

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

4 WRIT PETITION NO.2695 OF 2019

...

**BHAGWAT TATYABA NAWALE
VERSUS
THE COLLECTOR, OSMANABAD & OTHERS**

...

Advocate for the petitioner : Mr.Sushant B. Choudhari
AGP for Respondent-State : Mr.S.G.Sangle
Advocate for Respondent no.2 : Mr.B.M.Dhanure
Advocate for Respondent no.3 : Mr.D.S.Manorkar

...

**CORAM : RAVINDRA V. GHUGE &
S.G.DIGE, JJ.**

DATE : 18.04.2022

P.C. :

1. On 30th March, 2022, we had passed the following order :

1. We have heard the learned Advocate for the petitioner.

2. Leave to correct the prayer clause. Corrections be carried out within one week.

3. *The grievance of the petitioner is that, though there is an Award passed with regard to the acquisition under the National Highways Act, and though the land belonging to him, which has been acquired to the extent of 2076 sq. mtrs. for providing service roads and internal roads, the compensation has not been determined. Consequentially, his land admeasuring 2076 sq. mtrs. is virtually acquired free by the Acquiring Authority.*

4. *It is well settled that no land of a person can be acquired free of compensation and the compensation amount has to be paid. Our attention is drawn to an order dated 04/09/2018 in Writ Petition No.1986/2016, filed by Yuvraj Namdeo Khaladkar & ors. Vs. National Highway Authority of India & ors., wherein, the petitioner had approached this Court with the grievance that though the determination of compensation for the service roads and the internal roads was arrived at and compensation was quantified by the Competent Authority, there was no disbursement of compensation. In the instant case, the Competent Authority has not even quantified the said compensation.*

5. *The learned Advocate appearing on behalf of respondent No.2, in view of change of Advocate, submits that he would take instructions and make a statement, as to how the grievance of the petitioner would be redressed effectively under the National Highways Act and ensure that the compensation is paid to him.*

6. *List this petition in the 'passing orders' category on 18/04/2022.*

2. The learned Advocate representing respondent no.2 cites a judgment of this Court in the matter of **Vishwasrao Dattatray Kachare & others Vs. Union of India and others** reported in **2017 (6) Mh.L.J. 85** by which this Court has come to a conclusion that once an award is delivered under Section 3-G (5) of the National Highways Act, 1956, the competent authority is rendered *functus officio*. So also, the writ jurisdiction under Article 226 of the Constitution of India cannot be invoked. In so far as limitation is concerned, he submits that there is no

limitation applicable for approaching the Arbitrator and he relies on the judgment in the matter of **Bajranglal Vyankatlal Malu & another Vs. Secretary to the Govt. of India, Ministry of Road and Transport and Highways, Department of Road Transport and Highways, Dwarka, New Delhi and others** reported in **2019 (6) Mh.L.J. 907**. He also relies upon the judgment in the matter of **Bhupendrasingh Vs. Competent Authority and others** reported in **(2020) 1 AIR Bom R. 645**.

3. It is undisputed that the award was delivered on 6th October, 2015 and there is no limitation to challenge the same before the Arbitrator. This petition has been filed on 23rd January, 2019. In this circumstances, as the petitioner has belatedly approached this Court, the State Exchequer cannot be taxed in so far as the interest component is concerned.

4. We are, therefore, of the view that considering the reasonable period of three months within which the award could have been challenged, it would be equitable to

deprive the petitioner of the interest component for the period 1st February, 2016 till 31st January, 2019. He could be granted liberty to challenge the award before the Arbitrator. No doubt, the Arbitrator would consider the contentions of the respondents that the land acquired for the purposes of internal – service roads, cannot fetch compensation to the petitioner.

5. In view of the above, this petition is disposed off with liberty to the petitioner to challenge the award dated 06.10.2015, on or before 20th May, 2022.

6. In the event of such filing of the proceedings, the Arbitrator would consider the contentions of the litigating parties and the merits of the matter since it is conceded that there would not be any objection on maintainability. In so far as the petitioner having spent time in this Court, as we have already observed, he would not be entitled for the interest for the period 01.02.2016 to 31.01.2019.

7. We would advise the learned Arbitrator to decide the said proceedings, as expeditiously as possible and preferably on or before 31st March, 2023.

[S.G.DIGE, J.]

[RAVINDRA V. GHUGE, J.]

DDC