

ITEM NO.9

COURT NO.13

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).
31222-31223/2009

(Arising out of impugned final judgment and order dated 24/07/2008 in WP No. 2559/2008 and RA No. 17874/2008,25/09/2008 in WP No. 2559/2008 passed by the High Court of Bombay at Aurangabad)

EXE.ENG.MINOR IRRIGATION DIVISION Petitioner(s)

VERSUS

DINKAR & ORS.

Respondent(s)

(With appln.(s) for exemption from filing O.T., exemption from filing c/c of the impugned Judgment and interim relief and office report)

(For Final Disposal)

Date: 19/11/2014 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE PINAKI CHANDRA GHOSE

HON'BLE MR. JUSTICE R.K. AGRAWAL

For Petitioner(s)

Mr. Babu Marlapalle, Sr. Adv.
Mr. Sudhanshu S. Choudhari, Adv.
Apoorv Shukla, Adv.
Mr. Aditya Gaggar, Adv.
Mr. Ajit, Adv.

For Respondent(s)

Mr. Sidheshwar Biradar, Adv.
Mr. Awanish Sinha, Adv.

Ms. Asha Gopalan Nair, Adv.
Mr. Aniruddha P. Mayee, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The Appeals are disposed of in terms of the signed order.

(VISHAL ANAND)
COURT MASTER

(SNEH LATA SHARMA)
COURT MASTER

(Signed Order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.10387 AND 10388 OF 2014

(@Petition(s) for Special Leave to Appeal (C) No(s).
31222-31223/2009)

EXE.ENG.MINOR IRRIGATION DIVISION

Appellant(s)

VERSUS

DINKAR & ORS.

Respondent(s)

O R D E R

Leave granted.

We have heard Mr. Babu Marlapalle, learned Senior counsel appearing for the appellant and learned counsel appearing for the respondents.

The rental compensation as stated by the Bombay High Court which is the crux of the matter in question in challenge before us on behalf of the appellant which is reproduced hereunder:-

"Rental compensation is payable on the awarded value at the rate of 6½ % from 1-12-1972 and at the rate of 8% from 2-4-1979 till the full amount of final award is paid to the land owner. Awarded value would include all amounts determined under Section 23, except Section 23 (1-A) and Section 23 (2)".

The question is only with regard to the cut-off date in respect of the rental compensation which is payable by the appellant to the respondents.

It is needless to mention that this question also arose before this Court in Executive Engineer, Nandur, M. Canal versus Vilas Eknath Jadhav and Ors being Civil Appeal No. 2919 of 2013. In that decision, the Court relied upon a decision of this Court in R.L. Jain (D) By Lrs. Versus DDA and Others (2004) 4 SCC 79 which observed as follows:-

"In a case where the landowner is dispossessed prior to the issuance of preliminary notification under Section 4 (1) of the Act the Government merely takes possession of the land but the title thereof continues to vest with the landowner. It is fully open for the landowner to recover the

possession of his land by taking appropriate legal proceedings. He is therefore only entitled to get rent or damages for use and occupation for the period the Government retains possession of the property. Where possession is taken prior to the issuance of the preliminary notification, in our opinion, it will be just and equitable that the Collector may also determine the rent or damages for use of the property to which the landowner is entitled while determining the compensation amount payable to the landowner for the acquisition of the property. The provisions of Section 48 of the Act lend support to such a course of action. For delayed payment of such amount appropriate interest at prevailing bank rate may be awarded."

The said observations make it abundantly clear that in case landowner has been dispossessed prior to issuance of preliminary notification under Section 4 (1) of the Act, it would be open to the landowner to recover possession of his land by taking appropriate legal proceedings and if not recovered would be entitled to have the damages calculated with the rental value for use and occupation of the said land by the Government and/or the Authorities.

In these circumstances, as it appears in these matters, the Order passed by the Bombay High Court relying upon their decision in Bhagwat S/o Nathu Patil Versus State of Maharashtra and Others being Writ Petition No. 4943 of 2008 which judgment was delivered on 2-9-2008 and the concluding part of the said decision records as follows:-

(1) "If the compensation under Section 23 (1-A) has not been paid after notification issued under Section 4 (1) that would be paid to the petitioners, in terms of Section 23 (1-A) of the Land Acquisition Act. The S.L.A.O. to consider the same after hearing parties and order accordingly. The acquiring body to pay the same.

(2) Insofar as rental compensation is concerned, the same to be considered and disposed of, in the light of the observations made in the judgment passed by this Court in this petition and in W.P. No. 4943/2008 and the order of this Court in W.P. No. 1288/2008."

After considering the facts of these cases, it appears to us that the said clause has to be modified in the light of R.L. Jain (D) By Lrs. case and accordingly we modify the same and direct that the compensation should be paid till the issuance of the preliminary notification under Section 4(1) of the Act in question. So far as the interest payable on the rental compensation, if not paid by the Authorities, would be paid with interest at the rate of 9% per annum for the period in default. It is not necessary for us to go into the matters any further and it is also not necessary further to set out the facts since the matters can be resolved on the said questions.

The Appeals are disposed of in the afore-stated terms.

.....J
(PINAKI CHANDRA GHOSE)

.....J
(R.K. AGRAWAL)

NEW DELHI;
19TH NOVEMBER, 2014.