

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.5049 OF 2019

Shamkumar Manohar Kadam
and others

Petitioners

Versus

Union of India & others

Respondents

Mr.A.N.Nagargoje, advocate for the petitioners.
Mr.D.G.Nagode, Standing Counsel for Respondents No.1 & 2.
Mrs.G.L.Deshpande, AGP for Respondents No.3 & 4.

**CORAM : PRASANNA B. VARALE AND
NITIN W. SAMBRE, JJ.**

DATE : 29th April, 2019.

P.C. :

Heard Shri Nagargoje, learned counsel for the petitioners.

2 This petition is preferred questioning the decision of respondent-National Highway Authority in awarding compensation, which according to the petitioners, is less than as prescribed in Schedule-I attached to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for the sake of brevity, hereinafter referred to as the 'Act of 2013').

3 The facts necessary for deciding the petition are as under :

According to the petitioners, vide order dated June 17, 2017, passed by Respondent No. 3-Deputy Collector, compensation came to be awarded as the agricultural land of the petitioners came to be acquired by taking recourse to provisions of Section 24 of the Act of 2013. The petitioners are also questioning the recovery notice dated 31.01.2019, issued by Respondent no. 3 whereby the petitioners were directed to deposit the excess amount received by them, within seven days.

4 According to the petitioners, the award, pursuant to the provisions of Section 3-G (4), came to be passed on January 14, 2015, in respect of acquired land, houses, trees, cattle sheds, tin sheds, bore wells etc., thereby awarding compensation at the rate of Rs. 1737/- per square meter. As the land was required for construction of National Highway, petitioners state that by virtue of Ordinance dated April 03, 2015, the Act of 2013 was made applicable to the acquisition proceedings under the National Highways Act, 1956, with effect from January 01, 2015 as is apparent from the provisions of Section 12 of the amended act.

5 According to the petitioners, since the compensation was not granted as per Schedule – I appended to the Act of 2013, they approached this Court by filing Writ Petition No. 4227 of 2016, which was disposed of on 20.04.2016 thereby directing the Respondent-authorities to re-determine the amount of compensation payable to the petitioners as per the Act of 2013.

6 According to the petitioners, though the authorities have redetermined the compensation, the same is contrary to what

has been prescribed in Schedule-I to the Act of 2013 and then recovery was ordered. As such this petition.

7 Having heard Shri Nagargoje, learned counsel for petitioners, in the aforesaid background, this Court has invited his attention to the provisions of sub-section (5) of Section 3-G of the National Highways Act, 1956 which provides for alternate remedy to the persons like petitioners in case, they are aggrieved by the amount determined by the competent authority i.e. Respondent No. 3 in the present petition.

8 Shri Nagargoje submits that since the case in hand is open and shut case, as the compensation is required to be paid as per Schedule-I, the petitioners need not take recourse to the alternate remedy. He would also urge that since there is order of recovery, the bar of alternate remedy will not operate.

9 We do not see any legal impediment, as is sought to be canvassed by Shri Nagargoje, learned counsel for the petitioners, in invoking the alternate remedy as provided under sub-Section (5) of Section 3-G of the National Highways Act, 1956, which reads as under :

3-G Determination of amount payable as compensation :

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

10 We have given an option to the petitioners to withdraw the petition with liberty, however, learned counsel for petitioners has shown his disinclination towards the same. We appreciate the fairness shown by Shri Nagargoje, learned Counsel for petitioners, during the course of hearing of the present petition by disclosing to this Court the fact that petitioners have in fact, in earlier round of litigation, had taken recourse to the provisions of Section 3-G of the National Highways Act, 1956.

11 In the aforesaid background, we are left with no other option but to dispose of this petition with liberty to the petitioners to take recourse to the alternate remedy as provided under Sub-section (5) of Section 3-G of the National Highways Act, 1956.

12 The petition is, as such, disposed of accordingly.

NITIN W. SAMBRE
JUDGE

PRASANNA B. VARALE
JUDGE

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