

(2010) 03 BOM CK 0176

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 681 of 1994

Krishnarao Joshi Since deceased,
(through Legal Representatives
Kamlabai Joshi and Others) ,
Govind Joshi and Vishnu Joshi

APPELLANT

Vs

The State of Maharashtra, The
State of Maharashtra, The
Collector and Special Land
Acquisition Officer, Jayakwadi
Project

RESPONDENT

Date of Decision: March 8, 2010

Acts Referred:

- Constitution of India, 1950 - Article 226
- Land Acquisition Act, 1894 - Section 34, 4, 6

Hon'ble Judges: S.S. Shinde, J; A.M. Khanwilkar, J

Bench: Division Bench

Advocate: S.A. Kulkarni, for the Appellant; K.G. Patil, Assistant Government Pleade for Respondent Nos. 1 to 3, for the Respondent

Judgement

A.M. Khanwilkar, J.

Heard learned Counsel for the parties.

2. By this petition under Article 226 of the Constitution of India it is prayed that the respondent Nos.2 and 3 be directed to pay interest on Rs. 1,42,052.40 since passing of the Award on 26th June 1987 till 25th March 1993 (the correct date is 25th March 1992) when the said amount was made over to the petitioners. The petitioners are claiming interest on the said amount at the rate of 15% per annum for the said period amounting to Rs. 1,01,212.33 paise. In other words, the claim of the petitioners is founded on Section 34 of the Land Acquisition Act. Section 34 of the Land Acquisition Act obligates the acquiring authority to pay or deposit the amount

of compensation on or before taking possession of the land failing which it would be liable to pay the amount awarded with interest thereon at the specified rates.

3. In the present case the facts relevant to address the claim u/s 34 of the Act are that, Section 4 Notification in respect of the disputed land was issued on 15th April 1983. Section 6 notice was published with corrigendum to Section 4 Notification on 27th June 1985. The award was eventually passed on 26th June 1987 in relation to Gut No. 3 and Gut No. 6. Compensation awarded in respect of Gut No. 3 was Rs. 1,38,960/- out of which only amount of Rs. 52,110/- was received by the petitioners on 12th March 1986. Balance outstanding amount of Rs. 86,850/- was paid to the petitioners only on 25th March 1992. In so far as Gut No. 6 is concerned, the total compensation awarded was Rs. 88,250.40 paise out of which, the petitioners had received only sum of Rs. 33,048/- on 12th March 1986 as advance payment. The balance amount of Rs. 55,202.40 paise remained outstanding which was paid on 25th March 1992. The aggregate of the outstanding amounts concerning Gut Nos. 3 and 6 worked out to Rs. 1,42,052.40 paise which was paid only on 25th March 1992.

4. In this backdrop the petitioners made representation to the acquiring authority to pay interest for delayed payment since as per Section 34 of the Act, compensation amount had become payable soon after taking over possession of the land. However, in the present case the petitioners are claiming interest only from the date of award on the basis that the interest component for the period after taking over possession till passing of the award is already incorporated in the award passed by the acquiring authority. In other words, the claim for the interest is with effect from 26th June 1987 when the award was passed and the balance amount remained outstanding till 25th March 1992. Since the delay was more than one year in the present case proviso to Section 34 of the Act would be attracted for which reason the petitioners would be entitled for interest at the rate of 15% per annum. Neither the Special Land Acquisition Officer took steps to pay the interest component within time nor the Collector acceded to the request of the petitioners for releasing of such interest for the relevant period. As a matter of fact, the Collector rejected the claim of the petitioners on the specious reason that during the relevant period some civil dispute was pending between family members of the petitioners. This was the only reason stated in the communication dated 6th April 1993. We have no hesitation in taking a view that the said reason is preposterous in the fact situation of the present case for more than one ground. Firstly, there was no injunction operating against the petitioners to avail of the compensation amount in respect of Gut Nos. 3 and 6 for which reason the petitioners were entitled to receive compensation amount in their own right. Secondly, assuming that there was an injunction order of Court of competent jurisdiction against the petitioners or against the authority to release the amount or to pay amount to the petitioners, nothing prevented the authority to deposit the said amount in Court, which would have stopped the recurring liability of paying interest as per Section 34 of the Act. Section 34 plainly postulates that compensation has to be paid or deposited. In other words, the acquiring authority

has to either pay the amount to the claimant or for any reason or doubt payment could not be made to the claimant, the acquiring authority is obliged to deposit the amount in Court. Only on compliance of any of the above, the authority is extricated from liability to pay interest in terms of Section 34 of the Act.

5. In the present case the authority neither paid the amount directly to the petitioners after it became due and payable upon passing of the award on 25th June 1987 nor thought it appropriate to deposit the same in Court within reasonable time. Resultantly, on account of mandate of Section 34 of the Act, the petitioners would be entitled for claim of interest on the outstanding amount of Rs. 1,42,052.40 with effect from 26th June 1987 until 25th March 1992 as payable at the rate of 15% on account of proviso to Section 34 of the Act.

6. We, therefore, direct the respondent Nos. 2 and 3 to pay appropriate amount towards interest component on outstanding compensation amount of Rs. 1,42,052.42 at the rate of 15% per annum with effect from 26th June 1987 till 25th March 1992 forthwith. The amount should be initially paid by the office of the Special Land Acquisition Officer. But the same will have to be recovered from the concerned officers, who are responsible for non payment of the said amount to the petitioners without good cause much less the cause which can be justified in terms of Section 34 of the Act. The Secretary of the Irrigation Department as well as the Secretary of the General Administration Department, Government of Maharashtra, may take notice of this order and initiate appropriate action against the concerned officers namely the then Special Land Acquisition Officer and/or the then Collector at the relevant point of time, who have caused loss to the public exchequer on account of non payment of dues without any tangible cause which can be justified in terms of Section 34 of the Act. Besides the amount of interest payable to the petitioners, we further order that the petitioners would be entitled to costs of this proceeding which is quantified at Rs. 25,000/- payable to the petitioners which amount, as aforesaid, will be recovered from the erring officers on account of whose inaction the State has incurred the liability to pay the amount specified in this order. The amount shall be paid to the petitioners not later than six weeks from today.

7. Rule is made absolute on the above terms.