

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1 APEAL FROM ORDER NO. 62 OF 2016

NATIONAL HIGHWAYS AUTHORITY OF INDIA PROJECT
IMPLEMENTATION UNIT NASHIK THROUGH IT
VERSUS
VINITA SURESH MUTHA AND ANOTHER

WITH

2 APEAL FROM ORDER NO. 63 OF 2016

WITH

3 APEAL FROM ORDER NO. 64 OF 2016

WITH

4 APEAL FROM ORDER NO. 65 OF 2016

WITH

5 APEAL FROM ORDER NO. 66 OF 2016

WITH

6 APEAL FROM ORDER NO. 67 OF 2016

WITH

7 APEAL FROM ORDER NO. 68 OF 2016

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Advocate for Appellants : V.J. Dixit
Advocate for Respondents : A.B. Kale for R.1
Advocate for Respondents : V.B. Patil for R.2

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CORAM : P.R. BORA, J.
DATE : 21-11-2016.

P.C. :

1. Heard Shri V.J. Dixit, the learned senior counsel appearing for the appellants and Shri A.B. Kale and Shri V.B. Patil, learned counsel appearing for the respondents.

2. The common order passed by the learned Principal

District Judge, Dhule, whereby, he has permitted the present respondents to withdraw the amount of compensation deposited by the appellant in terms of the award passed by the Arbitrator under Section 3-G (5) of the National Highways Act, 1956, is questioned in the present appeals. As has been submitted by the learned senior counsel, the Arbitrator has enhanced the amount of compensation payable to the respondents-claimants from Rs. 135/- per sq.mtr as determined by the competent authority under Section 3-G (1) of the Act of 1956 to Rs. 4,000/- per sq.mtr. The learned senior counsel submitted that the amount of compensation so enhanced by the Arbitrator is wholly arbitrary. The learned counsel submitted that the appellants have, therefore, filed the applications under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act of 1996') before the District Court at Dhule for setting aside the said arbitral award.

3. The pleadings of the parties and the submissions made on behalf of the learned counsel appearing for the respective parties reveal that, the lands of the present respondents were acquired by the appellant for the purpose of widening of national highway no.3 under the provisions of National Highways Act, 1956 (hereinafter referred to as the 'Act of 1956'). Under Section 3-G(1) of the Act of 1956, the competent authority as defined under Section 3-A of the Act of 1956, determined the amount of compensation payable to the respondents-claimants, whose lands

were acquired @ Rs. 135/- per sq.mtr. Dis-satisfied with the amount of compensation so offered, the claimants approached the Arbitrator by invoking the provisions under Section 3-G(5) of the Act of 1956, whereupon, the learned Arbitrator enhanced the amount of compensation to the tune of Rs. 4,000/- per sq.mtr. and passed the arbitral awards accordingly. The arbitral awards so passed by the learned Arbitrator have been challenged by the appellant by filing applications before the District Court at Dhule under Section 34 of the Arbitration and Conciliation Act, 1996. In the proceedings under Section 34 of the Act of 1996, the appellants have deposited the amount under the arbitral award in view of the provisions under Section 3-H of the Act of 1956. After deposit of such amount the claimants preferred the applications before the District Court at Dhule seeking permission to withdraw the said amount. The learned Principal District Judge, Dhule vide common order has permitted the respective claimants to withdraw the amount falling to their shares in the respective arbitral awards. Aggrieved by, the present appeals are preferred by the appellants.

4. It is the grievance of the appellants that, the learned Principal District Judge could not have permitted the withdrawal of the amount when the arbitral awards have been challenged by the appellants by filing applications under Section 34 of the Act of 1996. It is the contention of the appellants that, filing of the applications under Section 34 of the Act of 1996 by itself renders

the arbitral award unenforceable.

5. The contentions and objections raised by the appellants are resisted by the respondents i.e. the original claimants. The claimants have raised a preliminary objection about the maintainability of the present appeals. According to the original claimants, no 'appeal from order' would lie against the impugned order and the same could have been challenged by the appellant by filing the substantive appeals. According to the respondents-claimants, the impugned order is an appellable order as enumerated under Section 37 of the Act of 1996.

6. Exhaustive arguments were made by the learned counsel appearing for the respective parties on the point of maintainability of the present appeal, as well as, on the merit of the appeals so filed. It was contended by the learned senior counsel that, since the applications under Section 34 of the Act of 1996 were presented by the appellants before coming into force the amendment to Section 34 and Section 36 of the Act of 1996, the same will be governed by the old provisions existing as on the date of filing of such application and, as such, according to the learned senior counsel, no withdrawal was permissible of the deposited amount till the decision of the applications under Section 34 of the Act of 1996. It was also the contention of the learned senior counsel that, impugned order does not fall in the category of orders

as enumerated under Section 37 of the Act of 1996. It was per-
contra vehemently argued on behalf of the respondents claimants
that, the applications made for withdrawal of the amount by the
claimants, must be treated as the applications under Section 9 of
the Act of 1996 and any order passed on such applications falls in
the categories of orders as stated in Section 37 of the Act of 1996,
which can be challenged only by filing the substantive appeals and
no appeal from order would lie against such orders.

7. After having heard the arguments of the learned
counsel appearing for the parties and having regard to the peculiar
facts involved in the present appeals, it appears to me that, by
keeping the legal points raised by the parties open to be
adjudicated in the other appropriate proceedings the present
appeals can be disposed of by passing the following order which
would strike the balance and meet the ends of justice. The common
impugned order is, therefore, modified as below:

ORDER

- i) The respective claimants are permitted to withdraw 40% of
the deposited amount by submitting an undertaking to the
District Court at Dhule that they will re-deposit the amount so
withdrawn by them if the applications filed by the appellants
are allowed and consequently the amount of compensation is
decreased.

- ii) The respective claimants are further permitted to withdraw the remaining 60% amount on furnishing solvent security / surety or bank guarantee of any nationalised or scheduled bank in the like amount to the satisfaction of the Registrar, District Court, Dhule.
- iii) The learned Principal District Judge, Dhule shall decide the applications under Section 34 before him as expeditiously as possible and preferably within a period of one year.
- iv) It is clarified that the present order shall not be treated as precedence.
- v) It is further clarified that all the legal objections raised by the respective parties are kept open.
- vi) The appeals from orders stand disposed of in the aforesaid terms without any order as to the costs.

(P.R. BORA)
JUDGE