

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

WRIT PETITION NO.6959 OF 2022

Vidarbha Irrigation Development Corporation, Washim .Vs. Namdeo S/o Goma
Gawai and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Ms. M.V. Babhulkar, Adv. h/f Mr. M.A. Kadu, Advocate for the petitioner.
Mr. Sureshchandra Mehadia, Advocate for the respondent No.1.
Mr. H.D. Dubey, A.G.P. for the respondent No.2./State.

CORAM : ANIL S. KILOR, J.

DATED : 25/04/2023

1. Heard Ms. Babhulkar, learned counsel h/f Mr. M.A. Kadu, learned counsel for the petitioners, Mr. Mehadia, learned counsel for the respondent No.1 and Mr. H.D. Dubey, learned Assistant Government Pleader for the respondent / State.

2. This petition challenges the order passed below Exh.9 by the executing Court, allowing the application for issuance of warrant under Order XXI Rule 43 of the Code of Civil Procedure (CPC), against the present petitioner, who is the original judgment debtor.

3. Ms. Babulkar, learned counsel h/f Mr. Kadu, learned counsel for the petitioner submits, that the amounts due and payable has not been correctly calculated and

therefore, the issuance of warrant on this ground itself is infirm.

4. She contends that,

(a) 12% additional component has to be calculated from the date of notification under Section 4 of the Land Acquisition Act, which according to her is dated 20/12/1994,

(b) 9% interest on the awarded amount, has to be calculated from the date of the Award which is 20/5/1996,

(c) the interest on 30% solatium has to be calculated from the date of the judgment of the Hon'ble Apex Court in *Sunder Vs. Union of India 2003 (Supp.) Bom.C.R. (SC) 296* and

(d) the 15% interest on enhanced amount has to be calculated after one year from the date of the Award.

5. It is therefore submitted that all these factors have not been taken into consideration while calculating the balance amount claimed to be due and payable by the petitioners, which has resulted in an incorrect warrant being issued.

6. Mr. Mehadia, learned counsel for the respondent No.1 submits, that the calculations as are placed on record at Annexure B are in accordance with law.

7. Since there is a dispute as to the correctness of the amount, which has not been considered while issuing the warrant, in my considered opinion, it would be appropriate if the learned executing Court shall while determining the quantum of amount for which the warrant of attachment is to be issued, take into consideration the respective calculations placed on record by both the parties and then arrive at a correct figure and then issue an appropriate warrant thereafter.

8. In the circumstances, the impugned order is hereby quashed and set aside and the matter is remitted back to the learned executing Court for calculating the balance amount due and payable under the Award, by taking into consideration the above factors as well as the calculations placed on record by both the parties. The copy of the Award shall be placed on record by the petitioner before the executing Court so that the relevant dates can be ascertained therefrom.

JUDGE