
(2016) 09 BOM CK 0184
In the Bombay High Court
Case No : First Appeal No. 2526 of 2016

ABA

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 22-09-2016

Acts Referred:

Land Acquisition Act, 1894 — Section 23(1-A), Section 23(2), Section 28, Section 34

Citation : (2017) 171 AIC 408 : (2017) 1 MhLJ 139

Hon'ble Judges : P.R. Bora, J.

Bench : Single Bench

Advocate : Shri C.K. Shinde, S/shri S.P. Deshmukh, S.N. Morampalle and A.M. Phule, AGP's in respective matters, for the Appellant

Final Decision : Allowed

Judgement

P.R. Bora, J.(Oral) - Heard. Admit. By consent of the learned Counsel appearing for the parties, taken up for final disposal.

2. In the present appeals, it is the grievance of the appellants that the Reference Court, though did grant interest under Sections 28 and 34 of the Land Acquisition Act, 1894 (for short, the Act) on the enhanced amount of compensation, did not grant such interest on the amount to which the appellants are held entitled under Sections 23(1A) and 23(2) of the Act.

3. Shri Shinde, learned Counsel appearing for the appellants, invited my attention to order clauses 5 and 6 in each of the LARs and submitted that the Reference Court has erred in awarding the interest only on the enhanced amount of market value by specifying the amount so determined by the Reference Court. The learned Counsel, taking me through the provisions of Sections 23, 23(1A), 23(2), 28 and 34 of the Act, submitted that the interest is liable to be granted under Sections 28 and 34 of the Act by adding into enhanced amount of compensation the amount of 12% component as well as 30% solatium.

In order to support his contention, the learned Counsel has relied upon the

judgment of Hon''ble Apex Court in the case of *Sunder v. Union of India* - 2001 SC 3516. In the aforesaid matter, the Hon''ble Apex Court has ruled that, " in calculating the interest, as mentioned in provisions under Sections 28 and 34 of the Act, amount of solatium, as envisaged under Section 23(2) of the Act, should be included."

4. The learned Counsel, therefore, prayed for grant of interest on the amount of 12% component and the 30% solatium, as provided under Section 23(1A) and 23(2) of the Act and to modify the Award accordingly.

5. Shri Phule, learned AGP appearing for the State, submitted that in view of the judgment, relied upon by the appellants in the case of *Sunder* (cited supra), the entitlement of the appellants for the interest on the entire amount of compensation including 12% component and 30% solatium on the enhanced market value, cannot be denied.

Learned AGP however, submitted that in the impugned judgment, the Reference Court has awarded interest under Section 34 of the Act from the date of possession and not from the date of the Award under Section 11 of the Act. Learned AGP further submitted that in view of the Full Bench Judgment delivered by this Court in the case of *State of Maharashtra v. Kailash Shiva Rangari* - 2016 (4) Bom CR 1, the interest under Section 34 of the Act can only be awarded from the date of the Award under Section 11 of the Act. The learned AGP, therefore, prayed that though the State has not filed any cross-objections or appeal challenging the aforesaid clause of the order, under inherent jurisdiction, this Court may correct that mistake and may pass appropriate order.

6. The Reference Court has admittedly awarded the interest under Sections 28 and 34 of the Act only on the amount of enhanced market value of the acquired lands by specifying the said amount in the concerned order clauses, i.e. clause 5 and clause 6. Though, the Reference Court has held that as per the Section 23(1A) of the Act, the claimants are entitled to get component @ 12% p.a. on the enhanced market value, and as per Section 23(2) of the Act, to get 30% solatium amount on the enhanced market value, while awarding the interest under Sections 28 and 34 of the Act, the same has been awarded only on the amount of enhanced market value and as I stated earlier, the Court has specified the said amount in the order clauses.

It is thus evident that though the Reference Court has enhanced the market value of the acquired lands and has accordingly assessed the enhanced amount of compensation and has also awarded interest thereon under sections 28 and 34 of the Act, has not granted interest on the amount payable to the appellants under Sections 23(1A) of the Act as also under Section 23(2) of the Act on the enhanced amount of compensation.

7. In the case of *Sunder v. Union of India* (cited supra), a question was referred to the five judges Bench of the Hon''ble Apex court, whether the State is liable to pay interest on the amount envisaged under Section 23(2) of the Land

Acquisition Act, 1894 ?. While deciding the aforesaid controversy, the five judges Bench of the Hon"ble Supreme Court in paras 23 and 24 of the said judgment, has held that-

"23. In deciding the question as to what amount would bear interest under Section 34 of the Act a peep into Section 31(1) of the Act would be advantageous. That subsection says: "On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next subsection." The remaining subsections in that provision only deal with the contingencies in which the Collector has to deposit the amount instead of paying it to the party concerned. It is the legal obligation of the Collector to pay "the compensation awarded by him" to the party entitled thereto. We make it clear that the compensation awarded would include not only the total sum arrived at as per subsection (1) of Section 23 but the remaining subsections thereof as well. It is thus clear from Section 34 that the expression "awarded amount" would mean the amount of compensation worked out in accordance with the provisions contained in Section 23, including all the subsections thereof.

24. The proviso to Section 34 of the Act makes the position further clear. The proviso says that "if such compensation" is not paid within one year from the date of taking possession of the land, interest shall stand escalated to 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". It is inconceivable that the solatium amount would attract only the escalated rate of interest from the expiry of one year and that there would be no interest on solatium during the preceding period. What the legislature intended was to make the aggregate amount under Section 23 of the Act to reach the hands of the person as and when the Award is passed, at any rate, as soon as he is deprived of the possession of his land. Any delay in making payment of the said sum should enable the party to have interest on the said sum until he receives the payment. Splitting of the compensation into different components for the purpose of payment of interest under Section 34 was not in the contemplation of the legislature when that Section was framed or enacted."

8. In view of the law laid down, as above, by the Hon"ble Apex Court, there remains no doubt that the appellants are entitled to get interest on the aggregate amount of compensation including the amount calculated @ 12% p.a. On the enhanced market value, as provided under Section 23(1A) of the Act and the sum of 30% of such enhanced market value, as provided under Section 23(2) of the Act. The Reference Court has thus committed an error in not awarding the interest as aforesaid. As such, the impugned Award needs to be modified to the aforesaid extent.

9. The another mistake committed by the Reference Court of granting interest under Section 34 of the Act from the date of possession also needs to be

corrected. In view of the Full bench judgment of this Court in the case of State of Maharashtra v. Kailash Shiva Rangari (cited supra), such interest can only be awarded from the date of award and not from the date of possession.

10. In the result, the following order,

ORDER

(i) The appellants are held entitled to get interest under Sections 28 and 34 of the Act on the aggregated amount, which would include the enhanced market value of the acquired lands plus the amount payable on the said amount under Sections 23(1A) of the Act plus 30% of the amount of such enhanced market value, as provided under Section 23(2) of the Act;

(ii) The impugned Award so far as it relates to grant of interest under Section 34 of the Act from the date of possession, is quashed and set aside and instead, it is ordered that such interest be awarded from the date of Award;

(iii) The impugned Awards be accordingly modified;

(iv) The appeals stand partly allowed in the aforesaid terms. Pending Civil Application, if any, stands disposed of.