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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9319 OF 2023

Sameer Vinodray Mehta)
Age 50 years Occ: Business)
Resident of 23, 6th Floor,)
Sindhu Apartment, 87,)
Netaji Subhashchandra Bose)
Road, Marine Drive)
Kalbadevi, Mumbai)

.... Petitioner

Versus

1. Sub-Divisional Officer,)
Bhiwandi Sub-Division,)
Bhiwandi)
2. Collector, Thane)
Competent Authroity For)
Land Acquisition,)
Court Naka, Thane (W))
3. Public Works Department)
Bhiwandi, Dist. Thane)
4. State of Maharashtra)
Through Principal Secretary,)
Ministry of Revenue)
Having Offie at Mantralaya,)
Mumbai)

.... Respondents

WITH

WRIT PETITION NO. 9320 OF 2023

Pravin Jivraj Shah (Sumariya)
Age 45 years)
Resident Flat. 205, B Wing,)
Kailash Darshan,)

Shankar Dyeing, Narpoli,)
Bhiwandi - 421302)

.... Petitioner

Versus

1. Sub-Divisional Officer,)
Bhiwandi Sub-Division,)
Bhiwandi)

2. Collector, Thane)
Competent Authroity For)
Land Acquisition,)
Court Naka, Thane (W))

3. Public Works Department)
Bhiwandi, Dist. Thane)

4. State of Maharashtra)
Through Principal Secretary,))
Ministry of Revenue)
Having Offie at Mantralaya,)
Mumbai)

.... Respondents

Mr. N.R. Bubna, for Petitioner in both Petitions.

Mr. A.I. Patel, Addl. G.P. a/w. Ms. M.S. Bane, AGP, for Respondent /State in WP/9319/2023.

Mr. A.I. Patel, Addl. G.P. a/w. Mr. R.S. Pawar, AGP, for Respondent /State in WP/9320/2023.

**CORAM : B. P. COLABAWALLA &
M.M. SATHAYE, JJ.**

RESERVED ON : OCTOBER 31, 2023

PRONOUNCED ON : DECEMBER 13, 2023

COMMON JUDGMENT (Per M.M. SATHAYE, J.)

1. Rule. Learned AGP waives service on behalf of Respondents. Rule made returnable forthwith. Heard finally by consent of the parties.

2. Writ Petition No. 9319 of 2023 is filed *inter alia* seeking a direction to the Respondents to immediately pay full compensation to the Petitioner for acquisition of his premises being Gala Nos. 203 and 217 in Building No. BH Shree Rajlaxmi Complex, Kalher, Bhiwandi, District Thane. Writ Petition No. 9320 of 2023 is filed *inter alia* seeking a direction to the Respondents to pay full compensation to the Petitioner for acquisition of his premises being Gala No. 19, Building No. AQ-1, Rajlaxmi Complex, Village Purna, Taluka Bhiwnadi District Thane. Both the Petitioners are also seeking a direction to the Respondents to pay interest @ 18% p.a.

CASE AND SUBMISSIONS

3. The case of the Petitioners, as pointed out by their learned Counsel Mr. Bubna, is that they are owners of the aforesaid subject matter properties under registered documents, which were acquired for the Mumbai-Ahmedabad High Speed Railway Project and the same

were taken in possession and demolished without passing any Award, much less paying any compensation therefor. It is their case that other gala owners in the same building have been paid compensation under Consent Awards. The Petitioners have produced on record 2 such Consent Awards dated 10.11.2021 and 03.11.2021. It is their case that despite various requests, correspondences and reminders sent to the Respondent Authorities, they have not been paid the compensation amount. In these circumstances, the Petitioners have filed present petitions with prayers, as already set out hereinabove.

4. The learned AGP invited our attention to the affidavits-in-reply filed by the concerned Competent Authority/S.D.O., Bhiwandi Division dated 05/09/2023 in both petitions. In the affidavit-in-reply filed in WP No. 9320/2023, it is stated that by following procedure under law, an Award has been declared on 14/09/2022. Considering that the Petitioners are only owners of shops and not the owner of the land beneath, it is contended that owner of the land is entitled to receive compensation at a particular rate which is decided by a Dist. Valuation Committee headed by the Collector, based on agricultural and non-agricultural type/s of lands. Since the Petitioners are not owners of the land and are owners of the shops, they are only entitled to the amounts as decided in the concerned Award. It is further stated that the

Petitioners have failed to plead and adduce documentary evidence that they have signed Consent Agreements and therefore, the Petitioners are not entitled to claim 25% additional compensation, which is granted in consent award in respect of other gala owners. Similarly, In the affidavit-in-reply filed in WP No. 9319/2023, it is stated that by following procedure under law, Awards have been declared on 17/02/2022. It is stated that compensation has been determined based on valuation of the constructed structures and the Petitioner being the owner thereof, has been awarded compensation. Alongwith these affidavits, copies of letters issued by the competent authority to the bank/s for transferring the award amounts in the respective bank accounts of the Petitioners, are also produced in both writ petitions. The learned AGP submitted that the amounts under the said Awards are already received by the Petitioners being credited in their accounts.

5. During the course of the hearing, as per the liberty granted by this Court on 12/09/2023, it appears that a common additional affidavit has been filed by the same competent authority / S.D.O. on 4th October 2023. Perusal of this affidavit shows that a completely different stand is now taken in respect of the same subject Awards. It is stated in this affidavit, that valuation details about Purna Village (where subject

matter properties are situated) have been inadvertently mentioned in the Awards. It is further stated that it was necessary and expected to mention in the subject Awards, the valuation of the construction worked out and received from Public Works, Sub Division Bhiwandi. It is further stated that valuation details of Purna Village mentioned at the beginning of para 9 of the subject Awards are not relevant to the subject matter properties and it is a typographical error. It is further stated that the valuation rate mentioned in the subject Awards is wrongly mentioned. It is now stated that in fact, valuation of the subject matter properties is based on 'Unit wise Valuation Reports' which are produced along with this affidavit. The Unit Wise Valuation Reports now sought to be produced for justifying the rates, show that it is issued by a Government Approved Valuer.

6. Mr. Bubna, the learned Counsel for the Petitioners has brought to our attention that during the pendency of the Petitions, the Petitioner in WP No. 9319/2023 has filed additional affidavit on 7th October 2023 placing on record a copy of the covering letter dated 25/11/2021 issued by him to the Competent Authority submitting necessary documents, including consent agreement and indemnity bond. It is at page no. 142 of the paperbook. This document shows the

acknowledgment by the Competent Authority. Likewise, the Petitioner in Writ Petition No. 9320 of 2023 has also produced a copy of the covering letter dated 01/11/2021 issued by him to the Competent Authority submitting necessary documents, including consent agreement and indemnity bond. It is at page no. 30 of the paperbook. This document also shows the acknowledgment by the Competent Authority. Both the Petitioners have specifically contended in their additional affidavits that the forms of the documents (consent agreements and indemnity bonds) were submitted to the competent authority and that they have purchased the required stamp papers for printing the said forms and have signed them and have submitted in the office of Respondent No. 1. They have further specifically contended that their thumb impressions and photographs were also taken at that time. He further pointed out that the fact that the competent Authority had the Petitioners' bank account details, itself lends credence to the Petitioners' case that they had submitted necessary documents for the Consent Awards, including bank account details, which are apparently utilized by the authorities to directly deposit the amounts under the Awards.

7. Mr. Bubna argued that the forms submitted by the Petitioners are similar/same to the cases where 25% additional

compensation is already granted to others under consent awards. It is also fairly stated by him that though the Petitioners do not have the copies of the documents submitted by them, but the acknowledgments on their respective covering letters are undeniable. He further submitted that if the recitals of the Consent Awards passed in respect of other similarly situated persons are perused, then they are almost identical with the recitals of the subject Awards passed in respect of the Petitioners' properties. In short, it is argued that in essence the subject awards are consent awards only, but still 25% additional compensation is not paid to the Petitioners as was paid to other similarly placed persons.

8. He submitted that the above argument is further fortified by the fact that the subject Awards are passed without following the process envisaged for compulsory acquisition. He submitted that no notice for determination of compensation or any hearing as to the amount of compensation was held before passing the subject Awards. It is submitted that possession has been taken in the year 2021 without any compensation, however, no procedure under section 40 (urgency clause) of 2013 act is followed. It is further submitted that if the provisions of Section 25 of the 2013 Act are applied, then the Awards passed in the present matter (17/02/2022 & 14/09/2022) are *ex-facie*

passed beyond a period of one year from the Section 19 declaration dated 07/02/2021 and as such the acquisition would thus lapse.

9. Despite all this, Mr. Bubna, on instructions submitted that if the Petitioners are paid 25% additional amounts as given to other similarly placed persons, along with interest as provided in section 80 of the 2013 Act, he will not press his arguments about procedure not being followed or the proceedings lapsing by virtue of Section 25 of the 2013 Act.

REASONS AND CONCLUSIONS

10. We have carefully considered the submissions of both sides. We have also perused the documents produced on record.

11. Perusal of the subject Awards and Consent Awards (granted in favour of similarly placed persons in the same building), shows that recitals therein are not only almost identical but make reference to the same rates which are approved by the District Level Committee for acquisition through private negotiations. Although a reference is made to the provisions of the 2013 Act about methods of calculation, actual consideration either of ready-reckoner values or the sale instances of nearby lands is conspicuously missing in the subject Awards. It is true

that the heading of the subject Awards passed are “*Final Award*” as if to suggest that the procedure under the 2013 Act has been adopted. However, on a careful reading of the recitals in the subject Awards show that at the operative part when the competent authority is exercising its power, it is clearly stated that “*a consent award is being passed (...कलम २३ प्रमाणे संमती निवाडा करीत आहे)* ”. Further the column regarding hearing given to the Petitioners about their objections is stated to be Nil. This apart, there is also no actual consideration about applicable rates based on either the ready reckoner value or sale instances. In short, the method adopted by the Competent Authority while passing the subject Awards is *ex facie* not as per the usual procedure adopted and calculating the compensation seems to have been arrived at in arbitrary manner, for reasons best known to the authority.

12. It is clear from the 2 affidavits in reply that the concerned Competent Authority/S.D.O. has taken different stands at different points of time, for justifying the valuation applied in the subject matter Awards. The actions of the authority, as sought to be explained in the additional affidavits, cannot be accepted for more than one reason. It is a settled position of law that an order (or an action under the order) is to be judged on what is stated by the Authority in the Order and it cannot

be improved upon by a subsequent affidavit. This has been so held by the Hon'ble Supreme Court in the case of ***Mohinder Singh Gill Vs. Chief Election Commissioner – (1978) 1 SCC 405***. Firstly, if the Unit Valuation Report was available at the time of passing Award and it formed basis of consideration, there is no explanation at all, why the same is not referred. Secondly, if the valuation of the subject matter property was not connected or concerned with the fixed valuations as decided by the valuation committee for the consent awards, then there was no reason to mention the same in the Award. Therefore, the explanation, as sought to be given in the additional affidavit, justifying the award amounts, cannot be accepted.

13. This is apart from the fact that perusal of the acknowledgments dated 25/11/2021 (in WP/9319/2023) and dated 01/11/2021 (in WP/9320/2023) produced by the Petitioners, clearly show that both the Petitioners had submitted consent agreements as well as indemnity bonds. These acknowledgments produced by the Petitioners are not denied by the Respondents, not even, orally much less by filing affidavits in reply. What is merely submitted by the learned AGP orally, is that the authorities have not received necessary documents from the Petitioners. This, we are afraid, cannot be accepted

in the teeth of the acknowledgments produced by the Petitioners.

14. In view of the aforesaid facts and circumstances there is considerable material to suggest that the Petitioners were indeed in the process of participating in the acquisition by private negotiations for which necessary documents were executed and submitted and the subject awards are, in essence, consent awards only.

15. So far as the prayer of interest is concerned, Mr. Bubna fairly submitted that he is not claiming any interest on the award amount in Writ Petition No. 9320 of 2023 because within a reasonable time from the date of the award (14/09/2022), the petitioner therein, has been paid on 11/10/2022. He however submitted that in Writ Petition no. 9319 of 2023, he is pressing for interest on the award amount from the date of award (17/02/2022) since the same has been paid after an inordinate delay on 14/08/2023. Perusal of section 80 of the 2013 Act shows that when the amount of compensation is not paid or deposited on or before taking possession of the land, the Collector 'shall' pay the interest @9 % p.a. from the date of possession for the first year and thereafter @ 15% p.a. from second year till payment/ deposit. In the present case, though it is admitted position that possession has been taken before the award, interest is claimed only from the award

date, which is later in point of time. In that view of the matter, we do not see any difficulty in granting statutory interest.

16. For all these reasons, we find these to be fit cases to exercise our extra ordinary writ jurisdiction and accordingly we hold that the subject Awards are consent awards and the Petitioners are entitled to 25% additional compensation just as it was paid to other similarly placed persons. We therefore direct the Respondents to calculate and pay 25% additional compensation to the Petitioners in respect of subject matter properties described in para 2 above, within a period of 8 weeks from today. We further direct the Respondents to pay to the Petitioner in Writ Petition No. 9319 of 2023 interest on awarded amount @9% p.a. from 18/02/2022 till 18/02/2023 and @15% from 19/02/2023 to 14/08/2023. The said interest amount shall also be paid within a period of 8 weeks from today.

17. Rule is made absolute in the aforesaid terms and the writ petitions are also disposed of in terms thereof. No order as to costs.

18. Place these matters for reporting compliance on 14th February, 2024.

19. All concerned to act on authenticated or digitally signed copy of this order.

[M.M. SATHAYE, J.]

[B. P. COLABAWALLA, J.]