

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5420 OF 2014

1. Bhiva Ramji Jachak (Deceased
through his heirs and legal
representatives
- 1a Smt. Laxmibai Bhiva Jachak,
Age : Major
- 1b Shriram Bhiva Jachak, died on 20th
December, 2010 (deceased through
his heirs and legal representatives
i.e. after the judgment of the Trial
Court was delivered i.e. on the date
of judgment 20th December, 2010
- 1b.1 Smt. Nirmala Shriram Jachak
Age : Major
- 1b.2 Rohit Shriram Jachak
Age : Major
- 1b.3 Nikhil Shriram Jachak
Ag : Major
- 1b.4 Smt. Snehal Shriram Jachak
- 1c Tanaji Bhiva Jachak
Age : Major
- 1d Vithoba Bhiva Jachak
Age : Major
- 1e Deveidas Bhiva Jachak
Age : Major
- 1f. Smt.Lankabai Balkrushna Sonavane
Age : Major
- 1g Smt. Sulochana Punjaji Jadhav
Age : Major
- 1h Smt. Lahanubai Balu Kombade
Age : Major
2. Parvat Ramji Jachak
Age : Major
3. Mahadu Ramji Jachak
Age : Major
4. Sadashiv Ramji Jachak
Age : Major
All residing at Pathardi, Taluka and
District Nashik

....Petitioners

Versus

1. The State of Maharashtra Through
The Collector of Nashik
2. Nashik Municipal Corporation,
Nashik, through the Commissioner
3. National Highway Authority, through
Executive Engineer, National
Highway No.3, Nashik.

...Respondents

Mr. P. N. Joshi, for the Petitioners.

Mr. M. L. Patil, for Respondent no.2.

Mr. Aarsh Mishra, a/w Ms. Lakshmi Buss, I/b M. V. Kini &
Co., for Respondent no.3.

Mrs. P. N. Diwan, AGP for Respondent nos.1 & 2/State.

**CORAM: R. M. BORDE &
N. J. JAMADAR, JJ**

DATED: 11th April, 2019

ORAL JUDGMENT:- (Per : R. M. BORDE, J.)

1. Rule. Rule made returnable forthwith. With the consent of the Counsels for the parties heard finally.

2. The Petitioner is making grievance in respect of the failure by the Respondent in paying the amount of compensation for an area to the extent of 3,300 sq. mtrs. alleged to have been taken in possession for construction of a national highway. The Petitioner contends that he is the owner of land Survey No.276 situate at village Pathardi, which is part of Nashik Municipal Corporation area. It is informed that the aforesaid property belonging to the Petitioner is reserved in the development plan prepared for

the Nashik Municipal Corporation for the purpose of laying down service road. The Petitioner contends that some other property belonging to him came to be acquired for development of a garbage depot, and an award in that respect came to be declared on 15th July, 1995. The Petitioners are in receipt of the amount of compensation determined by the land acquisition authority in respect of the area acquired. However, according to the Petitioners an area to the extent of 3,300 sq. mtrs., which was acquired for development of service road reserved in the final development plan prepared by the Nashik Municipal Corporation has never been acquired. The survey authorities as well as the Municipal Corporation, however, recorded the said area of 3,300 sq. mtrs. in the name of the Nashik Municipal Corporation. The Petitioners contend that on 28th February, 2014, he became aware of the fact that the National Highway Authority has undertaken construction of national highway and the subject property belonging to the Petitioner is being utilised. The Petitioner, as such, served a notice on the National Highway Authority and the Nashik Municipal Corporation objecting for continuation of the work and also demanded the amount of compensation. It was also revealed that a notification within contemplation of Section 3(D) of the National Highways Act

has already been issued on 27th July, 2010. All the parties including the Nashik Municipal Corporation and the National Highway Authority were under the wrong belief that the area of 2,230 sq. mtrs. belonging to the Petitioner has already been acquired and there is no need to undertake the acquisition proceedings afresh. The Petitioners contend that though the aforesaid area has been recorded in the name of the Municipal Corporation in the relevant record, in fact, the property belongs to the Petitioners and the same has never been acquired by the Municipal Corporation. In the circumstances, the Petitioners have approached this Court praying for issuance of direction to the Respondents i.e. the National Highway Authority to determine the amount of compensation to pay the same to the Petitioners.

3. An Affidavit-in-reply has been presented on behalf of the Corporation on 8th July, 2015 by one Bhaskar More, wherein it has been stated that so far as the portion of the land utilised for service road of the national highway is concerned, the Municipal Corporation has no concern with the said illegal utilization and National Highway Authority has to take steps, since the project is undertaken by the said authority.

4. Another Affidavit has been presented on behalf of the Corporation on 15th June, 2017, wherein it has been stated that Survey No.276/1 to 6 situate at Pathardi, totally admeasuring about 6H 67R, was notified for acquisition under Section 4 of the Land Acquisition Act for public purpose of garbage depot. The land involved in the instant petition abuts the Bombay Agra National Highway. It is further stated that during proposed acquisition for national highway an area to the extent of 10 mtrs. width was deleted from acquisition and, as such, the award in that regard was not declared. Since the aforesaid strip of land belonging to the Petitioners abutting the national highway was not part of the acquisition proceedings, there was no question of determining the amount of compensation and paying the same to the Petitioners. It is further recorded that, in fact, the aforesaid land admeasuring 33R remained with the Petitioners, however, erroneously the name of the Municipal Corporation has been recorded in the record. The national highway authority decided to widen the highway in the year 2009 and an area to the extent of 2,230 sq. mtrs. out of the land belonging to the Petitioners admeasuring 33R has been utilised for the purpose of widening the highway. It is further recorded that excluding the area of 2230 sq. mtrs. the

remaining area of 1070 sq. mtrs. which is having width of about 3.2 mtrs. abutting the national highway is not claimed by the Nashik Municipal Corporation and thus, the Petitioners continue to be the owners thereof. It is further recorded that the aforesaid calculation has been made on the basis of the maps and actual measurement needs to be carried out. It is further recorded in the Affidavit that the Corporation has not received any compensation in respect of the area of 2230 sq. mtrs. which in fact belongs to the Petitioner, from the National Highway Authority and as necessary consequence thereof, the Petitioners being the owners to the property, would be entitled to receive the amount of compensation.

5. Affidavit-in-reply has also been presented on behalf of the National Highway Authority, wherein it has been stated that if the Nashik Municipal Corporation issues a “No Objection Certificate” in favour of the land owners and certifies that they have not been allotted F.S.I. or T.D.R. in lieu of amount of compensation, the proceedings in respect of acquisition for purposes of determination of amount of compensation would be taken up.

6. It has been specifically stated by the Municipal Corporation in the Affidavit tendered on 12th June, 2017 that amount of compensation has not been received by the Municipal Corporation. It is also made clear that the Petitioners have not received any amount towards the compensation in respect of the area utilised for widening of the national highway. It has also been informed that since Municipal Corporation has not acquired or utilised the subject area, there is no question of allotment of F.S.I or T.D.R. to land owner, i.e. Petitioner. In the circumstances, the requirement of issuance of 'No Objection Certificate' from the Nashik Municipal Corporation shall have to be dispensed with and the National Highway Authority shall have to be directed to initiate the proceedings for acquisition and determination of the amount of compensation in respect of the area admeasuring 2230 sq. mtrs. already taken in possession by the National Highway Authority for widening of the national highway. Since a notification within the contemplation under Section 3D of the National Highways Act has already been issued on 27th July, 2010, it would not be necessary to again observe the same procedural formality. The authority/Land Acquisition Officer can proceed to determine the amount of compensation in respect of the area,

which has already been taken in possession. The Respondents, thus, shall have to take up the proceedings for determination of amount of compensation in respect of the actual area utilised by the National High Authority for widening of national highway, belonging to the Petitioners, and shall have to pay the amount of compensation so determined to the Petitioners. It also needs to be recorded that since the amount of compensation is being determined after enforcement of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the amount payable to the Petitioner towards compensation shall have to be determined in accordance with the Act of 2013.

7. In view of Section 105 of the Act, 2013 and Entry No.7, Fourth Schedule, the Respondent authority i.e. the National Highway Authority, shall determine the amount of compensation in accordance with the Act of 2013. It is pointed out that a notification has been issued by the Government of India, Ministry of Road, Transport and Highway, on 29th April, 2015, directing applicability the provisions of the Act of 2013, to the acquisitions of land under the National Highways Act, 1956. Paragraph 2 of the

notification records that the decision of the Central Government that insofar as the award of compensation made on or after for acquisition of the land under the National Highways Act, 1956, compensation shall have to be determined as per the First Schedule to the Act of 2013. In view of the provisions of Section 105 read with a notification dated 29th April, 2015, the Respondents have to determine the amount of compensation payable to the Petitioners in accordance with the Act of 2013 and, shall have to pay the same expeditiously.

8. In the circumstances, we direct the Respondents - National Highway Authority to determine the amount of compensation in respect of the area utilised for widening of the road belonging to the Petitioners, as expeditiously as possible, preferably within six months from today and, to pay the same to the Petitioner within the time limit provided as above.

9. Rule is accordingly made absolute. No costs.

[N. J. JAMADAR, J.]

[R. M. BORDE, J.]