

.... And for the secondly, thirdly and fourthly clauses; the petitioner is also entitled to get the compensation on all the grounds mentioned in his reference application at the following rates:

- (a) For making and maintaining truck able road Rs. 85,782/- as assesses by the acquiring authority.*
- (b) For maintaining and making terraces Rs.30,000/-*
- (c) For making and maintaining Fish Pond Rs.10,000/-*
- (d) For making swimming pool Rs.8,000/- and for maintaining swimming pool Rs.20,000/-*
- (e) For lost of Fruit nursery Rs.30,000/- this is his annual income from the fruit nursery as stated above.*
- (f) For making and maintaining play ground Rs.1,00,000/-*
- (g) Injury occasioned for severance of the land Rs.2,00,000/-*

41. Accordingly, I hold that the assessment made by the District Collector was not according to the market value of the land and the assessment shall be made on accordance with the market value of the land. Hence, the opposite party the District Collector is to make assessment at the rate of Rs.100/-per sq.ft for the acquired area of 7940 sq.ft of the petitioners land, and would include the entitled compensation as listed above. The District Collector is to pay compensation within 3 months. However, the amount already paid to the petitioner in the Award No.1 of 1998 shall be deducted. The petitioner is also entitled to get the solatium of 30% and interest at the rate of 12% over the compensation as well as over the solatium.

42. In addition to this the petitioner/claimant shall be given a sum of Rs.50,000/- to meet the expenditure incurred by him.”

4. In the instant case, the Judgment debtor deposited a sum of Rs,17,82,847/- and the same was received by the Decree holder under protest on 10.5.2013.

5. Thereafter the decree holder filed an application i.e. CMA 220/13 stating interalia that the manner of calculation of solatium and interest u/s 23(1) and 23(2) LA Act are not in consonance with the relevant law. The decree holder further made a prayer for being extended the benefit u/s 28 of the said Act.

6. Heard the ld. Counsels.

Mr. W. Sam Joseph, the ld. Counsel for the Decree-Holder/Applicant submitted LA Case No. 15/99 was a proceeding under the Land Acquisition Act on a reference made u/s 18 of the said Act. The ld. Counsel therefore submitted that award of interest @ 12% p.a. cannot but be the one provided u/s 23(1-A) of the LA Act and that the Respondent committed illigality in calculating the said amount of interest only from 7.7.2010 which is the date of the Judgment & Order in LA No. 15/99. The ld. Counsel also submitted that the reference was made in the year 1999 and compensation was paid only in the year 2013. The ld. Counsel also submitted that since the payment is made, after more than one year from which possession is taken, they are also entitled to payment of interest @ 15% p.a. as per sec. 28 of the LA Act.

On the other hand, Mr. A. Rinliana Malhotra, ld. Counsel for the Judgment-Debtor/ Respondent submitted that the hon'ble Court had not awarded only interest u/s 23(1-A) of LA

Act but had only awarded interest @ 12% over the compensation as well as over the solatium. According to the Id. Counsel, if the Court had awarded interest u/s 23(1-A) then the Court would have made specific reference to the said provision of law. The Id. Counsel further submitted that the hon'ble Court had not passed any direction u/s 28 LA Act and so it is clear that the Decree-Holder cannot claim benefit of the same.

7. Perusal of the execution petition clearly shows that the amount and interest due upon the decree holder is “Rs. 12,77,782/-(Rupees twelve lakh seventy seven thousand seven hundred and eighty two only) with interest @ 12 %p.a from dt.27.7.1999 with Rs.50,000/- as expenditure over the suit and also 30% solatium with @ 12% interest over solatium from dt.27.7.1999 as per Court's order.”

8. Dealing with the claim for payment of interest u/s 28 LA Act, Section 28 LA Act is reproduced as below for better appreciation:-

“28. Collector may be directed to pay interest on excess compensation. – *If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of [nine per centum] per annum from the date on which he took possession of the land to the date of payment of such excess into Court:*

[Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry.]

9. From a reading of the said provision of law, it is clear that it is the discretion of the Court while making the Award to direct or not to direct the Collector to make payment of interest @ 9%pa on such excess to the Court. Similarly, the proviso to section 28 of the LA Act is also the discretionary power of the court at the time of making the Award.

10. In the case at hand, the Judgment & Order dt.7.7.2010 does not contain any exercise of discretion u/s 28 of the LA Act. The matter is now at the stage of execution. There is nothing on record to show that the decree-holder has ever placed his claim u/s28 of the LA Act except by filing the present miscellaneous application. Considering the provision of section 28 of the LA Act, I am of the considered opinion that the same cannot be extended to a Decree-holder at the stage of an Execution proceeding in the absence of any direction made in the Award by the Reference Court.

11. Coming to the question of payment of interest u/s 23(1-A) of the LA Act, the Decree-holder submitted that the Judgment-Debtor calculated the said interest w.e.f.7/7/2010 which is

the date of Judgment & Order, whereas the same should have been calculated from the date of publication of Notification u/s 4 of the LA Act i.e. 16.2.1998.

In this regard, the Judgment-Debtor submitted that the honb'le Court had not awarded interest u/s 23(1-A) of the LA Act, but had only awarded interest @12% over the compensation as well as solatium. They submitted that if the Court has awarded interest u/s 23(1-A) of the LA Act, then the Court would have made a specific reference to the said provision of law at the time of passing the Judgment & Order dt.7.7.2000.

12. The admitted position in the instant case are –

- i) that the decree-holder owns a plot of land covered by LSC No. AZL. 1506/1989 located at Zemabawk.
- ii) that the said land falls within the area covered under Award 1 of 98 under the Land Acquisition act.
- iii) that the process of acquisition was carried out in terms of the Land Acquisition Act
- iv) that LA Case No.15/1999 was set into motion on reference made by the District Collector, Aizawl to the application submitted by the Decree-holder u/s 18 of the LA Act.
- v) that the Award No. 1 of 1998 does not include interest @30% as solatium u/s 23(2) and interest @ 12%pa u/s 23(1-A) of the LA Act.

13. Considering the indisputable facts that the case is one under the Land Acquisition Act, the only judgment/Award that can be made is what is permissible under the Land Acquisition Act. It is true that the Ld. Court while directing payment of interest has mentioned "*interest at the rate of 12% over the compensation as well as over the solatium*". The judgment does not state from when the said interest @ 12 % should be calculated. As stated above, the Ld. Court in LA Case No. 15 of 1999 was dealing with a reference application u/s 18 of the LA Act, the Ld. Court could not by its own award an interest @ 12% in the absence of any law to base upon. Keeping the entire proceeding as a whole, the Ld. Court could not have imposed such interest except as provided in the Land Acquisition Act itself. Accordingly, it can be safely inferred that "interest @ 12%" in the Judgment & Order is interest @12%pa as provided u/s 23(2) of the LA Act.

14. Having come to the said finding, it is clear from a reading of the provision of section 23(2) LA Act that interest @12%per annum has to be calculated from the state of publication of Notification u/s 4(1) of the LA Act to the date of Award of the Collector or the date of taking over possession of the land, whichever is earlier.

ORDER

The Judgment –Debtor i.e Director, RIPANS, Aizawl is directed to pay interest @12% pa from Rs. 7,94,000 i.e. 7940 sq.ft. X Rs. 100. The said interest shall be calculated from 16.2.1998 which is the date of publication of notification u/s 4 of the LA Act to the date of the Award i.e.

Award No. 1 of 1998 dt.9.3.1999. The said payment shall be made by the Judgment-Debtor within 2 months from the date of receipt of this Order. Amount already received shall be deducted while making further payment.

By this common Order, Execution Case No. 67/12 and CMA No. 220/13 stands disposed off.

Pronounced in open Court and given under my hand and the seal of this Court in this 20th day of March, 2014.

Sd/- HELEN DAWNGLIANI
Addl District & Sessions Judge
Aizawl Judicial District : Aizawl

Memo No. ____/AD&SJ/2014
Copy to: -

: Dated Aizawl, the 20th March, 2014

1. K. Vanlalmuana through Counsel Mr. W. Sam Joseph, Advocate.
2. Director, RIPANS through Counsel Mr. A.R. Malhotra, Advocate.
3. Registration Section.
4. Guard File.
5. Case Record.

PESHKAR

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