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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7858 OF 2022

Ramesh Ganpat Gaikwad & Ors. .. Petitioners

Versus

Dilip Dattu Jadhav & Ors. .. Respondents

Mr. Mandar Limaye *for the Petitioners.*

Mr. Hitesh A. Thorat a/w Rahul Ramteke *for Respondent No.1.*

Mrs. M. S. Bane, AGP, *for the State.*

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

DATE : JUNE 23, 2023

P. C.

Rule. With the consent of parties, rule made returnable forthwith and heard finally.

2. The above Petition is filed inter-alia seeking an order and direction to set aside the order dated 25th March 2022 (for short the “**impugned order**”) passed by Respondent No.2 (Sub Divisional Officer, Kalyan Region, Kalyan) in Review Application No. Kra. KD/T-2/Bhusa/

Mumbai Vadodara. Pursuant to the impugned order, Respondent No.2 has also issued certain letters and notices which are impugned in the Writ Petition.

3. To put it in a nutshell, the challenge to the impugned order is on the basis that Respondent No.2, being the Competent Authority under the provisions of the National Highways Act, 1956 (for short “**NH Act, 1956**”), had no power to review its earlier order dated 28th January 2021 and which was passed against the 1st Respondent and in favour of the Petitioners.

4. To understand the controversy in the present Petition, it would be necessary to set out the brief factual matrix, and which is really undisputed. The subject land is 852 sq mtrs. of Survey No. 37, Hissa No. 2, admeasuring 0-10-8 situated at Mouje Umbharni, Taluka Kalyan, Dist. Thane (for short “**the said land**”). The said land originally belonged to the grandfather of the Petitioners. On his demise, the said land was owned by the legal heirs, namely, Ganpat, Parvatibai, Dhakubai, Sakhubai, and Deubai. The Petitioners are the legal heirs of Ganpat and Respondent No.1 is the legal heir of Dhakubai.

5. It is the case of the Petitioners that Dhakubai, Parvatibai, the heirs of the Sakhubai, and the heirs of the Deubai, all executed a Release Deed dated 10th December 2013 in favour of the Petitioners. The said Release Deed was also registered on 4th January 2014 with the 5th Joint Sub-Registrar, Kalyan. The said Release Deed was executed with respect to the said land as well as other lands which are not the subject matter of the present Petition.

6. As mentioned earlier, the subject matter of the present Petition, is part of Survey No. 37, Hissa No. 2, admeasuring 852 sq. mtrs. (said land) which according to the Petitioners was jointly owned by them and one more person. It is not in dispute that subsequently, the said land was acquired for the Mumbai Vadodara Highway Project. Upon the acquisition of the said land, Respondent No.2 passed an Award in the sum of Rs. 44,17,706/- out of which the Petitioners were entitled to 50% i.e. Rs. 22,08,853/-.

7. After the passing of the Award on 15th January, 2020, Respondent No.1 filed objections before Respondent No.2 under Section 3-H(3) of the NH Act, 1956. The Petitioners filed their reply to the said objections. After hearing the parties, Respondent No.2, vide its order

dated 28th January 2021 rejected the objections raised by Respondent No.1. Respondent No.1 did not challenge the said order. Accordingly, Respondent No.2 released the amount of Rs. 22,08,853/- to the account of Petitioner No.1.

8. Thereafter, Respondent No.1 again filed an application under Section 3-H(3) of the NH Act,1956 (dated 28th July 2021) praying for review of the order passed on 28th January, 2021. This review application after hearing both sides, was finally allowed vide order dated 25th March 2022. This order, and which is impugned in the present Writ Petition, directed the Petitioners to pay Rs. 4,41,770/- to Respondent No.1. This is on the basis that Respondent No.1's mother had a 1/5th share in the said land and was therefore entitled to 1/5th of the compensation paid to Petitioner No.1. Even before this review application was decided, Respondent No.2 issued a letter dated 28th July 2021 to the Manager of Canara Bank to freeze this amount in the account of Petitioner No.1.

9. It would also be important to note that while the review application was pending and before it was decided, Respondent No.1 also filed Regular Civil Suit No. 528 of 2021 (in November 2021) against

the Petitioners and other legal heirs. This was filed before the Civil Judge, Junior Division, Kalyan *inter-alia* for a declaration that the Release Deed dated 10th December 2013 is null and void and not binding on Respondent No.1 for the reasons more particularly set out in the said suit. That suit is still pending.

10. Be that as it may, after the passing of the impugned order on 25th March 2022, Respondent No.2 issued a letter dated 27th May 2022 directing the transfer of Rs. 4,41,770/- to the account of Respondent No.1 before 6th June 2022. Since this was not done, Respondent No.2 issued an undated notice in June 2022 which was served on the Petitioners on 25th June 2022 calling upon the Petitioners to deposit the amount of Rs.4,41,770/- within fifteen days, failing which, the residential flat of Petitioner No.1 shall stand vested in the government. Being aggrieved by all these actions of Respondent No.2, the Petitioners have approached this Court under Article 226 of the Constitution of India.

11. In this factual backdrop, Mr. Limaye, the learned Counsel appearing for the Petitioners, submitted that the impugned order is an order that has been passed in its review jurisdiction. He submitted that

originally, an order was passed on 28th January 2021 wherein Respondent No.2 negated the objections raised by Respondent No.1 and thereafter even made payment of compensation of Rs. 22,08,853/- to the account of Petitioner No.1. Once the authority had done this, it had no power or jurisdiction to entertain another application filed by Respondent No.1 asking the authority (Respondent No.2) to re-consider its earlier order.

12. Mr. Limaye submitted that under the provisions of the NH Act, 1956 the Competent Authority constituted under Section 3(a) has no power to review its own order. He submitted that it is now well settled that review is a creature of the statute and cannot be entertained in the absence of a provision in relation thereto. Mr. Limaye submitted that this issue is no longer res-integra and is squarely covered by a decision of a Division Bench of this Court (Aurangabad Bench) in the case of *Bhupendrasing Sardarsingh Parmar Vs. Competent Authority for National Highway and Ors. [2020 (2) Bom. C.R. 296]*. He, therefore, submitted that the impugned order cannot be sustained and ought to be set aside. Consequently, it was the submission of Mr. Limaye that if the impugned order is set aside, then all letters/notices, etc. issued by

Respondent No.2 pursuant to the said order also cannot stand and would have to be set aside by this Court.

13. On the other hand, Mr. Thorat, the learned advocate appearing on behalf of Respondent No.1, submitted that after the passing of the Award, Respondent No.1 filed an objection before Respondent No.2 about disbursing the compensation [in relation to the said land] to the Petitioners. He submitted that accordingly Respondent No.2 heard the objections raised by Respondent No.1 and based on the registered Release Deed dated 10th December 2013, and which was *inter-alia* executed by the mother of Respondent No.1, rejected the objections filed by him. He submitted that thereafter, the 1st Respondent filed an application to re-consider the order passed by Respondent No.2 on 28th January 2021. He submitted that it was brought to the attention of Respondent No.2 that his mother (late Dhakubai) was 75 years old when the Release Deed was executed and the same was not supported by any medical certificate about the mental and physical state of his mother. It was the case of the 1st Respondent before the Competent Authority that the Petitioners had obtained his mother's thumb impression on the Release Deed by fraud and/or coercion and it was unnatural that his mother would not disclose the said Release Deed to

her children, one of whom was the 1st Respondent. He submitted that when looking at the totality of the facts of the case, Respondent No.2 realized that there was a glaring error in overruling the objections of Respondent No.1 and it is for this reason that Respondent No.2 has reviewed/recalled his own order passed on 28th January 2021. He, therefore, submitted that there is absolutely nothing perverse in the order which would require interference under Article 226 of the Constitution of India. Consequently he submitted that the above Writ Petition be dismissed with costs.

14. We have heard the learned Counsel for the parties at some length. We have also perused the papers and proceedings in the above Writ Petition. As rightly contended by Mr. Limaye, the short and narrow question that arises for our consideration is whether Respondent No.2, under the provisions of the NH Act, 1956 has the power to review his own order. We have carefully gone through the provisions of the NH Act, 1956 and we have no hesitation in saying that there is no provision in the said Act which gives Respondent No.2 power to review his order passed under Section 3 H(3) of the said Act. It is now well settled that the power of review is a creature of the statute and cannot be entertained in the absence of any provision in relation

thereto. This has been laid down by the Hon'ble Supreme Court as far back as in the year 1971. In fact, the Supreme Court has also laid down that it is well settled that the power to review is not an inherent power, and it must be conferred by law either specifically or by necessary implication. In the facts of the present case, looking at the provisions of the NH Act, 1956 we do not find that the power of review is conferred by law, either specifically, or by necessary implication. This apart, we find that the issue raised in the present Petition is squarely covered by the decision of the Division Bench of this Court in case of ***Bhupendrasing Sardarsingh Parmar (supra)***. In this decision, the Division Bench has categorically held that the Competent Authority has no power of review under the NH Act, 1956. The relevant portion of this decision reads thus:

15. For determining the question in hand, it will have to be considered whether the Competent Authority under the provisions of the NH Act, 1956 has the power of review or a power of correction of the award. A faint argument was advanced that considering the provisions of Section 3-I of the NH Act, 1956 the Competent Authority, being conferred with the powers to summon witnesses, etc., which were in fact available to a 'Court' and, thus, the status of the Competent Authority would be that of a 'Court' or equivalent thereto.

16. This has also to be looked into from the language of section 3-I of the NH Act of 1956, whereby certain powers of the Civil Court have been conferred upon the Competent Authority. Section 3-I of the NH Act, 1956 reads as under:

“3-I. Competent authority to have certain powers of Civil Court.-The Competent authority shall have, for the purposes of this Act, all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) reception of evidence on affidavits;

(d) requisitioning any public record from any Court or office;

(e) issuing commission for examination of witnesses.”

A plain reading of section 3-I of the NH Act, 1956 demonstrates that the Competent Authority as constituted u/s. 3(a) has neither been conferred the status of a Court nor has been equated with the Court. Very limited powers as stipulated in clause (a) to (e) of section 3-I have been conferred upon the Competent Authority, which is only with the intent of the effective and efficacious determination of the proceedings for acquisition of land and not otherwise. Thus, it can safely be said that the Competent Authority under section 3(a) of the Act of 1956 is not a “Court”. This is further borne out from the language of section 3(a) whereby the Competent Authority is defined, which reads as under:

“3(a) “Competent Authority” means any person or authority authorized by the Central Government, by notification in the Official Gazette, to perform the functions of the

Competent Authority for such area as may be specified in the notification.”

It is, thus, axiomatic that the Parliament has not conferred the status of a Court upon the Competent Authority appointed under the NH Act, 1956 nor can it be equated with a ‘Court’ merely because of the powers as conferred upon it u/s. 3-I of the NH Act, 1956.

29. Further question is, once the award was declared on 14/08/2011, was it permissible for the Competent Authority to reopen the same, on the ground that there was a subsequent notification dated 24/11/2017, providing a lesser multiplying factor. In our opinion, this was impermissible for two reasons. The first is that a notification/Govt. Resolution would always operate prospectively, unless by express language or necessary implication, as indicated therein. This is enunciated by the Hon’ble Apex Court in the case of MRF Ltd., Kottayam Vs. Asstt. Commissioner (Assessment) Sales Tax and others, (2006) 8 SCC 702, in the following words:

“27. The provisions of the Act or notification are always prospective in operation unless the express language renders it otherwise making it effective with retrospective effect. This Court in S.L. Srinivasa Jute Twine Mills (P) Ltd. Vs. Union of India, (2006) 2 SCC 740, has held that it is a settled principle of interpretation that (SCC p. 747, para 18) “.....retrospective operation is not taken to be intended unless that intention is manifested by express words or necessary implication, there is a subordinate rule to the effect that a statute or a section in it is not to be construed so as to have larger retrospective operation than its language renders necessary.”

“

A perusal of the Govt. Resolution dated 24/11/2017 does not indicate any such express language, implication or indication. It plainly and simply only notifies the factor by which the market value is to be multiplied in respect of areas other than residential, commercial and industrial area of Special Planning Authorities, etc. in the matter of determining compensation under the Act of 2013. This Govt. Resolution dated 24/11/2017 has to operate prospectively and not retrospectively, in light of which there was no reason or cause whatsoever for the Competent Authority to issue the corrigendum/clarification dated 02/01/2018, which clearly is not only illegal but also is without any authority too. The right to have use of the higher multiplier of 2.00, which was extant, as on the date of the award, can be said to be a vested right in the land owner, which could not have been taken away by way of amendment to the existing notification, subsequent in point of time to the award. The second is that, once the award was declared on 14/08/2017, the matter went out of the domain of the Competent Authority and was only susceptible to a challenge before the Arbitrator, as provided in Section 3-G(5) of the NH Act 1956. The Competent Authority, therefore, once having declared the award on 14/08/2017, was rendered bereft of any powers either to recall the award or reconsider the same, on any count whatsoever. Even assuming that the Competent Authority under the NH Act, 1956 had any inherent power to correct an error of clerical or arithmetical nature, the same should have been so obvious, apparent or patent as not to admit of any debate or discussion. On the factuality of the matter, it is pertinent to note that the purported correction dated 02/01/2018 was passed not because there was any clerical error or mistake in the award dated 14/08/2017 but for the reason that subsequent to the declaration of the award on 14/08/2017, the Government had issued a Govt. Resolution on 24/11/2017, providing for a multiplier factor, which in the opinion of the Competent Authority, if applied, would reduce the compensation granted to the petitioner in the award dated

14/08/2017. Such a course of action was not only impermissible but also is clearly without any authority in the Competent Authority in law. The Competent Authority appointed under a statute is supposed to be an independent person and has to dispassionately use and apply the powers as vested in it, for the purpose of implementing the provisions of the statute, which has to be done without fear or favour from any quarter. However, in the instant matter, the Competent Authority, instead of doing so, clearly appears to have digressed from its powers and duties, in order to favour the acquiring body, which clearly it ought not to have done. The correction dated 21/01/2018 by whatever name called, is therefore, illegal and unsustainable in law on the above counts too.

30. The net result of the above is that it is held as under:

(a) The 'Competent Authority' as appointed under Sec. 3(a) of the NH Act, 1956, has no power to review its award or correct any clerical or arithmetical mistake therein under the provisions of the NH Act, 1956.

(b) The powers u/s. 33 of the Act of 2013, are not available to the 'Competent Authority' appointed under the NH Act, 1956 for making any corrections of clerical or arithmetical nature in the award as passed by it.

(c) The 'Competent Authority' is not a 'Court', but is a quasi-judicial authority for the purpose of Sec. 3-C of the NH Act, 1956, in the matter of hearing and deciding the objections as received u/s. 3-C(1).

31. In light of above discussion and findings, we hold that the Competent Authority was not empowered to pass the

corrigendum/clarification dated 02/01/2018 and the same being without any authority, is hereby quashed and set aside. The Competent Authority, therefore, is liable to deposit/transfer the balance amount of compensation to the petitioner.

(emphasis supplied)

15. Once this is the position, we find that Respondent No.2 had no power to review the order passed by him on 28th January 2021 even though he might have been of the opinion that he was wrong. This being the position in law, we are of the view that the impugned order cannot be sustained and has to be set aside.

16. Having said this, we noticed that once the 1st Respondent filed his objections before Respondent No.2, and which really were objections relating to apportionment of the amount awarded, under Section 3H(4) the Competent Authority ought to have referred the dispute for a decision to the of the Principal Civil Court of Original Jurisdiction within the limits of whose jurisdiction the said land was situated. This obviously was not done, and the order dated 28th January 2021 came to be passed rejecting the objections filed by the 1st Respondent. When we put this to Mr. Limaye, the learned Counsel appearing for the Petitioners, on instructions, he fairly stated that the

compensation amount of Rs.4,41,770/- shall be deposited by the Petitioners in Regular Civil Suit No. 528 of 2021 pending before the Civil Judge, Junior Division, Kalyan within a period of eight weeks from today. He, however, submitted that this statement should not be construed to mean that the Petitioners admit that the 1st Respondent has any right over the said money or in the said land, as it is specific case of the Petitioners that no amounts are due and payable to the 1st Respondent and he has no right in the said land, especially, in light of the Release Deed dated 10th December 2013. In other words, Mr. Limaye submitted that this deposit of Rs.4,41,770/- is being made without prejudice to all the rights and contentions of the Petitioners.

17. Considering the fair stand taken by the Petitioners and in view of the forgoing discussion, the following order is passed:

- (a) The impugned order dated 25th March 2022 passed by Respondent No.2 in review application No. Kra. KD/T-2/Bhusa/Mumbai Vadodara is hereby quashed and set aside. All letters/notices issued pursuant to the order dated 25th March 2022 including the letter dated 28th July 2021 freezing the account of the Petitioners as well as the

undated notice calling upon the Petitioners to deposit the amount of Rs. 4,41,770/- within fifteen days, failing which the residential flat of Petitioner No.1 shall stand vested in the government, are also set aside. We find that the notices issued by Respondent No.2 and referred to by us above travel wholly outside the powers conferred upon the Competent Authority. We are in fact shocked that such notices have been issued. We, therefore, caution the Competent Authority to stay within the realms and bounds of law in the future. We say nothing more.

- (b) As per the statement recorded above, the Petitioners shall deposit the amount of Rs. 4,41,770/- to the credit of Regular Civil Suit No. 528 of 2021. The said amount shall not be withdrawn by the 1st Respondent till the hearing and final disposal of the Suit and shall abide by the final outcome of that Suit. It is made clear that this deposit is made by the Petitioners without prejudice to their rights and contentions and the same shall not be construed to mean that they have in any way accepted the claim of the 1st Respondent either to this amount, or to the said land, or to

the fact that the Release Deed was obtained by fraud and/or coercion.

18. It is made clear that this order shall not in any way prejudice Respondent No.1 in prosecuting his Regular Civil Suit No. 528 of 2021. That suit shall be decided on its own merits and in accordance with law uninfluenced by any observations made in this order. In this regard, all rights and contentions of all parties are expressly kept open to be agitated in the said suit.

19. Rule is made absolute in the aforesaid terms and the above Writ Petition is accordingly disposed of in terms thereof. There shall be no order as to costs.

20. 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.]