

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.11738 OF 2017

Umesh Board Paper Mills Pvt.Ltd.,
A Company registered as per the
Companies Act, 1956 and having
its registered office at Kaustub,
Plot No.12, N-5, M-Sector, CIDCO,
Aurangabad, through its Director
Shri Satyanarayan s/o Ramgopal
Agrawal, Age 65 years, Occupation
Business, R/o as above

.. Petitioner

Versus

1. The Union of India,
Through Department of
Road Transport,
New Delhi
2. The National Highway
Authority of India,
Through its Project Officer,
National Highway No.211,
Sector N-4, Near Kamgar Chowk,
Aurangabad, District Aurangabad
3. The Competent Authority
(Land Acquisition),
National Highway No.211,
Aurangabad @ Deputy
Collector (Acquisition),
Krushna Khore Vikas Mahamandal,
Sector N-4, Near Kamgar Chowk,
Aurangabad, District Aurangabad

.. Respondents

Mr D.P. Palodkar, Advocate for petitioner
Mr S.G. Karlekar, A.G.P. for respondent no.1
Mr D.S. Manorkar, Advocate for respondent no.2

**CORAM : S.V. GANGAPURWALA &
A.M. DHAVALA, JJ**

Date : 16th March 2018

PER COURT

1. The petitioner seeks directions against the respondents to pay interim compensation considering ready reckoner rates of the year 2017 as market value and complete the acquisition proceedings in respect of land admeasuring 2100 Sq.Mtrs. situated in Gut No.125 of village Pimpalgaon Pandhari, Taluka and District Aurangabad.

2. We have heard Mr Palodkar, learned Counsel for the petitioner, learned A.G.P. for respondent no.1. We have also heard Mr Manorkar, learned Counsel for respondent no.2 on the earlier date.

3. The case of the petitioner is that the total area of Gut No.125 is 6 hectare 52-R. There are six owners of the entire land Gut No.125. From Gut No.125, about 8040 Sq.Mtrs. land is acquired. The notification under Section 3A of the National Highways Act, 1955 (hereinafter referred to as 'the Act' for brevity) is issued for the first time on 29th March 2012. Second notification under Section 3A of the Act is issued on 15th September 2014. According to petitioner, the notifications did not include the name of the petitioner nor specified clearly the property acquired from Gut No.125. No boundaries were given of the property sought to be acquired. The petitioner filed representations/objections under Section 3C of the Act on 19th December 2014, 19th March 2015 and 6th April 2015. According to the petitioner, the representations/objections were not considered and eventually, notification under Section 3D of the Act was published on 31th August 2015 and the award is passed on 24th August 2016. It is accepted by the learned Counsel for the petitioner that the possession

of the part land of the petitioner from 2100 Sq.Mtrs. of Gut No.125 is taken on 22nd June 2017. The learned Counsel for the petitioner submits that though the land of the petitioner is effectuated in the acquisition, the notification under Section 3A and 3D did not state that the land of the petitioner is acquired. Even, in the award it is not stated that the land of the petitioner is acquired. In the joint measurement, it is found that land of the petitioner from Gut No.125 to the extent of 2100 Sq.Mtrs. is acquired. The respondents are now trying to correct the award under the impugned communication. The same is not permissible. They will have to initiate fresh acquisition proceedings. Learned Counsel for the petitioner to substantiate his submissions, relied on the judgments of Apex Court in the matter of **State of U.P. and ors. Vs. Abdul Ali and ors.**, reported in **(2017 (3) SCC 108** and in the case of **Competent Authority Vs. Barangore Jute Factory and ors.**, reported in **(2005) 13 SCC 477**.

4. It is the contention of the learned A.G.P. and learned Advocate for the respondent that land admeasuring 2100 Sq.Mtrs. owned by the petitioner was part of notification issued under Section 3A and 3D of the Act. However, the name of the petitioner was inadvertently excluded. Upon joint measurement, it transpired that the 8040 Sq. Mtrs. of land Gut No.125 inclusive of the land of the petitioner is acquired and as such, correction is directed to be effected in the award. The same is impermissible.

5. We have considered the submissions advanced by the respective parties.

6. The National Highways Act does not contain any provision, which permits correction to award. Under Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Section 33 permits correction to the award by the Collector. Section 33 of the said Act reads thus :

“ 33. **Corrections to awards by Collector** - (1) The Collector may at any time, but not later than six months from the date of award or where he has been required under the provisions of this Act to make a reference to the Authority under section 64, before the making of such reference, by order, correction any clerical or arithmetical mistakes in either of the awards or errors arising therein either on his own motion or on the application of any person interested or local authority;

Provided that no correction which is likely to affect prejudicially any person shall be made unless such person has been given a reasonable opportunity of making representation in the matter.

(2) The Collector shall give immediate notice of any correction made in the award so corrected to all the persons interested.

(3) Where any excess amount is proved to have been paid to any person as a result of the correction made under sub-section (1), the excess amount so paid shall be liable to be refunded and in the case of any default or refusal to pay, the same may be recovered, as prescribed by the appropriate Government.”

7. Perusal of the said provision reveals that only Clerical and arithmetical correction in the award are permissible.

8. The notification under Section 3A of the Act described the property to be acquired as from Gut No.125 of village Pimpalgaon Pandhari Gut No.125 part 0.216 hectare.

9. It is not disputed that there are six owners of Gut No.125 situated at Pimpalgaon Pandhari and Gut No.125 totally admeasures 6 hectares 52-R. In none of the notifications the details of the land admesasuring 0.216 hectares are given. Nor the name of the petitioner is included in any of the notifications and the award. According to the respondents, after the joint measurement was conducted, it transpired that under the notification, the land of the petitioner is also effectuated under acquisition.

10. The notification with regard to land under acquisition from Gut No.125 part is vague. It does not give details about the part of the land from Gut No.125 sought to be acquired. The boundaries are not given. The specifications are not given as to the land to the extent of 0.216 hectares under acquisition in the notification under Section 3A or 3D of the Act or in the award. The name of petitioner is not mentioned in the notification and in the award though the land of petitioner from Gut No.125 is acquired. When such is the position, the notification to the extent of land acquired may not hold good. The Apex Court in the case of Competent Authority Vs. Barangore Jute Factory (supra) has observed thus :

So far as the question whether the impugned Notification meets the requirement of Section 3A (1) of the Act regarding giving brief description of land is concerned, we have already shown that even though

plot numbers of lands in respect of each mouza are given, different pieces of land are acquired either as whole or in part. Wherever the acquisition is of a portion of a bigger piece of land, there is no description as to which portion was being acquired. Unless it is known as to which portion was to be acquired, the petitioners would be unable to understand the impact of acquisition or to raise any objection about user of the acquired land for the purposes specified under the Act or to make a claim for compensation. It is settled law that where a statute requires a particular act to be done in a particular manner, the act has to be done in that manner alone. Every word of the statute has to be given its due meaning. In our view, the impugned notification fails to meet the statutory mandate. It is vague. The least that is required in such cases is that the acquisition notification should let the person whose land is sought to be acquired know what he is going to lose. The impugned notification in this case is, therefore, not in accordance with the law.

11. Section 3A (2) of the Act of 1956 requires every notification under sub-section (1) to contain a brief description of the land. In the present case, the brief description of the land to be acquired vis-a-vis the petitioner is not given. Even, the name of the petitioner was not included in the notification, nor the details were given of the part of the land of the petitioner being acquired. The land of Gut No.125 is a big chunk of land admeasuring 6 hectare 52-R and from the same land, only 8040 Sq. Mtrs. land is acquired.

12. The Notification does not stand the test of Section 3A (2) of the Act and the judgment of Apex Court in case of Competent Authority

Vs. Barangore Jute Factory (supra). The land was not identifiable. The petitioner had also filed representations/objections under Section 3C of the Act, but the same are not considered.

13. As there is no provision for amending the award with regard to the description of the property and the name of the person, whose land is acquired, the notification would not be valid.

14. Considering the fact that the land has been acquired, we do not feel it proper to quash and set aside the notifications. We would adjust the right of the petitioner. The petitioner shall be paid compensation as per the market value of the land of the petitioner acquired as on the date the possession has been taken i.e. 22nd June 2017.

15. We are told by the learned A.G.P. that the corrected award is also passed and the name of the petitioner is included.

16. As directed, the compensation along with the statutory benefits shall be computed afresh within a period of three months and as per market value on 22nd June 2017. If the petitioner is aggrieved by the computation of the compensation, the petitioner is at liberty to approach the arbitrator within six weeks from the date of computation of compensation.

17. We would hasten to add that the respondents are required to pay higher compensation to the petitioner on account of their laxity and that they had not scrupulously taken steps to issue proper notifications upon confirmation of the ownership of the property,

which resulted into loss to the public exchequer. The authorities are expected to be scrupulous and meticulous while drafting and publishing notifications. They are required to correctly specify the land qua the person being affected under the acquisition and thereafter issue notifications. The same would avoid the situation as has arisen in this case and save the public exchequer.

18. Writ Petition is accordingly disposed of. No costs.

(A.M. DHAVAL, J.)

(S.V. GANGAPURWALA, J.)

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