



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2965 OF 2021

WITH

WRIT PETITION NO. 2966 OF 2021

Hatim Fidaali Rajkotwala and Anr. .. Petitioners

Versus

Land Acquisition Officer, The Collector
and District Magistrate, Mumbai City & Anr. .. Respondents

Mr.Mohd. Nawaz Haindaday i/b Gazala P. Shaikh,
Advocates for the Petitioners in both the matters.

Mr. L.T. Satelkar, AGP for Respondent-State in
WP/2965/2021.

Mr.Mansih Upadhyay, AGP for Respondent-State in
WP/2966/2021.

Ms. Fatema Kachwala i/b JSA, Advocate for
Respondent No. 2 in both matters.

**CORAM : B. P. COLABAWALLA &
M.M. SATHAYE, JJ.**

**RESERVED ON : AUGUST 11, 2023
PRONOUNCED ON : OCTOBER 06, 2023**

JUDGMENT: [Per M.M.Sathaye, J.]

1. Rule. The learned AGP waives service for Respondent No.1 and learned counsel for Respondent No.2 also waives service.

Rule made returnable forthwith. Taken up for final disposal by consent of the parties.

2. These two Petitions arise out of land acquisition under The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (for short "***the 2013 Act***"), between the same parties but in respect of two different properties. The contentions in both the Petitions are the same and therefore, they are being conveniently disposed of by a common Judgment.

3. The subject matter property in Writ Petition No. 2965 of 2021 is Rajkotwala Building, standing on land bearing City Survey No. 4337 of Bhuleshwar Division, at 16, Ibrahim Rehmatullah Road, J.J. Hospital, Mumbai-40003 and the subject matter property in Writ Petition No. 2966 of 2021 is Rukaiya Mansion, standing on land bearing City Survey No. 4338 of Bhuleshwar Division at 14, Ibrahim Rehmatullah Road, Bhendi Bazar, Mumbai-400003. The Petitioners are owners of 25% undivided share in the property which is the subject matter of Writ Petition No. 2965 of 2021 (***Rajkotwala Building***) and full owners of the subject matter property of Writ

Petition No. 2966 of 2021 (***Rukaiya Mansion.***

4. By these Petitions, filed under Article 226 of the Constitution of India, the Petitioners are seeking a direction to Respondent No. 1 (Land Acquisition Officer) to release the amount of compensation awarded in respect of the subject matter properties and also seeking a direction to pay interest on the awarded amount as provided under the 2013 Act. The matters are arising out of LAQ Nos. 18/2019 and 19/2019, both dated 30th December 2019.

5. At the outset, the learned Counsel for the Petitioners in both the matters, has fairly submitted that so far as prayer clause (I) is concerned in both matters [which seeks a direction to release the amount of compensation under the Award], the same does not survive because the amount of compensation under the Award is already received by the Petitioners during pendency of these Petitions. He however submitted that the second prayer regarding payment of interest on the awarded amount, is being seriously pressed.

6. Shorn of unnecessary details, following are the facts and

circumstances, from which both the Petitions arise. By the aforesaid two land acquisition Awards dated 30th December 2019, the said subject matter properties were acquired and the compensation amount was determined. It is common ground before us that panchnamas and possession receipts are drawn on 3rd February 2020 in respect of both subject matter properties. Even before the possession receipts were executed, Respondent No. 2 (The Acquiring body) has deposited the amount of the Awards with Respondent No. 1, on 6th January 2020. On the same date, when the amount was deposited by Respondent No. 2, letters were issued to the original owners / Awardees, calling upon them to submit their identity documents and bank details for payment of compensation. It appears, and is not disputed, that these letters dated 6th January 2020 were issued by Respondent No. 1 in the name of the original owners/ Awardees who were no more at the relevant time. It appears from the record that the present Petitioners, claiming to be legal heirs of the original owners, contacted Respondent No. 1 and by a common letter dated 27th January 2020, issued through their lawyer, informed Respondent No. 1 that the copies of the Awards have not been received by them and further made it amply clear that they intend to challenge the said Awards. The record further shows that

thereafter, till 19th November 2020, no communication took place from Respondent No. 1. On 19th November 2020, Respondent No. 1 issued letters, again in the name of original owners/ Awardees calling upon them to submit documents, including copies of bank pass-book, canceled cheque, Pan Card, Aadhar Card, documents of witnesses, Indemnity Bond and 'documents of heir-ship' if the person/s in whose favour Award is passed, is dead. The Petitioners, again thereafter, through their lawyer's letter dated 16th December 2020 informed Respondent No. 1 that the Petitioners are the legal heirs of the original owners. They gave details about the Documents such as the Release Deed and Letters of Administration submitted earlier, and pointed out that they will claim the amount of compensation under sec. 77 of the 2013 Act without prejudice to their rights to apply for a Reference under Section 64 of the 2013 Act.

7. Inviting our attention to Section 77 of the 2013 Act, learned Counsel for the Petitioners has contended that on making an Award, the Collector was duty bound to tender payment of compensation to the persons interested who are entitled to the Award. He further submitted that under Section 77(2), it is specifically provided that if there being any dispute as to the title to

receive the compensation or as to the apportionment of it, then the Collector was duty bound to deposit the amount of compensation with the authority to which a Reference under Section 64 of the Act lies. It is submitted on behalf of the Petitioners that if the chronology of the events is considered carefully, it can be seen that under letter dated 12/07/2019 itself, the Petitioners had produced copies of letters of administration issued by the High Court and the death certificate of deceased son of deceased Rukaiyabai. Copy of this letter dated 12/07/2019 is also produced on record. It is also clear that on 27th January 2020 itself, they clarified through their lawyer's letter that they intend to challenge the Award. It is further submitted that from the letter dated 19th November 2020 issued by the Land Acquisition Officer/ Respondent No. 2- Deputy Collector Mumbai, it is clear that the authorities were waiting for documents of heir-ship or proof of succession so far as the title of the subject matter properties are is concerned. Therefore, the matter squarely falls under Section 77 (2) of the 2013 Act. It is therefore submitted that Respondent No. 1 ought to have deposited the compensation amount with the authority to whom the reference lies. He submitted that admittedly this was not done and the amount kept lying with Respondent No. 1.

8. Inviting our attention to Section 80 of the 2013 Act, the learned counsel for the Petitioners urged that if the amount of the compensation is neither paid nor deposited on or before taking possession, then there is a mandate to pay interest @ 9% p.a. from the date of taking possession until it has been so paid or deposited and if the compensation is not paid or deposited within a period of one year from taking possession, then interest @ 15% p.a. shall be payable from the expiry of first year till the amount is either paid or deposited.

9. On the other hand, the learned AGP appearing on behalf of Respondent No. 1 has pointed out the common affidavit in reply filed by Respondent No.1, affirmed on 16th February 2023. The AGPs in both the matters submitted on behalf of Respondent No.1 that the provisions of Section 80 of the 2013 Act will not apply in the present case because there is an inordinate delay in complying with the requisitions which were raised by Respondent No.1 for the purpose of disbursing the compensation amount. It is submitted that by letter dated 6th January 2020, Respondent No. 1 had called upon the original owners to provide bank details and identity proof for the purpose of disbursement. It is contended that instead of complying

with the requirements, the Petitioners (who are not the original owners) raised petty objections about non service of the Award. It is contended that by the letter dated 19th November 2020, Respondent No.1 again called upon the Petitioners to comply with the requisitions including the heir-ship documents, to which Petitioners sought an extension of 4 weeks' time. It is contended that by letter dated 11th April 2022, Respondent No.1 once again called upon the Petitioners to submit the required documents. It is further contended that the Petitioners, vide letter dated 26th April 2022 again forwarded certain documents but the documents establishing their heir-ship were not still submitted. It is contended that ultimately vide letter dated 19th October 2022, the Petitioners complied with submission of all documents including documents of heir-ship and proof of title and thereafter compensation amount has been paid on 20th October 2022. Based on this chronology, it is urged that Respondent No. 1 cannot be saddled with any interest amount when compensation has been already paid.

10. The learned counsel for Respondent No. 2 (Acquiring Body) has pointed out that undisputedly Respondent No. 2 has deposited the original Award amounts with Respondent No. 1 on 6th

January 2020 itself, which is even prior to drawing possession receipts and therefore Respondent No. 2 cannot be held responsible under any circumstances, for payment of any interest to the Petitioners.

11. We have carefully considered the submissions. It is not disputed that after the Awards were made on 30th December 2019, Respondent No. 2 deposited the amounts under the Awards with Respondent No. 1 on 6th January 2020. The first communication was made by Respondent No. 1 vide its letters dated 6th January 2020, calling upon the original owners (who were no more) for submissions of identity documents and bank details. It is also not disputed that by immediate letters dated 27th January 2020, the Petitioners, vide their Advocate, contacted Respondent No. 1 and demanded copy of the Awards and clarified that they intend to challenge the Awards. It is clear from the letters of Respondent No. 1 dated 19th November 2020 issued in respect of both the subject matter properties, that documents of heir-ship or documents proving title to subject matters properties were called for, for the first time. Therefore, from 27th January 2020 till 19th November 2020, no demand about documents of heir-ship or documents of title was raised and as such no fault can

be found on the part of the Petitioners, who had continued their follow up.

12. It is important to note that in the letter dated 16th December 2020, written by the Petitioners' lawyer in respect of Rajkotwala Building (subject matter of Writ Petition No. 2965 of 2021), it is specifically contended that vide earlier letter dated 12th July 2019 itself, the Petitioners have submitted an Affidavit alongwith copy of the Letters of Administration. So far as the Petitioners' letter dated 16th December 2020, written through their lawyer in respect of other property i.e. Rukaiya Mansion, (subject matter of Writ Petition No. 2966 of 2021) is concerned, it is mentioned therein the Petitioners are legal heirs and descendants in title as the exclusive owners of Rukaiya Mansion through a Release Deed, which is already put on record vide letter dated 12th August 2003.

13. It is therefore clear that according to Respondent No. 1, due to lack of documents of title or heir-ship, the 1st Respondent withheld the amounts of compensation payable under the two Awards. Considering these facts, we are of the opinion that this matter is squarely covered by a situation contemplated under Section

77 (2) of the 2013 Act, which is quoted below for ready reference :

“77(2): If the person entitled to compensation shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Authority to which a reference under section 64 would be submitted.”
(Emphasis supplied)

14. It is therefore clear that Respondent No. 1 ought to have deposited the amount of compensation with the authority to which reference under Section 64 of the Act lies, immediately after the first communication dated 27th January 2020 was made by the Petitioners. In that view of the matter the subsequent communications of heir-ship, exchange of documents and compliance with the documentary requirements is of no consequence. For the same reason, the date on which, according to Respondent No. 1 all the documentary requirements were fulfilled including heir-ship documents (19th October, 2022) also loses relevance.

15. Having held that Respondent No.1 ought to have deposited the amount of compensation with the authority to which the reference lies under Section 64 of the 2013 Act, we would now

turn our attention to Section 80 which is a provision for payment of interest. For the sake of convenience, Section 80 is reproduced hereunder:-

*“80. **Payment of interest**-when the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per cent. per annum from the time of so taking possession until it shall have been so paid or deposited:*

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per cent. per annum shall be payable from the date or 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”

16. From this Section, it is clear that when the amount of compensation is not paid or deposited on or before taking possession of the land, the Collector shall have to pay the amount awarded with interest thereon @9% p.a. from the time of taking possession until it is so paid or deposited. The proviso to this Section stipulates that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest @15% p.a. shall be payable from the date or expiry of said period of one year on the amount of compensation which has not been paid or deposited before the date of such expiry. In other

words, what Section 80 stipulates is that where compensation is not paid or deposited before taking possession of the land, then, the Collector, for the first year, would have to pay interest @9% p.a., and for any period subsequent thereto @15% p.a., until the payment is made. Once this is the case, and finding that compensation was not deposited with the Reference Authority under Section 64 at any time and the compensation was paid only on 20th October, 2022, the provisions of Section 80 would squarely be attracted to the facts of the present case. It is not in dispute that possession of the subject properties in both the above Writ Petitions was taken on 3rd February, 2020, and which is the relevant date to be considered as the date of taking possession as contemplated under Section 80 of the 2013 Act. Accordingly, we are of the view that the Petitioners would be entitled to interest @9% p.a. in the first year from the date of taking possession of the subject properties and @15% p.a. from the start of the second year till its actual payment. As mentioned earlier, the actual payment was done only on 20th October, 2022.

17. The learned counsel for the Petitioners have tendered statement of interest calculations in both the matters. The same is taken on record and marked as '**X** colly' for identification, which is duly shown to the learned AGP for Respondent No. 1, who in turn has

shown it to the officer present in the Court on behalf of Respondent No. 1. The dates and arithmetic calculations therein have not been disputed.

18. In view of the foregoing discussion, both the Petitions succeed and the Petitioners are entitled to receive an amount of Rs.26,74,606/- in Writ Petition No. 2965 of 2021 and Rs. 1,35,30,884/- in Writ Petition No. 2966 of 2021.

19. Rule is made absolute in the aforesaid terms and both the Writ Petitions are disposed of in terms thereof. However, there shall be no order as to costs.

[M.M. SATHAYE, J.]

[B. P. COLABAWALLA, J.]

20. At this stage, the learned AGP sought 12 weeks' time either for making payment or to challenge the present order, as the Government may decide. Considering the overall circumstances, Respondent No. 1 is granted 8 weeks' time to pay the amount to the Petitioners in terms of this order.

21. The learned counsel for the Petitioners, on instructions, states that though possession of the subject matter properties were taken on 3rd February 2020, they continued to be in occupation of the same till 31st August, 2023 and have vacated the subject properties on 1st September, 2023. The same is duly noted.

22. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[M.M. SATHAYE, J.]

[B. P. COLABAWALLA, J.]