Writ Petition No. 1910 of 2022, the Affidavit in Reply filed on behalf of Respondent Nos. 1 and 2 shows that as per the supplementary award dated 15th July 2017, the amount of compensation was deposited in the ledger account as per the letter dated 27th September 2017, issued by NHAI. In Writ Petition No. 1911 of 2022, the Affidavit in Reply filed on behalf of Respondent Nos. 1 and 2 shows that as per Award dated 21st April 2015, the compensation amount was deposited in the ledger account on the same day. There is no dispute with respect to the aforesaid dates of deposit placed on record by way of Affidavit in Reply filed on behalf of Respondent Nos. 1 and 2 in both the Petitions.

22. So far as the contention on behalf of Respondent Nos. 1 and 2 regarding issuance of notice to the Petitioners calling upon to receive the compensation amount is concerned, neither a copy of such notice nor any proof of service of notice is produced on record. Hence, there is no merit in the Respondent's contention that, as notice to receive compensation was issued, the Petitioners are not entitled to claim interest on the delayed payment. There is no material produced on record in both the Petitions to show that by serving a notice within a reasonable time from the date of the award, the Petitioners were called upon to receive the compensation amount. Hence, in these two cases, there is a time gap of more than seven months in Writ Petition No. 1910 of 2022 and around three years in Writ Petition No. 1911 of 2022 in payment of compensation.

23. The submissions made by the learned counsel for the Petitioners with respect to the alternative prayer of the Petitioners with respect to the grant of statutory interest from the date of possession till the date of actual payment are not required to be dealt with in view of the prayer made by the Petitioners in the application made by them for grant of interest pursuant to liberty granted by this Court by order dated 14th January 2019 passed in Writ Petition No. 6871 of 2018 and Writ Petition No. 6894 of 2018.

Pursuant to the liberty granted by this Court, the Petitioners had filed their respective application claiming interest from the date of award till the date of actual payment. The Competent Authority by the Order impugned in both the Writ Petitions have rejected the claim of interest made by the Petitioners. Hence, the question to be decided in both the present Writ Petitions is only with respect to the Petitioners' entitlement for grant of interest from the date of award till the date of actual payment.

24. The other decisions of this Court and the Hon'ble Supreme Court relied upon by the Petitioners lays down the principles for the grant of interest on compensation awarded under the Acts of 1894 and the said Act of 1956. Hence, the same are not required to be dealt with separately.

25. We have perused the impugned order by which Respondent No. 3-Competent Authority has rejected the claim of interest made on behalf of the Petitioners. Respondent No. 3 has held that no objection was received to the compensation amount awarded. Hence, in view of Section 77 of the said Act of 2013 and Section 3(H)(4) of the Act of 1956, there was no question of depositing the amount of compensation in the Court. Hence, it is held that the Petitioners are not entitled to receive any interest on the amount of

compensation from the date of Award till the date of actual payment of compensation amount. The reasons given by the Competent Authority for rejecting the claim for interest are erroneous and liable to be set aside.

26. It is not disputed that after the original Award was passed, though the Petitioners had received compensation, they were not paid any interest. Since the Petitioners have not been granted any interest and there is a delay in the actual payment of compensation amount from the date of respective Awards in both the Petitions, the Petitioners, in our view, would be entitled to interest from the date of Award till the date of actual payment. Thus, in the facts and circumstances of both the Writ Petitions and for the reasons recorded above, it would be necessary to direct the Respondents to pay interest to the Petitioners on the delayed payment of compensation at the rate of 9 % per annum from the date of award till the date of actual payment.

27. Hence, we pass the following order:

- i) The order dated 20th January 2020 passed by Respondent No. 1 is quashed and set aside.
- ii) Respondents are directed to pay interest at

the rate of 9% per annum on the amount of compensation to the Petitioners from the date of Award till the date of actual payment.

- iii) Respondent Nos. 1 and 2 are directed to make payment of the amount of interest after necessary calculations within 4 weeks from today. Respondent No. 3 is directed to disburse the payment towards the interest amount within 4 weeks thereafter.
- iv) Writ Petition is allowed. Rule is made absolute in the above terms.
- v) There will be no order as to costs.
- vi) All parties to act on the authenticated copy of this order.

(GAURI GODSE, J.)

(R. D. DHANUKA, J.)