

IN THE HIGH COURT OF JHARKHAND AT RANCHI
C.M.P. No. 793 of 2023

Awadh Kishore Sahay, aged about 84 years, son of late Shitalanand Lalla,
resident of village Lalpur, Futaha, P.O. Lalpur, P.S. Putki, District-Dhanbad
(Jharkhand)

.....Petitioner

... Versus....

1. The State of Jharkhand through Deputy Commissioner, Dhanbad, P.O. and P.S. Dhanbad, District-Dhanbad, Jharkhand
2. District Land Acquisition Officer, Dhanabd, having its office at P.O. and P.S. Dhanbad, District-Dhanbad
3. Bharat Coking Coal Limited , a Government Company having its Head Office at Koyla Bhawan, Koyla Nagar, P.O. Koyla Nagar, P.S. Saraidhela, District-Dhanbad, Jharkhand through its Chairman-cum-Managing Director

..... Opposite Parties

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner	: Mr. Ayush Aditya, Advocate Mr. Manish Kumar, Advocate Ms. Alisha Lakra, Advocate
For the State	: Mr. Ankit Kumar, A.C. to S.C-I
For the O.P. No.3	: Mr. Anoop Kumar Mehta, Advocate

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10/Dated: 28/01/2025

Heard Mr. Ayush Aditya, learned counsel for the petitioner, Mr. Ankit Kumar, learned counsel for the State and Mr. Anoop Kumar Mehta, learned counsel for the O.P. No.3-BCCL.

2. This petition has been filed under Article 227 of Constitution of India for quashing the order dated 18.05.2023 passed by the learned Civil Judge (Senior Division)-II, Dhanbad in Land Acquisition Execution Case No. 01/2020, whereby the objection to calculation of the decree holder dated 19.04.2023 against the calculation chart, which was based upon the judgment passed by the Hon'ble Supreme Court, has been rejected.

3. Mr. Ayush Aditya, learned counsel for the petitioner submits that the land of the petitioner was acquired by the BCCL under Khata No. 33, Plot No. 291/3, having an area of 0.64 acres vide L.A. Case No. 76/1983-84 and an

award bearing Award No. 18 was prepared in the name of the petitioner. He further submits that being aggrieved with the amount and compensation, reference was made under section 18 of the Land Acquisition Act, 1894 which was registered as Land Acquisition Reference Case No. 3/1996 in which the learned Court in terms of judgment dated 30.04.2013 enhanced the compensation amount to Rs. 625/- per decimals. He further submits that the petitioner filed F.A. No. 130/2023 before the High Court which was dismissed for non-prosecution on 28.08.2019 and thereafter the petitioner filed Execution Case bearing Land Acquisition Case No. 01/2020 before the learned Land Acquisition Judge, Dhanbad and prayed for compensation amount at the rate which was calculated in Land Acquisition Case No. 3/1996 i.e. Rs. 625/- per decimal. He submits that the said order has attained finality. He further submits that Execution Case was filed claiming amount of Rs. 6,03,661.78 including interest i.e. actual amount of Rs. 2,75,896.66 and interest @ 15% per annum from 01.05.2013 to 31.08.2020 that comes to Rs. 3,27,765.12. He submits that by way of annexure-3 a calculation chart was made by the respondent-BCCL.

4. Learned counsel for the petitioner submits that the BCCL has not calculated the interest @ 15% from 01.05.2013 to 31.01.2023 on a total sum of Rs. 2,75,896.66 . He submits that in view of that the award of the learned court all the amount has not been taken into consideration for calculation and in view of that this is illegal and to buttress this argument, he relied in the case of **"Hyder Consulting (UK) Limited Vs. Governor, State of Orissa"** reported in **(2015) 2 SCC 189**. He refers to paragraphs 26, 27, 28 and 29 of the said judgment which is quoted hereinbelow:-

"26. Section 31(7)(a) of the Act deals with grant of pre-award interest while clause (b) of Section 31(7) of the Act deals with grant of post-award interest. Pre-award interest is to ensure that arbitral

proceedings concluded without unnecessary delay. Longer the proceedings, the longer would be the period attracting interest. Similarly, post-award interest is to ensure speedy payment in compliance with the award. Pre-award interest is at the discretion of the Arbitral Tribunal, while the post-award interest on the awarded sum is mandate of the statute the only difference being that of rate of interest to be awarded by the Arbitral Tribunal. In other words, if the Arbitral Tribunal has awarded post-award interest payable from the date of award to the date of payment at a particular rate in its discretion then it will prevail else the party will be entitled to claim post-award interest on the awarded sum at the statutory rate specified in clause (b) of Section 31(7) of the Act i.e. 18%. Thus, there is a clear distinction in time period and the intended purpose of grant of interest.

27. Section 31(7)(a) employs the words "... the Arbitral Tribunal may include in the sum for which the award is made interest...". The words "include in the sum" are of utmost importance. This would mean that pre-award interest is not independent of the "sum" awarded. If in case, the Arbitral Tribunal decides to award interest at the time of making the award, the interest component will not be awarded separately but it shall become part and parcel of the award. An award is thus made in respect of a "sum" which includes within the "sum" component of interest, if awarded.

28. Therefore, for the purposes of an award, there is no distinction between a "sum" with interest, and a "sum" without interest. Once the interest is "included in the sum" for which the award is made, the original sum and the interest component cannot be segregated and be seen independent of each other. The interest component then loses its character of an "interest" and takes the colour of "sum" for which the award is made.

29. There may arise a situation where, the Arbitral Tribunal may not award any amount towards principal claim but award only "interest". This award of interest would itself then become the "sum" for which an award is made under Section 31(7)(a) of the Act. Thus, in a pre-award stage, the legislation seeks to make no distinction between the sum awarded and the interest component in it."

5. Relying on the above judgment, he submits that once the interest is added in the compensation that interest is also included in the sum and if such a situation was there the award is also in the light of that the petitioner is entitled for interest on the amount of Rs. 2,75,896.66 which is the awarded amount which is combined component on the issue in question. He also refers to judgment of the Five Judges Bench of Hon'ble Supreme Court in the case of **" Gurpreet Singh Vs. Union of India"** reported in **(2006) 8 SCC 457**. He refers to paras 29, 33 and 43 of the said judgment which is quoted hereinbelow:-

"29. Let us now consider the scheme of the Land Acquisition Act, 1894 as amended by the Land Acquisition (Amendment) Act 68 of 1984. After the publication of the preliminary notification under Section 4 of the Act and after hearing of objections, a declaration has to be made under Section 6 of the

Act. The Collector is then to take the order for acquisition from the appropriate Government or the officer authorized in that behalf by the Government. After completing the formalities contemplated and the enquiry made in terms of Section 11 of the Act, the Collector has to make an award indicating the true area of the land, the compensation which in his opinion should be allowed for the land and the apportionment of the compensation among the persons known or believed to be interested in the land. In making the award, the Collector shall be guided by Sections 23 and 24 dealing with matters to be considered in determining the compensation and matters to be excluded in determining the compensation as enjoined by Section 15 of the Act. Under Section 12 of the Act, the award becomes final as between the Collector and the persons interested and the Collector is to give notice of his award to persons interested. On making the award, the Collector may take possession of the land in terms of Section 16 of the Act. Under Section 31, 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 the contingencies referred to in Section 31 itself. Under Section 34 of the Act, when the amount of compensation awarded 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 taking possession till it shall have been paid or deposited. But if the compensation or any part thereof is not paid within a period of one year from the date on which possession is taken, interest is payable at the rate of fifteen per cent 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 relevant to notice that on payment of the amounts thus due, the award made by the Collector stands satisfied.

33. The second stage occurs on a reference under Section 18 of the Act. When the Reference Court awards enhanced compensation, it has necessarily to take note of the enhanced amounts payable under Section 23(1), Section 23(1-A), Section 23(2) and interest on the enhanced amount as provided in Section 28 of the Act and costs in terms of Section 27. The Collector has the duty to deposit these amounts pursuant to the deemed decree thus passed. This has nothing to do with the earlier deposit made or to be made under and after the award. If the deposit made, falls short of the enhancement decreed, there can arise the question of appropriation at that stage, in relation to the amount enhanced on the reference.

43. This Court made a detailed survey of the relevant provisions of the Land Acquisition Act and after summing up the position held: (Prem Nath Kapur Case, SCC p. 76, para 8)

"8. A reading of the above provisions would establish that the award consists of (a) the compensation determined under Section 23(1), (b) solatium on the market value determined under Section 23(2), as additional sum for compulsory nature of acquisition, and (c) payment of interest on the amount of compensation under Section 11, on excess or part thereof under Section 26 awarded by court from the date of taking possession till date of payment or deposit into the court at the rates specified under the respective provisions of Sections 34 and 28. Under Section 23(1-A), additional amount at 12 per centum per annum shall be paid or deposited from the date of notification under Section 4(1) till date of award or taking possession of land, whichever is earlier. The additional amount under Section 23(1-A) and solatium under Section 23(2) are in addition to the compensation under Section 11 and excess amount determined under Section 23(1) read with Section 26 or Section 54. Equally, under Section 26 of the Act award is deemed to be a decree under Section 2(2) CPC for the excess amount determined by the court; this would be so proprio vigore, when the appellate court under Section 54 has further enhanced the compensation."

6. Learned counsel for the petitioner further relied in the case of **"Sunder Vs. Union of India"** reported in **(2001) 7 SCC 211**. He refers to

paragraph 24 of the said judgment which is quoted hereinbelow.

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 up 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."

7. Relying on the above judgment, he submits that once the compensation on different component is made the component cannot be splitted. On these grounds he submits that the learned executing court has wrongly calculated the interest.

8. Per contra, Mr. Anoop Kumar Mehta, learned counsel for the BCCL draws the attention of the Court to the award and submits that award was enhanced at the rate of Rs. 625/- per decimal and the interest part that is entitled to get interest @ 9 % per annum for one year from the date of delivery of possession and thereafter @ 15 % per annum till the date of realization. He submits that the spirit of the Land Acquisition Act has been rightly interpreted by the learned court and in view of that there is no illegality in the said calculation. He draws the attention of the Court to Section 23 of Land Acquisition Act, 1894 and submits that how the determination is required to be determined the provision is made therein. By way of referring Section 34 of the said Act, he submits the said section speaks of payment of interest and in the light of that order has been made @ 9% and 15% respectively. He further submits that the judgment relied by the learned counsel for the petitioner in the case of **Hyder Consulting (UK) Limited(supra)** was

arising out of Arbitration and Conciliation Act, 1996 in which Section 31(7) of the said act has been interpreted by the Hon'ble Supreme Court and that section is not parametria of the Land Acquisition Act. He further submits that in the case of **Sunder(supra)** the Hon'ble Supreme Court has only held that in the compensation the solatium would be also included and this aspect of the matter has not been considered and issue in question is not there. On these grounds, he submits that the this civil miscellaneous application may kindly be dismissed.

9. Learned counsel for the State submits that there is dispute between the BCCL and the petitioner. He submits that the learned court has rightly interpreted and passed the said order and there is no illegality in the said order.

10. On the reference under Section 18 of the Act, the Award was modified as under :-

"That the Award already made in favour of applicant is hereby set aside and the applicant is entitled to get compensation at the rate of Rs. 625/- per decimal for acquired land and further he is also entitled to get solatium @30% over excess amount determined by this court as per provision contained under section 23(2) of L.A. Act. The applicant is further entitled to get 12% more over and above the excess amount determined by the court as per provision contained under section 23 (1-A) of L.A. Act from the date of notification till the date of Award given by collector.

The applicant shall also be entitled to get interest @ 9% per annum for one year from the date of delivery of possession and thereafter @ 15% per annum till the date of realization."

11. In view of above the calculation was made and total compensation was said to be Rs. 101333.33 and prior to enhancement Rs. 20187.07 was made and in the light of Section 34 further principal amount has come to Rs. 81146.26 and interest @ 9% from 24.11.1996 to 23.11.1997 said to be Rs. 7303.14 and interest @ 15% from 24.11.1997 to 30.04.2013

which is said to be 187447.26 and total comes to Rs. 2,75,896.66 and till here, there is no dispute about the calculation. The issue arises with regard to the interest @ 15% from 01.05.2013 to 31.01.2023 wherein it is calculated on principal amount of Rs. 81146.26 and calculated to the tune of Rs. 1,18676.40. The contention of the petitioner is that the said period is required to be calculated on sum Rs. 2,75,896.66.

12. In the case of **Hyder Consulting (UK) Limited(supra)** the Hon'ble Supreme Court while interpreting the Award has come to the conclusion that there is no distinction between the sum and sum without interest and it has been held that once the interest is included in the sum for which the Award is made that cannot be segregated, meaning thereby that once in the Award interest is added that cannot be segregated.

In the case in hand coming to the facts of the present case, it is an admitted position that Award was enhanced on the reference under section 18 at the rate of Rs. 625/- per decimal and what has been discussed hereinabove particularly in the case of **Sunder(supra) and Hyder Consulting (UK) Limited(supra)** it cannot be segregated. There is no dispute till the calculation to the tune of Rs. 2,75,896.66. The dispute is with regard to calculation w.e.f. 01.05.2013 to 31.01.2023 which was made Rs. 81146.26. Once the two components 9 %, 15 % with effect from 24.11.1996 to 23.11.1997 and 24.11.1997 to 30.04.2013 is included in the principal as Rs. 81146.26/- that will a sum including the interest and if such a situation is there than on interest from 01.05.2013 to 31.01.2023 is required to be calculated on sum of Rs. 2,75,896.66 that has also been held by the Hon'ble Supreme Court in the case of **Sunder(supra)** to the effect that splitting up 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.

13. Thus, in the light of the Award once the sum is included in the principal, calculation is required to be made on that. As such the order dated 18.05.2023 passed by the learned Civil Judge (Senior Division)-II, Dhanbad in Land Acquisition Execution Case No. 01/2020 is modified to the effect that 15% from 01.05.2013 to 31.01.2023 will be calculated on a sum of Rs. 2,75,896.66.

14. With the above modification, this petition is allowed in Part.

15. The learned Executing Court will pass further appropriate order in the light of above observation. This petition is disposed of. Pending I.A, if any, stands disposed of.

(Sanjay Kumar Dwivedi, J.)

Satyarthi/A.F.R.