

IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

WRIT PETITION No. 25710 of 2021

Between:-

PREMSHANKAR VIJAYVARGIYA

1. OCCUPATION: RETIRED GOVT. OFFICER

GOPAL KRISHNA VIJAYVARGIYA

2. OCCUPATION:

.....PETITIONERS

(BY SHRI ABHINAV MALHOTRA, ADVOCATE)

AND

**1. UNION OF INDIA THROUGH SERCRETARY MINISTRY OF
DEFENCE (DELHI)**

**2. DEFENSE ESTATE OFFICER MHOW CIRCLE, MHOW
CANTONMENT, MHOW (MADHYA PRADESH)**

CHIEF EXECUTIVE OFFICER MHOW CIRCLE MHOW

**3. CANTONMENT, MHOW DIST INDORE (MADHYA
PRADESH)**

.....RESPONDENTS

**(SHRI HIMANSHU JOSHI, FOR RESPONDENTS NO.1 AND 2 WITH MS.
BHAWNA SINGH, DIRECTOR GENERAL COMMANDANT, LUCKNOW
SHRI ASHUTOSH NIMGAONKAR, FOR RESONDENT NO.3)**

*This petition coming on for orders this day, the court passed
the following:*

O R D E R
(Passed on 26/04/2022)

1] This writ petition has been filed by the petitioners under Article 226/227 of the Constitution of India seeking the following reliefs:-

- “1. Allow the present Petition.
- 2. Pass an appropriate writ, order or directions in the nature of mandamus directing the Respondents to forthwith make payment of an amount of Rs.1,30,57,640/- as compensation for the subject Bungalow, situated 153, 154, 154-A, Mall Road, Mhow, District Indore along with interest @12% per annum from the date of compulsory resumption i.e., 01.04.2009, in terms of the Award dated 30/11/2011, within a period of 4 (four) weeks from the date of final judgement passed by this Hon’ble Court.
- 3. Direct the Respondents to pay Rs.10,00,000/- (Rupees ten lakhs only) to the Petitioners for causing a delay in payment of compensation.
- 4. Award the cost of the present Petition to the Petitioner.
- 5. Pass any other order, writ or direction that this Hon’ble Court may deem fit and proper in the facts and circumstances of the present case.”

2] The grievance of the petitioners is of non-execution of the arbitration award passed by the Competent Arbitration Committee dated 30/11/2011, this is despite being an order passed by this Court on 02/03/2020 in WP No.4117/2020, wherein the executing Court was directed to decide the execution case within four months’ time without granting unnecessary adjournments to the respondents.

3] Learned counsel for the petitioners has submitted that even after passing of the aforesaid order, and despite giving numerous undertakings by the respondents before the executing Court for compliance of the award, no action has been taken by the executing Court nor the respondents themselves and the petitioners are running from pillar to post to get the compensation in respect of their bungalow which was resumed by the Union of India (Defence Department) for their own purpose. Thus, it is submitted that the respondents be directed to pay the amount expeditiously. Reliance is also placed by the counsel for the petitioners upon an order passed by the coordinate Bench of this Court presided over by Shri Justice A.M. Sapre (as his Lordship then was), in WP No.4186/2005 dated 07/09/2006, in an identical matter.

4] A reply to the petition has also been filed and it is submitted that the award which is sought to be executed from the lower Court is not actually an award in terms of the Arbitration Act, 1996 (hereinafter referred to as the Arbitration Act) in fact it is only a recommendation given to the Government of India which has already been rejected by the Ministry of Defence vide its letter dated **08/03/2022**, a copy of the order is also placed on record.

5] Learned counsel appearing for the respondents have submitted that the aforesaid recommendation made by the Arbitration Committee were not in consonance with the principles of procedures of the Ministry of Defence dated 18/12/2009, and the appendix there to, hence, it could not be sustained.

6] Shri Sapan Kumar, the Defence Estate Officer, Mhow (hereinafter D.E.O.) present in the Court has submitted that he has given various undertakings before the Court and the letters issued by him to the Principal Director of Ministry of Defence have also been filed on record but he has sent those letters in his capacity as DEO only and he is also bound by the orders issued to him from his superiors.

7] Ms. Bhawna Singh, the Director General Commandment, Lucknow also present in the Court has also submitted that the award itself is not actually an award but only a recommendation and cannot be executed in the Trial Court. Hence, their inability to satisfy the same may be excused and the petition be dismissed.

8] Heard learned counsel for the parties and perused the record.

9] From the record, it is found that it is not in dispute that the execution case No.139/2013 filed by the petitioners is pending in the Court at Mhow for execution of the award dated 30/11/2011.

The operative para of the award reads as under:-

“प्रश्नाधीन ३ बंगलों के मूल्य में से डिप्रिसिएशन अधिकमत ५० प्रतिशत घटाये जाने के पश्चात मुआवजा निर्धारण के लिए बंगलों का मूल्य निम्नानुसार निर्धारित किया गया है :—

क्रमांक	बंगला नंबर	राशि
1	बंगला नंबर 153	44,08,193 = 00
2	बंगला नंबर 154	48,08,837 = 00
3	बंगला नंबर 154-ए	38,40,610 = 00
	महायोग	1,30,57,640 = 00

(02) बंगला नंबर 153, 154 एवं 154 (ए) माल रोड महू का किराया मार्च 2009 तक डी.ई.ओ. महू द्वारा बंगला ऑनर को भुगतान किया गया

है। बंगला ऑनर ने निवेदन है कि उन्हे अप्रैल 2009 से मुआवजा राशि का भुगतान की तिथि तक 12 प्रतिशत ब्याज दिलाया जावे। क्योंकि सैन्य विभाग द्वारा दिनांक 01 अपैल 2009 से बंगलों का पुर्णग्रहण कर लिया है और उसके पश्चात आज दिनांक तक किराया भी नहीं दिया गया है।

समिति बंगला नम्बर 153, 154 एवं 154 (ए) की मुआवजा राशि रूपये $1,30,57,640 = 00$ सदस्य एक्स बंगला ऑनर भुगतान करने की अनुशंसा करती है। समिति यह भी अनुशंसा करती है कि उक्त मुआवजा यथाशीघ्र एक्स बंगला ऑनर को भुगतान किया जाना चाहिए। जहाँ तक पुर्णग्रहण के दिनांक 01/04/2009 से भुगतान की तिथि तक 12 प्रतिशत मुआवजा राशि पर ब्याज देना का बांगला ऑनर के नामिनी के मांग उचित प्रतित होती है। बंगला ऑनर के नामिनी द्वारा निवेदन किया गया कि इस कार्यालय द्वारा पूर्व में पारित आर्बाट्रेशन कमेटी के अवार्ड से ब्याज की राशि का भुगतान किया गया है। अतः अनुशंसा की जाती है कि पुर्णग्रहण के दिनांक 01/04/2009 से भुगतान की तिथि तक 12 प्रतिशत मुआवजा राशि पर ब्याज देय होगा।

अनुविभागीय अधिकारी एवं चेअरमेन
समिति के सदस्य आर्बाट्रेशन कमेटी ब. नं. 153ए 154 एवं 154 (ए)
महू केन्ट, जिला-इन्दौर
स्टेशन कमाण्डर के नामिनी

समिति के सदस्य
एक्स बंगला ऑनर के नामिनी”

10] It is true that the Arbitration Committee has used the word “*Anushansha*” the English translation of which means ‘*recommendation*’ but no such document has been placed on record by the respondents to submit that such recommendation would not be binding on the respondents, however, the respondents have placed on record the Letter/document dated 18/12/2009, which refers to appointment of Arbitration Committee with respect to bungalow No.153, 154 and 154-A (GLR SY. No.478 and 479), Mall Road, Mhow Cantt. For ready reference, the relevant paras of the same read as under:-

“9. The Chairman of the Arbitration Committee will ascertain the name of the nominee(s) of the legal heirs of the HOR and take necessary action for convening the Arbitration Committee.

10. The legal heirs of the HOR should give an undertaking before convening of the Arbitration Committee to the effect that the land appurtenant to and underneath the building belongs to the Government and they are not entitled to any compensation from the Govt. on account of land.

11. The Arbitration Committee will follow the procedures ad laid down in the Appendix attached with this letter.

12. The terms of reference of the Committee appointed are confined strictly to determine the value of the authorized constructions on the land after hearing the legal heirs of the HOR and the G.E./C.W.E. In no case the Committee shall entertain any dispute as to claim to the title of land.

13. The Arbitration Committee is required to decide the compensation payable within six months of the formation of the Arbitration Committee.”

11] Para 5 of the appendix to this letter provide for procedure to be followed by the Arbitration Committee, which reads as under:-

“5. The Committee will record its decision in sufficient detail stating that the cases of the parties, issues arising for examination, summarising the evidence and pleading and giving the findings with brief reasons therefore. The points of dispute can only be in relation to facts and not on principles or the basis of valuation. The Committee in no case will entertain any dispute as to the claim to title to the land. The findings of the Committee will as far as possible, be by consensus and in its absence by majority view of the members present. The findings of the Committee should be filed with the Principal Director, Defence Estates, Command for obtaining the order of the Govt. of India.”

(emphasis supplied)

12] It is also found that being aggrieved by the inaction on the part of the respondents to satisfy the aforesaid award, the petitioners herein had also filed WP No.4117/2020 which came to be disposed of by this Court on 02/03/2020, in the following manner:-

“Shri Abhinav Malhotra, learned counsel for the petitioners.

Ms. Ishita Agrawal, learned counsel for the respondents.

Petitioners before this Court have filed this present petition being aggrieved by non-payment of compensation by respondents in terms of the arbitral award dated 30.11.2011.

The facts of the case reveal that the Union of India has resumed the bungalows and the land attached to it in contonment area situated at Mall Road, Mhow, District Indore but, they have not been paid compensation to the petitioners. Petitioners came up before this Court by filing writ petitions. A common order was passed in W.P.Nos. 7605 & 7606 of 2009 on 22/10/2009 by this Court directing the competent authority to decide the claim of the petitioners for compensation within six months. It was also observed that in case the competent authority realises that the claim of the petitioners has to be determined by some other authority / arbitrator, then an arbitrator shall be appointed in the matter. An arbitrator was appointed. The arbitrator has passed an award on 30/11/2011. The petitioners have been held entitled for grant of compensation to the tune of Rs.1,30,57,640/- (Rupees one crore thirty lakhs fifty seven thousand and six hundred only).

It is the case of the petitioners that the matter is pending since the year 2011 and the Union of India is avoiding payment of compensation to them on one pretext or the other. Therefore, execution case was filed. The execution case is pending for the last nine years and before the executing Court, time is being sought by the Union of India for compliance in the matter.

Learned counsel for the respondents argued that the

matter has been reported to the higher authorities for sanction of the amount. As the sanction has not been received so far, time is being sought in the matter of payment of compensation to the petitioners.

Heard learned counsel for the parties at length and perused the record.

In the considered opinion of this Court, the matter is pending before the executing Court for getting the award executed since the year 2011.

Resultantly, this petition is disposed of with a direction to the executing Court to decide the pending execution case within a period of 04 (four) months from the date of receipt of certified copy of this order. It is made clear that the executing Court shall not grant unnecessary adjournments. In case, either side seeks adjournment, the reasons for the same be recorded in writing by the executing Court.

Accordingly, writ petition stands disposed of.”

(emphasis supplied)

13] So far as the various undertakings given by the Estate Officer in the executing Court are concerned, it would suffice to refer to the letter dated 15/09/2015 given in the aforesaid undertaking by the Estate Officer. The relevant paragraph of which reads as under:-

“g) Now, the Executing Court has passed attachment order of Govt property on 07.09.2015 in the subject case for not depositing awarded amount Rs.1,30,57,640.00 plus interest @12% as per award (Total: Rs.2,29,85,045/-). (Copy of Hon. ADJ Court Order dated 07.09.2015 is enclosed herewith as Annexure-C).

h) The Hon. ADJ Court Mhow has ordered payment as per Adhinirnay/recommendations of the Arbitration Committee.

The calculation details are as below:-

	Details of items	Rs.
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	Amount of compensation as per Arbitration committee recommendations dated 30.11.2011	1,30,57,640.00
+	Interest @ 12% from 01.04.2009 to 31.10.2015	1,03,20,186.27
	Total payable	2,33,77,826.27

Calculation sheet is also attached separately as (Annexure-D).

i) In view of the above, Govt. sanction may kindly be sought and communicated to this office regarding payment of Rs.2,33,77,826.00 (Rupees two cror thirty three lakh seventy seven thousand and eight hundred twenty six only) to the ex-resumpee owners as per recommendations of the Arbitration Committee and as ordered by the Executing Court. In case otherwise, this office may be suitably directed to take necessary action in this matter.

j) Next date for hearing in the Executing Court is 22.09.2015 hence kindly accord priority to avoid loss of the Govt.'s position before the Hon. Court.

(Dte. DE case file No24507/LC-3/VOL-III refers)"

(emphasis supplied)

14] So far as the order dated 08/03/2022 is concerned, whereby of the award dated 30/11/2011 has been rejected, apparently it has been passed after an enormous delay of 10 years, i.e., the period, the Union of India took to come out of its slumber. Although the decision rendered by this Court (Sapre,J.) in WP No.4186/2005 dated 07/09/2006 is sought to be distinguished by the respondents but it would be germane to refer to the said order to demonstrate identical nature of the case. The same reads as under:-

"By fling this writ under Article 226/227 of the Constitution of India, the petitioners seek enforcement of an award, passed by Arbitration Committee, constituted by respondent no.2 for determining the compensation payable to the petitioners for their house, bearing No.14, Situated at Dr. Ambedkar Nagar,

Mhow, District Indore.

2. Facts of the case are not in dispute. In other words, it is not in dispute that petitioner was the owner of Bungalow No. 14, situated at Dr. Ambedkar Nagar (Mhow), District-Indore. It is also not in dispute that the said Bungalow was resumed by Union of India (Defence Department) for their own purpose. It is also not in dispute that Government of India by their communication No. 701/708/R &D/L & O/86-1436/D (lands), dated 2.12.1986 constituted an arbitration Committee for determining the compensation payable to the petitioner in respect of the said Bungalow (structure). It is also not in dispute that pursuant to the constitution of the committee, the said committee by their award dated 3.01.2005 (Annexure P-6), determined the compensation amounting to Rs. 15,05,182/- payable to the petitioner alongwith the interest payable the rate of 9 % for the first year and thereafter 15% p.a. after the expiry of one year, as is clear from mere perusal of the award. It is also not in dispute that the respondents have not so far paid this amount determined by the committee in terms of the award and hence, the petitioners are in writ Notice of this petition was issued to the respondents. They are served and duly represented.

3. Heard Shri BM Masani, learned counsel for the petitioners and Shri Vinay Zelawat, learned Assistant Solicitor General of India for the respondents.

4. Having heard learned counsel for the parties, having perused the record of the case and taking note of undisputed facts narrated supra, I am inclined to allow the writ.

5. In my considered view, in the light of the undisputed facts which are taken note of supra, a case for issuance of writ of mandamus without going into much details of the legal quibbling is made out in favour of the petitioners and against the respondents. When Government of India has deprived of a citizen from his property by taking recourse to the provisions of law relating to resumption of his property then in the event, it is the duty of the Government of India to ensure that adequate compensation is paid to the citizen. In this connection, I can not possibly overlook the subtle observations of a great Judge MC Chagla made in the case of

firm Sita Ram Kalu Ram Vs. Dominion of India. AIP 1954
Bombay 50 which in later years received the approval from
Apex Court when His Lordship observed :-

“When the State deals will a citizen it should
not ordinarily rely on technicalities, and if the
State is satisfied that the case of the citizen is a
just one, even though legal defences may be
open to it, it must act, as an honest person.”

The aforesaid observations can be applied to the undisputed facts of this case.

6. As observed supra, it is not in dispute that respondents have not yet paid the due compensation determined by their Arbitration Committee by an award, dated 3.01.2005, referred supra to the petitioners. It is also not in dispute that respondents have not questioned the legality and validity of the said award in any court of law till date. Under these circumstances, this award is binding upon them, because it is the respondents, who constituted the committee and got the determination done obviously with a view to pay the same to the petitioners.

7. Accordingly and in view of the aforesaid discussion, which alone is sufficient, the petitioner succeeds and is hereby allowed. As rightly submitted by learned Assistant Solicitor General on behalf of the Government of India that a reasonable time should be fixed to enable the Government of India to release the amount of compensation awarded to the petitioners in terms of the award dated 3.01.2005, I accept this submission and direct the respondents to pay the awarded amount of compensation to the petitioners in terms of the award, dated 3.01.2005 preferably within a period of six months as an outer limit from the date of this order.”

(emphasis supplied)

15] On perusal of the aforesaid order it is apparent that on earlier occasion also the award passed by the Arbitration Committee has been directed to be complied with by this court. In such facts and circumstances of the case, this Court is of the considered opinion

that merely if the award dated 30/11/2011 has been rejected or set aside by the respondents, on 08/03/2022 i.e., after 10 years, and taking note of the order dated 02/03/2020 passed by this Court in WP No.4117/2020, this Court has no hesitation to come to a conclusion that the respondents have not only failed in their duties to redress the grievance of senior citizens 74 years and 66 years old respectively, but have also failed to perform their duties with due diligence.

16] It is also found the award dated 30/11/2011, passed by the Arbitration Committee has not been challenged by them in any court of law and even the execution proceedings have never been challenged on the ground that there is no award under the Arbitration Act and it was only a recommendation. What this court sees is only *Tareekh pe Tareekh* sought by the UOI to satisfy the award, especially when the case is pending since 01/04/2009 and it was specifically directed by this court vide order dated 02.03.2020 in W.P.No.4117/2020, to dispose of the proceedings within 4 months' time in the following terms :-

“Resultantly, this petition is disposed of with a direction to the executing Court to decide the pending execution case within a period of 04 (four) months from the date of receipt of certified copy of this order. It is made clear that the executing Court shall not grant unnecessary adjournments. In case, either side seeks adjournment, the reasons for the same be recorded in writing by the executing Court.”

17] It has already been more than two years since the aforesaid

order was passed by this court which is also demonstrative of the failure on the part of the executing court to exercise the powers vested in it by law despite being armed with the aforesaid order of this court, which also has the effect of demeaning its own authority. So far as the order dated **08/03/2022 passed by the respondents rejecting the award passed by the Arbitration Committee on 30/11/2011 is concerned, in the considered opinion of this court it is only an eye wash and appears to have been passed only with a view to wriggle out of this unpleasant situation and is of no help to the respondent at this juncture of the lis. It is also beyond the faculties of this court as to why, after acquiring the property of a citizen in the year 2009, a democratic Government would shy away from making the payment and would not part with a single penny even in the year 2022.**

18] Resultantly, in view of the aforesaid discussion, the petitioner deserves to be and is hereby **allowed**. As a reasonable time also requires to be fixed to enable the Government of India to release the amount of compensation awarded to the petitioners in terms of the award dated 30/11/2011, this court deems it proper to directs the respondents to pay the awarded amount of compensation to the petitioners in terms of the award dated 30/11/2011, within a period of six months as an outer limit from the date of this order.

C.c. as per rules.

**(Subodh Abhyankar)
Judge**

krjoshi