

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

WRIT PETITION NO.9165 OF 2021

Syed Azizuddin Hyder s/o
Syed Basheeruddin Hyder,
Age 34 yrs., Occ. Business,
R/o Plot No.21, Jagirdar Colony,
Opp. RTO Office, Near Railway Station,
Aurangabad.

... **Petitioner**

... **Versus** ...

- 1 The State of Maharashtra,
 through Collector, Aurangabad.
- 2 The Project Director,
 National Highway Authority of India
 (N.H.A.I.)
 Project Implementation Unit, Aurangabad,
 B-23, Near Kamgar Chowk, N-4, CIDCO,
 New Aurangabad.
- 3 The Competent Authority (Land Acquisition),
 National Highway Authority of India,
 NH 211 (New NH 52),
 B-23, Near Kamgar Chowk,
 N-4, CIDCO, New Aurangabad.

... **Respondents**

...

Mrs. A.N. Ansari, Advocate for petitioner
Mr. A.R. Kale, AGP for respondent no.1
Mr. D.S. Manorkar, Advocate for respondent no.2
Mr. D.B. Gaikwad, Advocate for respondent no.3

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**CORAM : DIPANKAR DATTA, CJ AND
 VIBHA KANKANWADI, J.**

DATE : NOVEMBER 16, 2022

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Rule. Rule made returnable forthwith. Heard learned Advocates
for the parties finally, by consent.

2 The petitioner seeks direction to the respondents to pass Award
as per chart/statement prepared by the Superintendent of Land Records,
Aurangabad and to pay compensation for the excess land acquired under the
National Highways Act, 1956 (hereinafter referred to as, "the Act").

3 The petitioner is the owner and possessor of 53 R land out of Gat
No.109 situated at Chitte Pimpalgaon, Tq. & Dist. Aurangabad. He had
become the owner by purchase and thereafter the respondents had acquired
940 sq. mtrs. of the said land. Petitioner contends that he received a notice
for collecting compensation of the amount in the month of October, 2017 and
thereupon realized that his land has been acquired. It has been categorically
stated that the petitioner had no knowledge about the acquisition prior to
that date and he was normally residing in Mumbai for the purpose of
education and thereafter private service. He had no knowledge in respect of
the Joint Measurement, which was carried out in August, 2017. Thereafter,
he received the said notice regarding the compensation in October, 2017.
The petitioner further contends that even after the receipt of the said notice
he had got the land measured privately to ascertain about the actual

acquisition and it transpired that total 20 R i.e. approximately 1920 sq. mtrs. land was in fact acquired, but compensation has been granted only to the extent of 940 sq. mtrs. Therefore, he immediately made an application to the respondents for payment of the compensation for the excess acquisition. Thereafter, he was pursuing the said matter and once again made application on 18.03.2019. He again requested for the re-measurement and payment of rightful compensation to him. Thereupon, it is stated that the Deputy Director of Land Records passed the order on 30.07.2019 in respect of re-measurement of the land. Thereafter, re-measurement was conducted and on the basis of the same comparative chart of actual land acquired and the land mentioned in the Award was prepared by Deputy Director of Land Records under his signature by communication dated 20.10.2020. It showed that before correction that as per the earlier record 0.094 R is shown to have been acquired from the petitioner and in re-measurement it transpired to be 00.16.92 R. As less compensation has been paid, the petitioner once again made request to the authorities to grant him compensation, but when his request was not accepted he has approached this Court.

4 Heard learned advocate Mrs. A.N. Ansari for the petitioner, learned AGP Mr. A.R. Kale for respondent no.1, learned advocate Mr. D.S. Manorkar for respondent no.2 and learned advocate Mr. D.B. Gaikwad for respondent no.3. Perused the affidavit-in-reply and additional affidavit-in-reply filed on behalf of respondent No.2, so also affidavit-in-reply filed on

behalf of respondent No.3.

5 Peculiar facts of the case which have to be considered are that the land belonging to the petitioner has been acquired by the respondent-authorities. It was for the up-gradation of the road from 2 lane to 4 lane of Solapur-Dhule section on NH 211 in the State of Maharashtra. Notification under Section 3-A of the Act with the approval of the Central Government came to be published in the Gazette of India on 23.10.2012. The Notification was published in the two local newspapers having wide circulation in the locality. Thereafter notice for hearing under Section 3-C of the Act was given on 24.12.2012. At the time of hearing, 22 persons had raised certain objections, however, the petitioner had not raised any objection. The Joint Measurement was initially done on 04.05.2013. Thereafter the report was published as required under Section 3-D of the Act. Total area under acquisition was 9216 sq. mtrs. and regarding the area of the petitioner is concerned, it was stated that 940 sq. mtrs. out of Gat No.109 of the petitioner stood acquired. Award was passed on 18.04.2016 to that effect. Respondent no.2 in the affidavit-in-reply accepts that pursuant to the objection raised by the petitioner, re-measurement was carried out and in the said re-measurement report it has been stated that area of one Pramod Raosaheb Mule is reduced from 1590 sq. mtrs. to 944 sq. mtrs. and the area of the petitioner is increased from 940 sq. mtrs. to 1692 sq. mtrs. It is also stated that the increase in the petitioner's land is not new from the pocket of the

said land, but it was acquired in the same Award, but it was then shown in the name of said Pramod Raosaheb Mule. By way of additional affidavit-in-reply the respondent No.2 has further submitted that amount of compensation in respect of Award dated 18.04.2016 has been paid to all the concerned persons including the petitioner. Now, the petitioner has raised the issue of apportionment of the amount of compensation and, therefore, he ought to have invoked provisions of Section 3-H of the Act, which affords him remedy. From the office of the competent authority it has been informed that the competent authority has issued notice to Pramod Raosaheb Mule for refund of the amount paid in excess to him. In the earlier affidavit-in-reply there was a wrong statement that was made that no Award in favour of the petitioner acquiring an area of 1528 sq. mtrs. vide supplementary Award dated 08.06.2018 has been made. It is stated that in fact, it is the same Award, however, the area transpired to be changed after re-measurement. Again it has been reiterated that the additional area of 738 sq. mtrs., which is now shown in the name of petitioner, is the area included in the Award dated 18.04.2016, but it has been shown in the name of said Pramod Raosaheb Mule.

6 Learned advocate Mrs. A.N. Ansari appearing for the petitioner vehemently submitted that when the respondent nos.2 and 3 are admitting that petitioner is entitled to more amount of compensation than which has been given to him, then, the amount should be paid to the petitioner.

7 Per contra, the learned advocate Mr. D.S. Manorkar for
respondent no.2 and learned advocate Mr. D.B. Gaikwad for respondent no.3
have opposed the petition. The objection is mainly on the ground that
Section 3-H of the Act makes a specific provision that in case of dispute
regarding apportionment made of the amount or any part thereof has been
raised before the competent authority, then, such competent authority shall
refer the dispute to the decision of the Principal Civil Court of original
jurisdiction. When no such step has been taken by the petitioner, the
petitioner cannot invoke the writ jurisdiction of this Court.

8 At the cost of repetition, it can be said that there is no dispute
about the fact that the land of the petitioner came to be acquired by the
respondent-authorities and he has been paid compensation for acquisition of
940 sq. mtrs. only. Section 3-A of the Act prescribes for power to acquire
land. Section 3-C of the Act contemplates hearing of objections after the
issuance of notice under sub-section (1) of Section 3-A of the Act. Thereafter,
if no objection is taken, then, the Central Government to declare that the
land should be acquired under the provisions of sub-section (1) of Section 3-
D of the Act. Section 3-E of the Act deals with power to take possession and
Section 3-G of the Act prescribes for the determination of the amount payable
as compensation. No doubt, under the facts of the present case the objection
has not been raised by the petitioner, however, it is to be noted that Section
3-G of the Act does not prescribe for any re-measurement to be carried out

after the Award is declared. However, in the present case, even the competent authority i.e. respondent no.3 is accepting the fact that such re-measurement has been carried out at the request of the petitioner. Therefore, when facts are not disputed, we need not go into the deliberation on the point tried to be raised on behalf of the respondent no.2 that once the Award is passed, there cannot be a second Award. According to the petitioner, in fact, more land from his portion from the same gat number has been acquired. Ultimately as regards the entire gat number is concerned, the Award might not be required to be changed as the petitioner is restricting his right to receive more compensation, as the actual area of his ownership has been acquired. Section 3-H of the National Highways Act, 1956 reads thus -

“3-H. Deposit and payment of amount. - (1) The amount determined under section 3-G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land.

(2) As soon as may be after the amount has been deposited under sub-Section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

(3) Where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated.

(5)

(6)

9 The conjoint reading of Section 3-G as well as 3-H of the Act would make it clear that the Central Government has to deposit the land that has been determined under Section 3-G of the Act with the competent authority before taking possession. In the present case such deposit has been made. Thereafter, the competent authority will have to pay the said amount to the person/s entitled thereto on behalf of the Central Government. The competent authority has the power to determine the claim of several persons interested in the amount deposited under sub-section (1), who in its opinion are entitled to receive the amount payable to each of them. Then, as per sub-section (4) of section 3-H of the Act, if any dispute arises in respect of such apportionment, then, the competent authority should refer the dispute to the decision of the Principal Civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated. Neither in Section 3-G nor in Section 3-H of the Act is there any provision of re-measurement by the competent authority at the time of determining the claim of several persons. In the present case, along with the additional affidavit-in-reply the

respondent No.2 has produced on record two notices dated 01.07.2021 and 04.12.2021, issued to Pramod Raosaheb Mule, by respondent No.3, wherein it has been specifically mentioned that amount of Rs.19,76,009/- has been paid in excess to him than his entitlement. It has been specifically mentioned that Pramod Raosaheb Mule has received the said amount of compensation in respect of excess of 706 sq. mtrs. than his entitlement. Thus, the competent authority has on its own adjudicated, as to what is the amount of compensation, which could have been paid to Pramod Raosaheb Mule and how the excess amount has gone to him. Section 3-H of the Act does not contemplate determination of claim of the several persons' interest in the amount deposited under sub-section (1) thereof in such a manner as it has been dealt with by the competent authority in this case. Now, the respondent no.2 or respondent no.3 cannot rely on sub-section (4) of Section 3-H of the Act to say that the petitioner should raise an appropriate dispute afresh with it and then the respondent no.3 would refer the said dispute to the decision of the Principal Civil Court of original jurisdiction. The act of re-measurement undertaken by respondent no.3 around 20.10.2020 i.e. Exh. 'E' cannot be said to be covered under Section 3-I of the act; though the said provision gives powers of Civil Court to the competent authority.

10 Here, in the peculiar facts of the case, the respondent no.3 has not done its statutory function as contemplated under Section 3-H of the Act and went on further to give recovery notices by specifying the amount to said

Pramod Raosaheb Mule. It can be certainly said that the amount mentioned under those notices is in fact, due and payable to the petitioner. A statement has been made on behalf of respondent no.3 that said Pramod Raosaheb Mule has not responded nor challenged those notices before any competent Forum. Therefore, the amount which is due and payable to the petitioner, he should receive it.

11 The learned advocate appearing for respondent no.2 submitted that if respondent no.2 is directed to pay the said amount of compensation to the petitioner, then, it would be duplication of the amount, that too public fund. We do not appreciate the said point for the simple reason that the petitioner, whose property has been acquired, should get his dues from the public authority. When statutory function has not been discharged; the petitioner cannot be asked to suffer for the same and wait till the recovery of that amount from Pramod Raosaheb Mule to be then made over to the petitioner.

12 The learned advocate appearing for the petitioner submits that if respondent no.2 is directed to deposit the said amount within a fixed period, then, the petitioner is ready to accept the same without any interest.

13 We consider this to be an exceptional case under the facts and the reasons stated, to exercise our writ jurisdiction to direct respondent no.2 to deposit the said quantified amount. After all, mandamus should reach

injustice wherever it is found is the settled law.

14 For the aforesaid reasons, following order is passed.

ORDER

1 The writ petition stands partly allowed.

2 Respondent no.2 is directed to deposit amount of Rs.19,76,009/- (Rupees Nineteen Lac Seventy Six Thousand and Nine only) with the competent authority, within a period of two months from today who shall proceed to disburse the same to the petitioner in accordance with law.

3 This exercise shall not affect the right of the respondent no.2 to take steps in accordance with law, if any excess payment has been released in favour of any party.

4. Rule made absolute in above terms.

(SMT. VIBHA KANKANWADI, J.)

(CHIEF JUSTICE)

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