

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.630 OF 2019

Gopalkrishna P. Prabhugaonkar
son of late Pundalik Prabhugaonkar,
aged 60 years, married, occupation
retired, resident of H.No.B/4,
Gaurikul, Ambaji, Fatorda, goa. Petitioner.

V/s.

1. State of Goa, through its
Chief Secretary, with office at
Secretariat, Goa Legislative Assembly,
Porvorim, Goa.

2. Special Land Acquisition Officer,
National Highways (SLAO) and
Competent Authority for
Land Acquisition with office at
PWD (Cell), Altinho, Panaji, Goa. Respondents.

Mr. Sudesh Usgaonkar with Ms. Marie R. Pereira, Advocate for the
Petitioner.

Mr. Manish Salkar, Government Advocate for the Respondents.

***Coram : M.S. Sonak &
Nutan D. Sardesai, JJ.***

Date : 17th September, 2019.

ORAL JUDGMENT : (Per M.S. SONAK, J.)

Heard Mr. Sudesh Usgaonkar for the Petitioner and Mr.
Manish Salkar, Government Advocate for the Respondents.

2. Rule. Rule is made returnable forthwith, with the consent of and at the request of the learned Counsel for the parties.

3. By this Petition instituted under Article 226 of the Constitution of India, the Petitioner seeks appropriate writ, order or direction to direct the Respondents to pay to the Petitioner, compensation as determined by the Award dated 30th April, 2018 (Exhibit E) in respect of 650 sq. metres of the Petitioner's land, bearing Survey No.356/5 at Loliem, Canacona, Goa (said land). The acquisition was for the purposes of widening/four laning of the National Highway, Panaji - Mangalore section.

4. The records, in the present case, indicate that the Petitioner was served with a notice dated 21/03/2017 under Section 3E of the National Highways Act, 1956 (said Act) stating that it is the Petitioner who is believed to be interested in the land admeasuring 650 sq. metres surveyed under No.356/5 of Village Loliem (said land) which is proposed to be acquired. The notice requires the Petitioner to establish his interest in the suit land and states that on the basis of the same, the Special Land Acquisition Officer (SLAO) will proceed to frame award of compensation and decide on apportionment of compensation payable to the Petitioner for the land, trees and structures, based on prevailing norms and sections of the Land Acquisition of National Highway Act, 1956, as applicable

from time to time. A questionnaire was also annexed to the said notice and the Petitioner was required to furnish answers to the questions.

5. The Petitioner submitted response dated 5th May, 2017, replying to the questions in the questionnaire appended to the notice dated 21/03/2017. The Petitioner produced several evidences, necessary for determination of the appropriate rate of compensation, as well. Ultimately, the SLAO made an award dated 30th April, 2018, in which he determined that the compensation of ₹ 12,80,992 is found to be entirely payable to the Petitioner herein. The Petitioner has placed on record the Award dated 30th April, 2018 and the same is marked as Exhibit E in the paper book of this Petition. To the Award is appended '*Statement-B*', in which there is specific reference to the said property surveyed under No.356/5 part; there is specific reference to the name of the Petitioner; there is specific reference that the entire compensation amount is to be apportioned in favour of the Petitioner and finally there is specific reference to the compensation amount, as well.

6. Mr. Usgaonkar submits that despite the clear endorsement in the award, the SLAO is refusing to pay the Petitioner the compensation which is already determined on the specious plea that the Petitioner has failed to produce further evidence on record to establish that he is indeed the owner in respect of the said property.

7. Mr. Usgaonkar submits that such a demand on the part of the SLAO is *ex facie* without jurisdiction. He submits that once an award has been made, there is no question of the SLAO demanding any further proof in the matter. In any case, Mr. Usgaonkar points out that on the earlier occasion, for the purpose of National Highway itself, a portion of the Petitioner's property surveyed under No.356/5 was acquired and the Petitioner was paid the compensation in respect of the same. Mr. Usgaonkar points out to the Judgment and Order dated 21st January, 2011 in First Appeal No.180/2005, instituted by the Petitioner, in which the Petitioner had, in fact, applied for enhancement of compensation.

8. Mr. Salkar, learned Government Advocate points out that the SLAO has filed an affidavit. In terms of the affidavit, all that the SLAO required of the Petitioner, was to produce further documents to establish the title of the Petitioner. He submits that there was nothing wrong on the part of the SLAO in making such a demand.

9. According to us, once the award determined the compensation payable to the Petitioner, there was no justification for the SLAO requiring the Petitioner to produce further evidence in the matter of this nature. If, at the stage of making an award, the SLAO had any doubt as regards the ownership of the Petitioner, or had any doubt as to whether there were more than one persons entitled to

compensation, then in terms of the said Act, the SLAO should have ordered deposit of the compensation amount before the appropriate Court and then left it to the parties to litigate for apportionment of such compensation. In this case, however, the SLAO, in his award, has clearly determined that the compensation was due and payable to the Petitioner in its entirety.

10. Besides, in this case, the Petitioner has produced material on record that in the past, a portion of the very same property was acquired by the Respondents and, for which, compensation was paid to the Petitioner, exclusively.

11. In these peculiar facts, we cannot appreciate the stance of the SLAO in refusing to pay the compensation to the Petitioner. Such refusal, according to us, is without authority of law and, therefore, cannot be countenanced.

12. Accordingly, we allow this Petition and direct the SLAO to pay the compensation amount as determined by the award dated 30th April, 2018 to the Petitioner, as expeditiously as possible and, in any case, within a period of two weeks from today. We make it clear that if this compensation amount is not paid within two weeks from today by the SLAO, then, in addition to the requirement of payment of interest, the officer who was responsible for the delay in payment of the compensation, will have to be made personally liable for

payment of interest to the Petitioner. It is, of course, open to the SLAO to insist upon the compliance with the usual formalities in such matters.

13. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

14. All concerned to act on the basis of an authenticated copy of this order.

Nutan D. Sardesai, J.

M.S. Sonak, J.