

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

940 WRIT PETITION NO.6815 OF 2020

**NANASAHEB VISHWANATH KADAM
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioner : Ms. P S. Talekar.
AGP for Respondent Nos.1 & 2-State : Mr. S. B. Pulkundwar.
Advocate for Respondent No.3 : Ms. Sudha S. Chintamani
Kulthe (Absent).
Advocate for Respondent No.5 : Mr. Deepak S. Manorkar.

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**CORAM : RAVINDRA V. GHUGE, AND
S. G. MEHARE, JJ.**

DATE : 07.07.2021

PER COURT :-

1. By this petition, the petitioner has put forth prayer clauses 'A', 'B' and 'C' which read as under :

"A. To quash and set aside the impugned communication dated 04.10.2018 issued by the respondent No.4 - Assistant Director, Town Planning, Ahmednagar by issuing writ of certiorari or any other writ, order or direction, as the case may be."

"B. To quash and set aside the final award dated 15.07.2019 passed by the respondent No.3 - CALA to the extent of the petitioner, thereby, refusing to pay compensation to the acquisition of NA land and the structure erected thereon by issuing writ of certiorari or any other writ, order or direction, as the case may be."

"C. To direct the respondent No.3 to pass revised award under Section 25 r/w Section 30 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and the procedure prescribed therein, in respect of the petitioner's land from Gut No.1/4 at village Savilivihir (Bk), Tq. Rahata, by issuing a writ of mandamus or any other writ, order or direction, as the case may be."

2. By the first order passed by this Court on 07.10.2020, it was recorded that the award at issue does not grant any compensation to the petitioner for land admeasuring 100 square meters, which is an N.A. land and which has admittedly been acquired. The compensation amount is not determined to this extent only on the ground that compensation is not payable since the petitioner has undertaken that his N.A. land would be handed over for road widening without seeking compensation.

3. The petitioner has approached the District Collector, who is the Arbitrator by preferring L.A.R.No. / Land Reference No.02/2019 in December 2019. The learned advocate for the petitioners submits, on instructions, that notices have been issued by the Arbitrator in the said proceedings, which have been filed under Section 3(G)(5) of the National Highways Act, 1956. The next date of hearing has not been

communicated.

4. The pleadings in this petition are complete. None of the respondents can indicate from any provision of law that the N.A. portion of land belonging to any person, which may be acquired in a road widening project, would not entitle the land owner to any compensation. There is no dispute in accepting the legal position that, with reference to an N.A. land, there would be no compensation for fruiting trees or a garden or a pipe line or a well since the land is not being used for agricultural purposes. However, none of the respondents have been able to show us any provision of law or a judicial pronouncement indicating or laying down the law that N.A. land acquired for road widening would not fetch any compensation to the land owner.

5. The learned advocate for the petitioner submits that the basic obstacle in the path of the petitioner was a contention of the respondents that he was not entitled for compensation to the extent of 100 square meters of N.A. land acquired for road widening. Since the respondents have been unable to establish that a land owner would not be entitled for compensation, if

the N.A. portion of his land is acquired for road widening project, it is obvious that the decision of respondent No.3 to refuse compensation to the petitioner would be unsustainable.

6. The learned AGP points out paragraph Nos.11 and 12 from the affidavit-in-reply filed by the Sub Divisional Officer, Shirdi, wherein it is contended that the petitioner is not the original owner and then it is stated that he had purchased 200 square meters from the original owner. By order dated 16.06.1983, 30 R. land from Gut No.1 was converted into N.A. land and the petitioner had purchased 200 square meters. It further stated that the petitioner has not complied with the conditions mentioned in the N.A. order.

7. We are not satisfied with the said reply, since these grounds do not form a part of the order of respondent No.3 when he concluded that the petitioner would not be entitled for compensation of 100 square meters of the N.A. land.

8. In view of the above, this petition is disposed off with the observations that the petitioner would be entitled for the compensation to the extent of 100 square meters of the N.A. land acquired for road widening, unless there is any other legal

impediment which would dis-entitle the petitioner from claiming compensation. Needless to state, the structure standing on his 100 square meters land has already been subjected to determination of compensation. Therefore, we leave all contentions of the petitioner open to be considered in L.A.R.No.02/2019, which is pending before the Arbitrator at Ahmednagar.

9. We expect respondent No.2 to issue fresh notices to all the parties concerned in the above stated pending proceedings before him, so as to initiate a hearing. We expect respondent No.2 to conclude the proceedings within one (1) year from the date, on which, all the parties appear before him. In the event, this period is over, respondent No.2 would then decide the said proceedings on or before 31.12.2021.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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vmk/-