

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

WRIT PETITION NO. 4337 OF 2018

Shri. Shekhar Madhukar Joshi & Ors. .. Petitioners
Versus
Special Land Acquisition Officer
Metro Centre No. 3, New Panvel .. Respondent

Mr. S. S. Patwardhan for Petitioners
Mr. P. G. Sawant, AGP for Respondent - State

CORAM : SARANG V. KOTWAL, J

DATE : 30TH MARCH, 2023

P.C.:

1. The Petitioners have challenged the order dated 27/07/2017 passed by 2nd Joint Civil Judge, Senior Division, Alibag in Misc. Civil Application No. 15 of 2016. The impugned order was passed on the Application made by the Petitioners u/s. 152 of CPC for correction in the main award.
2. The award was passed on 29/09/2015 and in the said award the payable amount was mentioned as Rs. 78,049/-. The Petitioners had disputed the due amount and according to them the due amount is Rs.3,72,951/-. The learned Judge rejected the said Application on the ground that he did not find any mistake in the arithmetical calculations.

3. Heard Shri Patwardhan, learned counsel for the Petitioner and Shri Sawant, learned AGP for Respondent-State.

4. The Dy. Collector (Land Acquisition), Metro Centre No. 3, Panvel, District Raigad has filed Affidavit dated 13/02/2023 in the present Petition. It is mentioned in the Affidavit that the total area of the land i.e. Survey No. 52/1 was 23600 square meter. The final rate awarded by the reference Court in Land Reference No. 67/2004 was Rs.18/- per square meter and total cost of land was Rs.4,24,800/- in LAR No. 67/2004. Four notifications were published in the year 1970 and the award u/s 11 of the Land Acquisition Act, 1894 was passed on 22/02/1987. The possession of the land was taken on 23/09/1986. The 12% additional component from the date of Section 4 notification upto the date of possession the total land cost was Rs.8,37,858.30/-. The Dy. Collector has further given calculations in paragraph nos. 5 to 9, which read as under:

"(5) I say that 30% solatium on the total land cost of Rs. 4,19,647.65/- is Rs. 1,25,894.30/- which is to be added to Rs. 8,37,858.30/- and to total cost to Rs. 13,83,400.25/-

(6) I say that Ex Gratia amount of Rs. 71,548/- on survey number 52/1 was already paid to Petitioner which as to be deducted from total land cost of Rs. 13,83,400.25/-. I say that in my earlier calculation

submitted alongwith my Affidavit the ex gratia amount to be remain to be deducted.

(7) I say that there is provision of 9% interest for in the award for period of first year from the date of possession. Thus total 9% interest from 29/07/1987 to 28/07/1988 comes to is Rs. 1,18,066.63/-.

(8) I say that in the award there is provision of 15% interest from second year onwards till it realization. The period of 15% interest is calculated initially from date 29/07/1988 to 30/09/1998 i.e. 10 years, 7 months and 4 days the said amount of 15% interest is Rs. 20,84,720.76/-. The said amount is to be added to Rs.13,11,851.45/- and which total comes to Rs.35,14,683.83/-. I say that enhance compensation u/s 28A (2) alongwith interest of Rs. 12,05,241.85/- which was earlier paid to the Petitioner is to be deducted from the said amount of Rs.35,14,638.83/- which total comes to Rs.23,09,396.98/-.

(9) I say that 15% interest from 01.10.1998 to 15.02.2023 is Rs. 31,51,239.42/- is required to be added to net total of Rs.23,09,396.98/- and final which subtotal cum to Rs.54,60,636.41/-. I say that the said amount is final enhanced compensation amount of total acquired land. However, the share of the Petitioner is 40% of the total land, therefore Rs.21,84,255/- payable to the Petitioner as on 15.02.2023 including interest."

5. In view of these clear averments, it is necessary for learned Joint Civil Judge, Senior Division, Alibag to consider the calculations afresh in consonance with this Affidavit. Therefore, the following order is passed:

:: ORDER ::

(a) The order dated 27/07/2017 passed by 2nd Joint

Civil Judge, Senior Division, Alibag in Misc. Civil Application No. 15 of 2016 is set aside. The said Application is remanded back on his file.

(b) The said Application now shall be decided in consonance with the Affidavit filed by the Dy. Collector (Land Acquisition), Metro Centre No. 3, Panvel, District Raigad in the present Petition before this Court.

(c) The said exercise shall be completed within a period of six weeks from today.

(d) The parties shall appear before the learned Judge on 10/04/2023.

6. The Petition is disposed of.

(SARANG V. KOTWAL, J.)