

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

FIRST APPEAL NO. 1612 OF 2008

APPELLANT: Vidarbha Irrigation Development Corporation, through its Executive Engineer, Upper Wardha Dam Project, Division Amravati, Dist. Yavatmal.

..V E R S U S..

RESPONDENTS 1] Bhaurao s/o Shioram Dhole,
Aged 65 years, Occu: Cultivator,
R/o Morshi, Tq. Morshi, Dist. Amravati.

2] The State of Maharashtra, through
the Collector, Amravati,
Tq. & Dist. Amravati.

3] The Special Land Acquisition Officer
No. IV, Upper Wardha Project, Amravati.

Mr A.B. Patil, counsel for the appellant.

Mr Devendra Dapurkar, counsel h/f Mr D.H. Wankhede, counsel
for t he respondent No.1..

Mr M.A. Kadu, AGP for the respondent/State Nos. 2 and 3.

WITH

FIRST APPEAL NO. 1613 OF 2008

APPELLANT: Vidarbha Irrigation Development Corporation, through its Executive Engineer, Upper Wardha Project, Amravati, Dist. Amravati.

...VERSUS...

- RESPONDENTS**
- 1] Harichandra s/o Baliram Dhole,
Aged 55 years,
 - 2] Ramchandra s/o Baliramsa Dhole,
Aged 53 years.
 - 3] Ashok s/o Baliramsa Dhole,
Aged 35 years.
 - 4] Sau. Kantabai w/o Suresh Gulhane,
Aged 42 years.
 - 5] Sau. Vimal w/o Gajanan Sawalakhe,
Aged 38 years, All r/o Ravinagar Morshi,
Tq. Morshi, Dist. Amravati.
[L.Rs. of late Baliramsa Shioram Dhole]
 - 6] The State of Maharashtra, through the
Collector, Amravati, Tq. & Dist. Amravati.
 - 7] The Special Land Acquisition Officer
Upper Wardha Project, Amravati.

Mr A.B. Patil, counsel for the appellant.

Mr Devendra Dapurkar, counsel h/f Mr D.H. Wankhede, counsel
for the respondent Nos. 1 to 5.

Mr M.A. Kadu, AGP for the respondent Nos. 6 and 7.

CORAM : URMILA JOSHI-PHALKE, J. .

DATE : 27/03/2023

ORAL JUDGMENT :

1. Both the appeals are preferred by the Vidarbha Irrigation

Development Corporation (VIDC) against the judgment and award passed by the Adhoc District Judge-3, Amravati in Land Acquisition Case No. 137/2002 and Land Acquisition Case No. 138/2002, filed by the claimants- Bhaurao s/o Shioram Dhole and Harichandra Baliramsa Dhole and others decided on 25/02/2008.

2. Brief facts which are necessary for disposal of the appeals, are as under :-

Land survey No. 9/1, admeasuring 2.67 HR of village Shekapur owned by the Bhaurao Shioram Dhole and was acquired by the award dated 21/12/1984 in acquisition proceedings bearing No. 47/9/80-81. The petitioner accepted the amount under protest and surrendered the possession of the field on 21/12/1984. Subsequently, on 26/02/1986, the petitioner made an application under Section 28-A before the Special Land Acquisition Officer for compensation on the basis of the judgment passed in Land Acquisition Case No. 45/1985 dated 30/11/1985. The Special Land Acquisition Officer has refused to accept the application of the petitioner. Therefore, the petitioner approached to this Court. This Court had directed the Special Land Acquisition Officer to hear and decide the application under Section 28-A vide order dated 10/02/2000 in Writ Petition No.3820/2000. Accordingly, the Special Land Acquisition Officer decided the said application and awarded the enhanced compensation vide award dated 31/03/2000. The said award was proposed to be made on 30/03/2000 and it was communicated to the petitioner on 11/08/2000 vide notice under

Section 12(2) of the Land Acquisition Act. The petitioner did not disputed the valuation of the land as determined by the Land Acquisition Officer and only challenged the award on the ground that statutory interest was not awarded to him.

3. The other petitioners – Harichandra s/o Baliramsa Dhole and others in Land Acquisition Case No. 138/2002, were the owners of the Land Survey No. 9/1 admeasuring 4.94 H.R. of village Shekapur, Tq. Morshi. The said land was acquired in the said proceedings. Herein also, the petitioners had accepted the amount under protest and surrendered the possession of the field on 21/12/1984. The original award was declared vide award No.47/9/80-81, dated 21/12/1984. The petitioners had made an application under Section 28-A before the Special Land Acquisition Officer on 26/02/1986 for predetermination of the compensation, on the basis of a judicial decision in Land Acquisition Case No. 45/1985, dated 30/11/1985. Herein also, initially the Land Acquisition Officer had not accepted the application filed by the claimants under Section 28-A. In view of the order passed by this Court in Writ Petition No.3820/2000. The Special Land Acquisition Officer had accepted the application and awarded the enhanced compensation. However, the statutory interest was not awarded.

4. Being aggrieved and dissatisfied with the award of the Land Acquisition Officer, by which the interest part was denied to the claimants, they had preferred Land Acquisition Case Nos. 137/2002 and 138/2002, on the ground that the Land Acquisition

Officer was under obligation to grant the interest in view of Section 34 of the Land Acquisition Act. The land was kept in possession by the acquiring body. The awarded amount was paid without the interest and claimants are deprived from getting the interest which is statutory right of the claimants.

5. The respondent No.3 in Land Acquisition Case No.138/2002 at the relevant time, was the Chief Engineer, Upper Wardha Project, Amravati filed a written statement and raised the issue that the reference is not within the limitation and requested for dismissal of the petition. It is been observed in para 15 of the decision in the case of *Patel Jotiram Kalidas and other V/s Special Land Acquisition Officer*, that Section 34 specifically provides that when the amount of compensation is not paid on or before taking possession of the land, the Collector shall pay interest at the rate of 6% per annum for the date of taking over possession. The payment of interest is not dependent on any claim by the person, whose land has been acquired. There can be no controversy between the parties regarding payment of interest. When once the provision of Section 34 are attracted to pay the interest, it is obligatory for the Collector to pay the interest.

6. It is further observed by the learned Reference Court that Sections 28 and 34 while enacting the same framers of the Act intended to assure the payment of the interest to the person whose land was acquired and it was not the intention to subject the said payment to procedural hazards. Section 34 lays down that the Collector shall pay interest on the amount of compensation found

due from the date of taking possession of the land till the amount of compensation is paid to the land owner or till deposited in the Court. The legislative mandate is clear. It is a directive to the Collector to pay the interest in a given circumstances. Section 34 nowhere says that the interest amount is to be included in the award decree as prepared under Section 23(1) read with Section 26 of the Act. By observing that the statutory provision of Section 34 which is the mandatory provision, the learned Reference Court has awarded the interest on the compensation amount.

7. Being aggrieved and dissatisfied with the judgment and award passed by the learned Reference Court, present appeals are preferred by the acquiring body - VIDC on the ground that, the learned Reference Court ought to have seen that the claimant has admitted in his evidence that his counsel was present before the Special Land Acquisition Officer when the award was passed. Hence, the finding of the learned Reference Court that the reference has been filed within six weeks of the receipt of notice under Section 12 (2) is totally erroneous and liable to set aside. The appeal is filed only on the ground of limitation by the appellant.

8. Undisputedly, the land survey no. 9/1 admeasuring 2.67 H.R. of village Shekhapur owned by Bhaurao s/o Shioram Dhole and land survey No. 9/1 admeasuring 4.94 H.R. of village Shekhapur owned by the Harichandra Baliram Dhole and others, were acquired by the Government by the Land Acquisition Case No. 47/9/80-81 vide award dated 21/12/1984. There is no dispute that the petitioners had not filed any application under Section 18

for a grant of compensation. However, some of the land owners, whose lands were acquired by the same notification filed the Reference. One of the reference bearing No. 45/1985 was decided by the learned Reference Court dated 30/11/1985. On the basis of the judgment passed in Reference No.45/1985, the present petitioners have filed the application under Section 28-A on the ground of parity. It is also not in dispute that initially the said applications were not accepted by the Special Land Acquisition Officer. Therefore, the present petitioners have filed writ petition bearing No. 3820/2000 which was decided on 10/02/2000. This Court has directed the Special Land Acquisition Officer to consider the applications filed by the petitioners. Accordingly, the Special Land Acquisition Officer decided on the said application and awarded the enhanced compensation in view of the judgment passed by the learned Reference Court in Reference No. 45/1985. While awarding the compensation on the basis of the above said judgment, the Special Land Acquisition Officer has not awarded the interest. Therefore, the petitioners are constrained to file the above reference for grant of interest. The Land Acquisition Cases were objected only on the ground that the reference is not filed within limitation. There is no dispute that the right of interest under Section 34 is the statutory right of the claimants.

9. Mr Devendra Dapurkar, learned counsel holding for Mr D.H. Wankhede, learned counsel for the respondent No.1 submitted that claimants are deprived from getting the interest which is their statutory right therefore, the question of limitation

does not arise. In support of his contention, he placed reliance on *Shree Vijay Cotton And Oil Mills Ltd. — Vs. State of Gujarat*¹, wherein it is held that it is not necessary for the appellant/claimant to have file separate appeals/cross-objection before the High Court for the purposes of claiming an interest under Section 28 or Section 34 of the Act. He could claim the interest in the said appeal. The fact that he filed the cross-objection, which were dismissed as the time barred is wholly relevant. In para-17 of the said judgment. The Hon'ble Apex Court held that "we do not, therefore, agree with the reasoning and the findings reached by the High Court. We are of the opinion that it was not necessary for the appellant-claimant to have file separate appeals/cross-objections before the High Court for the purposes of claiming an interest under Section 34 of the Act. He could claim the interest in the State-appeal. The fact, that he filed his cross-objections which were dismissed as time barred, is wholly irrelevant".

10. There is no dispute that under the Act, the claimants are entitled for the compensation at the rate of the market value of the land on the date of notification u/s 4 of the Act. Section 23(1) of the Act enumerates the matters which are to be taken into consideration in determining the compensation. On a reference u/s 18 of the Act, the parties go to trial before the Court primarily on the issue of determination of the market value of the land. So far as the award of interest is concerned, it is never an issue between the parties. Once the conditions u/s 28 or Section 34 of the Act are satisfied, the award of interest is consequential and automatic.

1 (1991) 1 SCC 262

11. In view of the legal provisions, the reference Court has awarded the interest to the claimants. As observed by the Hon'ble Apex Court, that the issue of limitation is irrelevant, the same is applicable in the present case also. While reiterating the statutory provisions, the Hon'ble Apex Court held that there is inherent evidence in the working of Sections 28 and 34 of the Act to show that the framers of the Act intended to assure the payment of interest to the person whose land was acquired and it was not the intention to subject the said payment to procedural hazards. Section 34 lays down that "the Collector shall pay the amount awarded with interest at 6% per annum...." The legislative mandate is clear. It is a directive to the Collector to pay the interest in a given circumstance. Section 34 nowhere says that the interest amount is to be included in the award decree as prepared u/s 23(1) read with Section 26 of the Act. Similarly, Section 28 provides "the award of the Court may direct that the Collector shall pay interest." Here also the award u/s 23(1) read with Section 26 has been kept distinct from the payment of interest under the section. The interest to be paid u/s 34 and also u/s 28 is of a different character than the compensation amount u/s 23(1) of the Act. Whereas the interest, if payable under the Act can be claimed at any stage of the proceedings under the Act, the amount of compensation u/s 23(1) which is an Award-Decree u/s 26, is subject to the rules of Procedure and Limitation. The rules of procedure are handmaiden of justice. The procedural hassle cannot come in the way of substantive rights of citizens under the Act.

12. In view of the above observations of the Hon'ble Apex

Court, the contention of the appellant that the reference is not within limitation is not sustainable. Hence, I proceed to pass following order:

- a) Both the appeals are devoid of merits and liable to be **dismissed**.
- b) The claimants are entitled to receive the interest, in view of the judgment of the learned Reference Court.
- c) The appeals are dismissed in the above said terms with no order as to costs.
- d) The claimants are at liberty to withdraw the amount of compensation along with the accrued interest on due identification and verification.

JUDGE

RKN