

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.642 OF 2021

Mr. Revansidha Soma Laman @ Rathod
Since deceased through legal heirs
Mrs. Premabai Revansidha Rathod & Ors. ..Appellants
Versus
The State of Maharashtra & Ors. ..Respondents

Dr. Ramdas Sabban a/w Shrikant Kompelli & Arundhati Sabban, for
the Appellants.
Mr. A. R. Patil, AGP for the Respondent/State.
Mr. Vilas B. Tapkir, for the Respondents.

CORAM : KISHORE C. SANT, J.

DATE : 11th MARCH, 2024

PC.

1. Heard the parties.
2. Learned advocate for the Appellants pointed out that the Respondent/acquiring body has accepted rate of Rs.2,65,130/- per hectare as decided by this Court in consent terms in First Appeal No.582 of 2013 and another First Appeal No.1175 of 2019. The Corporation has also agreed the said rate subject to condition that the Appellants shall not claim interest for a period from 11.12.2014 on-wards till 2021 as for that period though delay condonation application was filed, the same was deliberately not moved.
3. Learned advocate for the Appellants relies on the judgment in the case of *Major General Kapil Mehra & Ors. Vs. Union*

of India & Anr. reported in **2015 (2) SCC 262**. Paragraphs 43 to 49 of the judgment are reproduced herein-below for the purpose of convenience :-

“42. Contention of the appellants is that on the enhanced compensation, the mandatory interest under Section 34 of the Act has not been awarded to them. Placing reliance upon CIT vs. Ghanshyam (HUF), it is contended that the impugned judgment is silent on granting statutory interest under Section 34 of the Land Acquisition Act and the appellants pray for award of interest on the enhanced compensation. The appellants filed C.M. No.735/2011 before the High Court seeking review for payment of interest which according to the appellants was omitted to be included and the said application was dismissed by the High Court.

43. Land Acquisition Act, 1894, provides for payment of interest to the claimants either under Section 34 or under [Section 28](#) of the Act. [Section 34](#) of the Act fastens liability on the Collector to pay interest on the amount of compensation to be worked out in accordance with provisions of [Section 23\(1\)](#) and the sub-section thereof, at the rate of 9% per annum from the date of taking possession until the amount is paid or deposited. As per proviso to [Section 34](#), if the compensation amount or any part thereof is not paid or deposited within a period of one year from the date of taking over possession, interest shall be payable at the rate of 15% per annum from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.

44. [Section 28](#) empowers the courts, if it was enhancing the compensation awarded by the Collector, to award interest on the sum in excess of what the Collector had awarded as compensation. Both in terms of [Section 34](#) and [Section 28](#), interest at 9% per annum is payable for the first year of taking possession and 15% per annum thereafter, if the amount of compensation was not paid or deposited within a period of one year or deposited thereafter.

45. Award of interest under [Section 34](#) is mandatory in as much the word used in the Section is ‘shall’. The scheme of the Act and the express provisions thereof establish that the interest payable under [Section 34](#) is statutory. The claim for interest under [Section 28](#) of the Act proceeds on the basis that due compensation not having been

paid, the claimant should be allowed interest on the enhanced compensation amount. The award of interest under Section 28 is discretionary power vested in the Court and it has to be exercised in a judicious manner and not arbitrarily. The use of the word “may” in Section 28 does not confer any arbitrary discretion on the Court to disallow interest for no valid or proper reasons. Normally, Court awards interest if it enhances the compensation in excess of the amount awarded by the Collector, unless there are exceptional circumstances.”

4. Learned advocate thus relying on these paragraphs submits that once the rate is agreed by the parties, the interest under Section 34 of the Act has to follow as a consequence. He thus prays for direction to the Respondents to pay the amount at the rate of Rs.2,65,130/- along with interest till the date of actual payment.

5. Learned advocate for the Respondents fairly concedes that the Corporation has decided and agreed to grant compensation at the rate of Rs.2,65,130/- by producing letter dated 11.04.2023 bearing Outward No. मकसोविम/०६(६००/२०२१) काक.२/१८९३ on record. The only dispute is in respect of period of interest. Learned advocate submits that the Appeal was filed after some delay and the Applicants/Appellants will not be entitled for the said period. He submits that though the delay condonation Application and the Appeal were filed on 11.12.2014, Application for condonation of delay was not circulated for long time. Application was circulated only and delay of only 56 days was condoned only by order dated 18.09.2021. Appellants would thus not be entitled to receiver interest till 18.09.2021. Appellants should have been diligent to get the delay condoned at the earliest by getting the Application

circulated. He submits that because the Application was circulated late and for this delay, Corporation should not be made liable to pay the interest.

6. A short question that falls for consideration is thus as to whether the Appellants would be entitled to the interest only after 18.09.2021 as submitted by learned advocate for the Respondent or they would be entitled to get interest for entire period by excluding 56 days i.e. the days of delay caused in filing the Appeal.

7. For deciding the said question, this Court has considered the judgment of ***Major General Kapil Mehta (cited supra)***. In paragraph 45, the Hon'ble Apex Court has held that the award of interest under Section 34 is mandatory as the word used in Section 34 is "shall". It is further considered that the interest under Section 28 of the Act proceeds on the basis of due compensation is not paid to the claimant and therefore claimant should be allowed to interest on the enhanced compensation award. The award of interest under Section 28 is discretionary and the said discretion is vested in the Court and is to be exercised in judicious manner. In paragraph 48 of the said judgment, it is further held that the statutory interest in terms of Section 34 of the Act is payable. This Court thus finds that the amount of interest needs to be granted under Section 34. For the present, the only dispute is about whether the interest for the period for which the Application was not circulated be paid. This Court finds that while filing the Application in the Appeal, the delay

was only of 56 days. Once the Application was filed, though it could have been circulated by the Applicant, the said was not circulated. The Application was not listed in the regular course before the Court. Under such circumstances, whether the Appellant can be deprived of interest.

8. This Court finds that once the Application is filed in Court, there is time taken for listing of the Application for various reasons mainly because of pendency of the matters. The Applicant cannot be solely held responsible, if the Application is not immediately listed for orders. This Court finds that it would not be proper to deprive the Applicant of the interest amount. The acquiring body is under obligation to pay amount of interest on the enhanced amount under Section 34. The compensation is granted, as the valuable property of the claimants are acquired. The amount of interest cannot be said to be a penalty, only for the reason that the compensation is not paid in time to the claimants. In the present case, considering the above, this Court is of the view that the Appellants will be entitled to the interest on the amount of enhanced amount of compensation already decided by this Court in other two Appeals and also as accepted by the Respondent/Corporation. This Court thus finds that except for a period of 56 days, period of delay, the Appellants shall be entitled to receive the amount of interest on the amount of compensation which is enhanced at the rate of Rs.2,65,130/- minus amount already paid.

9. With this, the Appeal stands disposed of.

10. It is expected of the Respondents to pay the amount as early as possible.

[KISHORE C. SANT, J.]