



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1227 OF 2024

Ishak Kashimsab Amlichunge & Anr. ... Petitioners

Versus

The Competent Authority and Deputy Collector & Ors. ... Respondents

WITH
WRIT PETITION NO. 7297 OF 2024

Kalyanappa Madhivalappa Chanshetty ... Petitioner

Versus

The Competent Authority and Deputy Collector & Ors. ... Respondents

WITH
WRIT PETITION NO. 1229 OF 2024

Sharnappa Sidram Keshetty ... Petitioner

Versus

The Competent Authority and Deputy Collector & Ors. ... Respondents

WITH
WRIT PETITION NO. 1303 OF 2024

Ghaleppa Sidramappa Keshetty ... Petitioner

Versus

The Competent Authority and Deputy Collector & Ors. ... Respondents

WITH
WRIT PETITION (St.) NO. 27494 OF 2024

WITH
WRIT PETITION (St.) NO. 27499 OF 2024

(Not on board, taken on board)

Venkatesh alias Rajabhau Vasudeo Somshetti ... Petitioner

Versus

The State of Maharashtra & Ors. ... Respondents

**WITH
WRIT PETITION (St.) NO. 24894 OF 2024
(Not on board, taken on board)**

Shriniwas Ramayya Boddul

... Petitioner

Versus

The State of Maharashtra & Ors.

... Respondents

Dr. Ramdas Sabban a/w. Mr. Pravin Sabban, Mr. Shrikant Kompelli and Arundhati Sabban for the petitioners.

Mr. Akshay Shinde, 'B' Panel, Mr. A.I. Patel, Addl. G.P. a/w. Ms. M.S. Bane, AGP for the State.

**CORAM: G. S. KULKARNI &
 FIRDOSH P. POONIWALLA, JJ.**

Date : 11 October, 2024

PC:

1. We have heard Mr. Sabban, learned counsel for the petitioners and Mr. Patel, learned AGP for the State. Respondent no. 3 is the Project Director, National Highway Authority of India, who would be required to be heard.

2. The prayer in all these petitions as stated by the petitioners is identical, which is for payment of interest @9% p.a. on the amount of compensation already received by the petitioners at different dates as set out in the prayer. For convenience, we note the prayers in lead petition, being Writ Petition No. 1227 of 2024, which reads thus:

“a) This Hon’ble Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ, direction or order, directing the respondents to pay 9% p.a. interest on the said Sec. 3(G) compensation amount of Rs.1,82,10,349/- from the date of Sec. 3(G) compensation order/award

dated 02.12.2018 till the date of actual payment dt. 19.06.2019;

b) Pending the hearing and final disposal of the petition, this Hon'ble Court be pleased to direct the respondents to deposit in this Hon'ble High Court the said 9% p.a. interest on the said Sec. 3G compensation amount of Rs.1,82,10,349/- from the date of Sec. 3(G) Compensation Order/Award dt. 02.12.2018 till the date of actual payment dt. 19.06.2019."

3. On a plain reading of the prayers, it is clear that the prayers simplicitor are for a money claim. Admittedly, the petitioner has received the land acquisition compensation under the provisions of Section 3G of the National Highway Act, 1956 on 19 June, 2019 paid under an award which was declared on 2 December, 2018. The present Writ Petition is filed after almost four years on 15 December, 2023. It is not in dispute that due process of law was followed and the land was acquired by an award being declared under the provisions of the said Act and compensation amount is also being paid. The claim of the petitioner is purely a monetary claim, as it is petitioner's contention that interest @9% remained to be paid to the petitioner from the date of the award till the actual payment of compensation which was paid on 19 June, 2019.

4. On a query made to Mr. Sabban, it is fairly stated that the petitioner in accepting the amount of compensation paid on 19 June, 2019 did not receive it under protest and/or without prejudice to the rights and contentions to claim

interest. He is not in a position to point out that the National Highway Act, 1956 makes any provision in regard to payment of interest and even if such a provision is assumed to be provided in the said Act, he would not deny that the right to receive interest had accrued to the petitioner on 14 June, 2019 when the petitioner received the compensation. It is also not known as to what was the factual reason for the delay in accepting compensation. Whether the delay was attributable to the petitioners or the respondents, which would be determinative of the entitlement to such interest to be paid on the compensation amount received by the petitioner. This would be certainly subjective which would involve an enquiry on evidence on the facts of each case. Whether such determination can at all be undertaken in the proceedings of a Writ Petition under Article 226 of the Constitution would also be an issue. In our *prima facie* opinion, in the present circumstances as pointed out by Mr. Patel, the delayed acceptance of the award of compensation by the petitioners would be a pure issue of fact and/or in the realm of a disputed question of fact

5. Thus, the questions which would arise for determination would be as under:

“1. Whether a Writ Petition under Article 226 of the Constitution would be an appropriate remedy to award such a

monetary claim as raised by the petitioner on interest in respect of a cause of action, for which a simplicitor money suit would also not be maintainable when the same was time barred. This more particularly considering that the entitlement of the petitioner to receive compensation under the 1956 Act which specifically does not incorporate any provision for interest, had attained “accord and satisfaction”, when the petitioner received the compensation on 19 June, 2019?

(ii) Whether is it a principle of law that only for the reason that interest amount is claimed under the National Highways Act on compensation awarded for acquisition of land, the basic principles of law in regard to maintainability of the money claim on the legal parameters the same would be tested in a civil suit, can be overlooked by a Writ Court so as to entertain a Writ Petition simplicitor for a money claim, which is time barred can nonetheless be granted exercising writ jurisdiction?

(iii) Whether such money claim as in the present case will be required to be treated differently, when tested by applying the provisions of the Limitation Act as if the law of limitation

would not apply when a claim is made in a Writ Petition?

6. Although Mr. Sabban has placed reliance on some decisions, we do not find that there is express determination on these points and/or such points had fell for consideration of this Court. The petitioners would be required to be heard finally. Hence, the following order:

ORDER

(i) **Rule.** Respondents waive service.

(ii) Reply affidavit to the petitions for final hearing be placed on record.

7. Liberty to apply after the pleadings are complete.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)