

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL REVISION APPLICATION NO. 23 OF 2021
WITH CAC NO.19 OF 2021

Special Planning Authority,
Maharashtra Housing Area
Development Board, through
its Chief Executive Officer,
Civil Lines, Nagpur. .. Applicant
(Objector before Executing
Court on R.A.)

.. Versus ..

1. Ragoba Mungale, dead through its Lrs.
 - 1.1. Laxmibai Ragoba Mungale,
Aged 75 years, R/o. Chinchala,
District-Chandrapur.
 - 1.2. Waman s/o Ragoba Mungale,
Aged about 50 years,
Occupation-Service,
R/o. New Fayaleria Office,
Adilabad Road, Rajura, Tah. Rajura,
District-Chandrapur.
 - 1.3. Ramchandra s/o Raghoba Mungale,
Aged about 45 years,
Occupation-Service,
R/o. Chinchala, Tah. Chandrapur,
District-Chandrapur.
 - 1.4. Indu s/o Madhukar Pal,
Aged about 40 years,
Occupation-Household,
R/o. Chinchala, Tah. Chandrapur,
District-Chandrapur.

- 1.5. Suresh s/o Raghoba Mungale,
Aged about 35 years,
Occupation-Labour,
R/o. Chinchala, Tah. Chandrapur,
District-Chandrapur.
- 1.6. Bapurao s/o Raghoba Mungale,
Aged about 32 years,
Occupation-Business,
R/o. Chinchala, Tah. Chandrapur,
District-Chandrapur.
2. State of Maharashtra, through
Special Land Acquisition Officer,
Chandrapur, Tahsil and District-
Chandrapur. .. Non-Applicants
(Decree Holder)

.....
Shri P. N. Kothari, Advocate for Applicant,
Shri Amol Mardikar, Advocate for Respondent No.1 (1.1
to 1.6),
Ms M.A. Barabde, AGP for Respondent No.2-State.
.....

CORAM : N.B. SURYAWANSHI, J.
RESERVED ON : 24.08.2021.
PRONOUNCED ON : 20.09.2021

JUDGMENT

1. **Rule.** Rule made returnable forthwith. Heard
the petition finally with the consent of the parties.
2. The objector before the executing court has
challenged the order dated 03.06.2019 passed by the

Civil Judge, Senior Division, Chandrapur below Exh.45 in Regular Darkhast No.110/2001 (Annexure-C) whereby the objection raised by the applicant-objector has been rejected.

3. Non-Applicant No.2-State initiated proceeding for acquisition of land at village Datala for construction of houses through applicant-MAHADA. Award was passed on 29.09.1996. Thereafter, Reference LAC No.51/1997 was made to the Civil Court, which came to be decided on 22.12.2000, thereby enhancing rate of acquired land in respect of field Survey No.320 ad-measuring 3.20 H.R. from Rs.20.50 per square meters to Rs.90.75 per square meters. Non-Applicant No.1-Decree Holder filed R.D. No.110/2001 initially claiming an amount of Rs.42,27,508/- which was subsequently enhanced to Rs.1,54,93,818=80. In the execution proceedings the State Government deposited an amount of Rs.69,64,802/-, which the executing court permitted non-applicant no.1-decree holder to withdraw after considering the objection of the State Government.

4. Applicant- MHADA thereafter appeared in the execution proceeding and was added as party in it. Thereafter, the application Exh.45 raising objection to the execution was filed by the applicant-MHADA, inter alia contending that it was not a party in the original proceeding and it was represented by the State. However, the State failed to take proper defence and to protect the interest of MHADA, the acquiring body. Mhada therefore claimed that excessive amount paid to the decree-holder is required to be recovered and the execution proceeding liable to be dismissed. In fact, the compensation amount payable to the decree-holder as on 2.3.2015 was Rs.17,47,173/-. The State has deposited an amount of Rs.69,64,802/- which is already withdrawn by the decree-holder. Thus, MHADA has suffered loss of Rs.52,20,629/- because of excess amount paid to the decree-holder. It is stated that as per the calculations made on the basis of government ready reckoner and implementation guidelines (Koshtak) needs to be applied while calculating the compensation. The decree-holder opposed the said application by filing written say contending that the

executing court cannot go behind the decree and MHADA has no *locus standi* to file the objection. The executing court, after hearing the parties, rejected the petition. The rejection order is impugned in the present Civil Revision Application.

5. Heard the learned Advocate for the applicant, the learned Advocate for the respondent nos.1 (1.1 to 1.6) and the learned Assistant Government Pleader for the respondent no.2.

6. The learned Advocate for the applicant vehemently contended that an award was passed on 29.9.1996 granting compensation of Rs.20.50 per square meters. The Reference Court enhanced it to Rs.90.75 per square meters. The applicant has no objection to the same. On 4.4.2015, the State deposited Rs.69,64,802/- and the non-applicant no.1-decree holder was permitted to withdraw the same. At that time, MHADA was not party. The interest of MHADA was not properly protected by the State. As per the calculations made on the basis of calculation chart,

the decree-holder was entitled only for an amount of Rs.17,42,000/-. However, the State, on the basis of wrong calculation of the compensation amount, deposited an amount of Rs.69,64,802/-. By misleading the court, the decree holder obtained the order of withdrawal of that amount and permission to withdraw that amount. He submitted that MHADA bring a statutory body has suffered a loss of Rs.52,20,629/- due to the wrong calculation by the State Government. He submitted that the executing court ought to have allowed the objection filed by the applicant, which is erroneously rejected for untenable reasons. He, therefore, submitted the objection filed by the applicant deserves to be allowed and execution proceeding is liable to be dismissed. The excess amount paid to the decree holder / respondent deserves to be recovered.

7. On the other hand, the learned Advocate for the decree-holder contended that the executing court cannot go behind decree. The reference was decided on 22.12.2000. The reference court award was challenged before this Court and this Court decided

First Appeal No.133/2002 on 21.9.2013. The learned Advocate supports the impugned order and submitted that the executing court has passed a reasoned order which need not be interfered. He further submitted that MHADA cannot be said to be a person interested and therefore the objection filed by MHADA was not maintainable. In support of his submission, he relied on the judgment of this Court in **Percival Joseph Pareira .vs. Special Land Acquisition Officer and others, 2010 (1) Mh.L.J.985.**

8. Heard the learned Advocate for the applicant, the learned Advocate for the respondent nos.1 (1.1 to 1.6) and the learned Assistant Government Pleader for the respondent no.2 at length. Perused the grounds raised in the civil revision application and the documents placed on record.

9. It is settled legal position that the executing court cannot go behind the decree. MHADA has not led any evidence before the executing court in support of the objection filed by it. They merely placed the

reliance on the Government Resolution dated 31.10.1994 and the calculation chart (Koshtak). It appears from the record that the similar objection was raised by the State that compensation was wrongly calculated, however, the said objection was not taken to its logical end. The decree-holder have based their calculation on the basis of calculation made by the Land Acquisition Officer which was made on the basis of area of acquired land. In the orders passed by the reference court as well as this court in first appeal, there is no reference of mode of calculation of the amount of compensation.

10. Government Resolution dated 31.10.1994 is in respect of mode of calculation of market value i.e. calculation as per ready reckoner and calculation as per comparison of value of land based upon the sale transaction and higher amount is to be preferred. The mode of calculation relied upon by MHADA is not in consonance with the Government Resolution dated 31.10.1994. It is necessary to note here that when the

decree-holder had withdrawn the amount, at that point of time no objection was raised by MHADA.

11. It is observed by the executing court that the calculation chart relied upon by MHADA has no legal sanction or authority. The Trial Court has also observed that there is no ambiguity of the award of the reference court and, therefore, there is no question of making any calculation based upon any chart, which was not before the reference court or the High Court. Admittedly, MHADA was not a party in original proceeding. The MHADA has failed to substantiate their objection in respect of how the calculations of the decree-holder were wrong. The executing court has rightly observed that prima facie the decree-holders have not claimed interest on the amount already received by them. The executing court, therefore, was justified in coming to the conclusion that MHADA has failed to show that the decree-holders have not properly calculated the amount of compensation or they have made excessive claim regarding interest. The impugned order passed by the executing court is a

reasoned order and MHADA has failed to show any illegality or perversity in the impugned order.

12. The applicant cannot reopen the issue which is already finalized by the High Court. Nothing is brought by the applicant to show that the decision of this Court in first appeal was challenged before the Hon'ble Apex Court. In that view of the matter also there is no substance in the objection raised by the applicant.

13. For the aforesaid reasons, there is no merit in the civil revision application and the same is dismissed. Rule is discharged. No costs.

14. In view of disposal of civil revision application, CAC No. 19 of 2021 is to be circulated separately.

(N.B. Suryawanshi, J.)