

Sharayu Khot.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4748 OF 2014

Babaso Gangaram Dorge & Ors.

...Petitioners

Versus

Union of India & Ors.

...Respondents

Mr. Girish S. Godbole a/w Mr. Ashok B. Tajane, for the
Petitioners.

Mr. A.R. Varma a/w Mr. A.M. Sethna, for the Respondent No. 1.

Mr. Nitin P. Deshpande a/w Mr. Rakesh L. Singh, Mr. Pushkal
Mishra, i/b M.V. Kini & Co., for the Respondent No. 2.

Mrs. R.A. Salunkhe, AGP, for the Respondents No. 3 to 6 and 8.

**CORAM : ABHAY S. OKA AND
RIYAZ I. CHAGLA, JJ.**

DATE : 18 July 2018

ORAL JUDGMENT : (*Per A.S. Oka, J.*)

1. As per the administrative order dated 18th July 2014

passed by the Hon'ble the Chief Justice, this Writ Petition has been specially assigned to the Bench presided over by one of us (A.S. Oka, J).

2. The Petition arises out of the acquisition of the lands of the Petitioners under the provisions of the National Highways Act, 1956 (for short "*the said Act*"). The occasion for acquisition was the extension of the width of the National Highway No. 9 between Pune – Solapur. On 24th February 2009, a notification under Sub-Section 1 of Section 3A of the said Act was published by the Central Government. A notification dated 23rd July 2009 was published under Sub-Section 1 of Section 3D of the said Act. By the said notification, various lands situated at Village Bhangaon, Daund, District Pune which are more particularly described in the schedule to the notification were acquired. On 19th July 2010, another notification under Sub-Section 1 of Section 3D of the said Act was published in respect of various lands at Village Bhangaon for acquiring the same.

3. Again on 22nd July 2011, a notification under Sub-Section 1 of Section 3D of the said Act was issued in respect of the additional lands from the same village. This was followed by one more notification under Sub-Section 1 of Section 3A of the said Act which is dated 27th October 2011. On 15th June 2012, there was another notification issued under Sub-Section 1 of Section 3D of the said Act. On the very day, there was one more notification issued under Sub-Section 1 of Section 3A of the said Act issued in respect of the other lands from the same village. Based on the aforesaid notifications, determination of compensation was made by Special Land Acquisition Officer appointed by the State Government who exercised the powers of the Collector. The determination of compensation was made in accordance with Section 3G of the said Act.

4. It appears that there was some issue regarding the exact width of the existing highway passing through the said village. The issue was whether the width was 20 meters or 30 meters. The present Petitioners filed Writ Petition No. 8954 of

2012 challenging the notifications issued on 27th October 2011 and 15th June 2012. One of the contentions raised in the said Writ Petition was that the width of the said Highway passing through the said village was 20 meters. Even pending the said Writ Petition, one more notification under Sub-Section 1 of Section 3D of the said Act was issued on 7th March 2013. The Writ Petition was disposed of by the judgment and order dated 18th March 2013. This Court has issued directions to the Deputy Superintendent of Land Records, Daund to carry out measurements and survey of the existing National Highway passing through the said village for ascertaining the exact width of the National Highway. According to the Petitioners, after measurements, it was found that the width of the existing National Highway passing through the said village was 20 meters. There is a reference to a Civil Suit pending in the Civil Court. It appears that there was a fresh notification issued under Sub-Section 1 of Section 3D of the said Act on the basis of which another Award under Section 3G of the said Act was made on 11th December 2013. The Petitioners have set out various

factual developments which took place thereafter.

5. In the present Petition, the first prayer is for issuing a *writ of mandamus* directing that unless a proper procedure is followed under Section 3D and 3G of the said Act in respect of areas of lands mentioned in the Chart annexed to the letter dated 28th November 2013, the widening the Highway should not be commenced. Prayer (b) of the Petition is the same, but it incorporates the description of the lands. There are further prayers for seeking quashing the notification dated 7th March 2013 under Sub-Section 1 of Section 3D of the said Act and consequently, for quashing the Award dated 11 November 2013. There are various orders passed from time to time in this Petition, which crystalise the issues arising in this Petition. The first material order is the order dated 28th April 2017. Paragraphs 5 to 8 of the said order read thus:-

“5. Thus, the only question which survives for consideration of this Court is whether the

determination of the compensation has been made in respect of lands which are described in the prayer clause (b) in respect of of which declarations under Sub-Section 1 of Section 3D of the said Act have been published. This issue is of importance as Sub-Section 2 of Section 3D provides that on publication of a declaration under Sub-Section (1), the lands notified vest absolutely in the Central Government, free of all encumbrances.

6. We direct the petitioners or their authorised representatives to remain present in the Office of the Land Acquisition Officer-17, Pune (CALA) on 22nd May, 2017 at 11 am. On that day, the petitioners will produce the copies of the declarations made under Sub-Section 1 of Section 3D of the said Act in respect of the lands mentioned in prayer (b). An authorised representative of National Highway Authority of India shall also remain present before the Special Land Acquisition Officer on 22nd May, 2017.
7. After perusing the record and after giving an opportunity of being heard to the petitioners and

the National Highway Authority of India, the Land Acquisition Officer will verify whether the determination of compensation has been made in respect of all lands which are the subject matter of declarations under Sub-Section 1 of Section 3D of the said Act the copies of which will be produced by the petitioners.

8. *The Land Acquisition Officer will submit a report to this Court after undertaking the aforesaid exercise. The report will state whether the determination of compensation in accordance with Sub-Section (1) of Section 34 of the said Act has been made in respect of the lands covered by the notifications under Sub-Section (1) of Section 3D produced by the petitioners. Necessary details be set out in the report.”*

(Underline supplied.)

6. On 16th August 2017, another direction was issued by this Court. Paragraphs 1 to 3 of the said order read thus:-

“1. In terms of the order passed by this Court on 28

April 2017, the Deputy Collector (Land Acquisition) No. 17, Pune had submitted a Report and a Chart accompanying the Report. The said Chart has 24 columns. It is not in dispute between the Petitioners, the State Government and National Highway Authority that areas mentioned in column No. 23 of the Chart are the areas which are mentioned in the declarations issued under Sub-section 1 of Section 3D of the National Highways Act, 1956 (for short “the said Act”). The learned Government Pleader on instructions stated that though the compensation is not fixed in accordance with Section 3G of the said Act in respect of areas mentioned in Column No. 23, the said areas have not been actually demarcated on the site. The learned Counsel appearing for the National Highways Authority on instructions states that in principle, the said Authority has no objection, if the areas mentioned in Column No. 23 of the Chart are ordered to be deleted from the declarations under Sub-section 1 of Section 3D.

2. In view of the aforesaid statements made by the learned Counsel for the parties, it will be appropriate, if the areas mentioned in Column

No. 23 are actually demarcated in presence of the parties, so that the final order can be passed by this Court.

3. We direct the Deputy Superintendent of Land Records, Daund to actually demarcate the areas mentioned in Column No. 23 of the Chart annexed to the Report dated 30 June 2017. The Report and the Chart are marked as **Exh.R1 (Colly.)** for identification. The Deputy Collector (Land Acquisition) No. 17, Pune shall forward a copy of the Report and Chart to the Deputy Superintendent of Land Records, Daund.”

(Underline supplied.)

7. Thereafter, there was some controversy raised regarding manner in which the survey was carried out or whether a survey was at all carried out in terms of the order of this Court. Ultimately, last report dated 12th July 2018 was submitted by the District Superintendent of Land Records, Pune after Super Nimtana measurements. The chart appended to the said report contains details with regards to various Gat numbers

such as the area shown in the notifications under Sub-Section 1 of Section 3D of the said Act, the area in respect of which the compensation was fixed under Section 3G of the said Act, the area included in the notification under Sub-Section 1 of Section 3D in respect of which no Award has been made and the area not covered under notification under Sub-Section 1 of Section 3D of the said Act in respect of which the compensation has been fixed. There is again a controversy raised whether proper survey and measurements were carried out by the Survey Officer in terms of the orders of this Court. However, the controversy need not be detain us. The question as formulated in the order dated 28th February 2017 is whether determination of compensation has been made in respect of all the lands described in prayer clause (b) in respect of which declarations under Sub-Section 1 of Section 3D of the said Act have been published. The order dated 16th August 2017 records that there is no dispute that the areas mentioned under Column No. 23 of the Chart submitted by the Deputy Collector (land Acquisition) No. 17 are the areas which are mentioned in the declarations

issued under Sub-Section 1 of Section 3D of the said Act. It is also recorded in the said order that in respect of the said areas, compensation has not been fixed in accordance with Section 3G of the said Act. There is a specific statement made by the learned Government Pleader on instructions that in respect of the areas mentioned under Column 23 though the said areas formed a part of the notifications under Sub-Section 1 of Section 3D of the said Act, compensation has not been fixed under Section 3G of the said Act. The same order records the statement of the learned Counsel appearing for the National Highway Authority of India on instructions that the said Authority has no objection, if the areas mentioned in Column 23 of the Chart are ordered to be deleted from the declarations issued under Sub-Section 1 of Section 3D of the said Act. Though there is no factual controversy about these aspects, the Petition was kept pending only with a view to ascertain whether the areas mentioned under Column 23 can be identified on the spot so that about the location of the said areas, there is no dispute between the parties. However, even after multiple

measurements, it appears from the record that the dispute about the location is still subsisting. However, the said dispute need not detain us.

8. The learned Counsel appearing for the Petitioners on instructions of the Petitioners stated that the Petitioners have no objection, if within a time bound schedule, the compensation is fixed in relation to the areas mentioned under column 23. He further stated that if the compensation cannot be fixed, by setting aside the declaration to that extent, the Petitioners will have to be placed in possession of the areas mentioned under column 23. The learned Counsel appearing for the National Highway Authority of India has no objection for adopting the course of directing compensation to be fixed in respect of the said areas. However, he submitted that the second suggestion may not be accepted. We may note here that there is no dispute about the correctness of the areas mentioned under Column 23 in the Chart annexed to the report dated 12th July 2018 which for the purpose of identification, we are marking as *Exhibit RX*.

9. We have considered the submissions. We have perused the documents on record. In view of Sub-Section 2 of Section 3D of the said Act, on publication of a declaration of Sub-Section 1 of Section 3D of the said Act, the lands mentioned therein vest absolutely in the Central Government. Under Section 3E of the said Act, the possession of the said lands can be taken on vesting subject to compliance of the conditions under Sub-Section 1 of Section 3E of the said Act. Section 3G of the said Act provides for determination of the compensation in respect of the land acquired in accordance with Section 3D of the said Act. Considering the provision of Sub-Section 2 of Section 3D of the said Act, it is mandatory to determine the compensation of all the lands notified under Sub-Section 1 of Section 3D of the said Act in accordance with Section 3G of the said Act. Admittedly, this obligation of the determination of the compensation in respect of the areas mentioned below column 23 has not been discharged. On one hand, on the dates of the publication of the respective notifications under Sub-Section 1 of Section 3D of the said Act, there is a vesting of the notified

lands in the Central Government and on the other hand even after the said vesting, for last few years, the compensation has not been determined. Therefore, the compensation will have to be determined as expeditiously as possible. The learned AGP on instructions of the concerned Special Land Acquisition Officer stated that it is possible to fix the compensation within a period of six months from today.

10. Coming back to the provisions of the said Act, action of taking possession in accordance with Sub-Section 1 of Section 3E of the said Act of the lands subject matter of a declaration under Sub-Section 1 of Section 3D of the said Act can be taken only after the amount fixed by the Competent Authority under Section 3G of the said Act has been deposited with the Competent Authority as required under Sub-Section 3 of Section 3H of the said Act. In the present case, without complying with the said statutory requirement in respect of the areas mentioned under column 23, the possession has been illegally taken inasmuch as the compensation payable in respect

of the lands mentioned under Column 23 has not been determined. More than reasonable time has elapsed from the date of the publication of the declarations under Sub-Section 1 of Section 3D of the said Act. Therefore, on the failure of the Competent Authority to determine the compensation in respect of the said excluded areas within a reasonable time, the acquisition in relation to the said areas will have to be set aside and consequently, the possession will have to be restored.

11. There is one more factual aspect mentioned in the note appended below the Chart annexed to the report dated 12th July 2018 (marked as Exhibit RX for identification). It is mentioned that the lands bearing Gat Nos. 384, 387, 399, 538 and 557 are not covered by the acquisition and therefore, the same will have to be deleted from the Award. The learned Counsel appearing for the Petitioners has no objection to do that with a modification that according to him, in respect of the lands bearing Gat Nos. 399 and 538, there is no Award made and in respect of the lands bearing Gat Nos. 384, 387 and 557,

Award has been made. However, in respect of the land bearing Gat No. 384, Award has been made only in respect of 1/2 of the notified land. In view of the statement made in the report, these lands can be excluded from the Award.

12. It appears that in some cases, Awards have been made even in respect of certain areas though the said areas are not included in the notifications. It is for the Respondents to take appropriate steps in respect of the said lands.

13. Hence, we dispose of the Petition by passing the following order:-

- (i) We direct the Competent Authority within the meaning of Clause (a) of Section 3 of the said Act to determine the compensation payable in respect of the areas mentioned under the Column 23 in the Chart annexed to the report dated 12th July 2018 (marked as Exhibit RX for

identification). The determination shall be made in accordance with Section 3G of the said Act;

(ii) The exercise of determination of the compensation in relation to the said lands shall be completed and the payment shall be made to the persons entitled within a period of six months from the date on which this judgment and order is uploaded;

(iii) If the Competent Authority fails to determine the compensation and to make payment of the amount within the stipulated time of six months as stated above, in relation to the said lands mentioned under column 23, a notification shall be issued within a period of two months from the expiry of the stipulated period of six months, for deleting the said portions of the lands from the notifications already published under Sub-

Section 1 of Section 3D of the said Act. Consequently, within one month from the date of the publication of the notification of deletion, the persons from whom the possession of the said lands in respect of which compensation is not fixed, shall be placed in possession thereof;

(iv) We make it clear that it will be open for the concerned Respondents to take appropriate steps in accordance with law in respect of those portions of the lands in respect of which compensation has been determined under Section 3G of the said Act, but the same are not a part of the notifications under Sub-Section 1 of Section 3D of the said Act;

(v) We also direct the concerned Respondents to take steps for deleting the lands bearing Gat Nos. 384, 387, 399, 538, 557 from the Awards

made in accordance with Section 3G of the said Act by issuing necessary order/notification in accordance with law within a period of one month from the date on which this judgment and order is uploaded;

- (vi) We make it clear that we had made no final adjudication on the issue of identity of the areas mentioned under the Column 23 of the Chart appended with the report dated 12th July 2018;
- (vii) Rule is made partly absolute in the above terms;
- (viii) No order as to costs.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]