

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

WRIT PETITION NO.10552 OF 2022

**TULSHIRAM SUNDAR SAPKAL
VERSUS
THE PROJECT DIRECTOR NATIONAL HIGHWAY AUTHORITY OF
INDIA AND OTHERS**

...

Mr. S. S. Thombre, Advocate for the Petitioner.
Mr. B. M. Dhanure, Advocate for Respondent No.3.

...

CORAM : RAVINDRA V. GHUGE

AND

SANJAY A. DESHMUKH, JJ.

DATED : 18th OCTOBER, 2022.

PER COURT:-

1. The petitioner has put forth prayer Clause
'B' as under:-

"B. By issuing Writ of Mandamus or any other writ, order or directions in the like nature, direct the respondent authorities to pay the compensation to the petitioner as per the award dated 14.11.2019 passed by the respondent no.2 @ Rs.1100/- per square meter in File No.2017/Coordination/Arbitrator/305 and for that purpose issue necessary orders."

2. Considering the prayer, it is obvious that the petitioner desires that this Court should execute the Arbitration Award dated 14.11.2019. It is contended that there is no provision under any law whatsoever that this award could be executed by approaching the Executing Court by filing Darkhast

Proceedings.

2. Shri. Dhanure, the learned advocate submits that Section 36 of the Arbitration and Conciliation Act, 1996 is available to the petitioner.

3. Respondent no.1 is the National Highway Authority of India. This authority, in similar circumstances, had approached the Hon'ble Supreme Court in Civil Appeal No.5256/2022 being aggrieved by the order passed by this Court dated 01.04.2022 in Writ Petition No.144/2021 wherein this Court had issued directions to the NHAI to deposit entire amount alongwith interest with the Land Acquisition Authority. Vide order dated 24.08.2022, the Hon'ble Supreme Court has observed in paragraph nos.6.2, 7 and 7.1 as under:-

"6.2. Apart from the fact that the award dated 12.06.2018 has been challenged by the NHAI by initiating proceedings under Section 34 of the Arbitration Act which are reported to be pending, the High Court ought not to have entertained the writ petition under Article 226 of the Constitution of India seeking the reliefs to execute the award passed by the learned Arbitral Tribunal/Court, when the award passed by the learned Arbitral Tribunal/Court is to be executed by initiating an execution proceeding before the concerned Executing Court.

But, by passing the impugned order/directions the High Court has virtually converted itself into Executing Court. Therefore, once the original writ petitioner was having an efficacious, alternative remedy to execute the award passed by the learned Arbitral Tribunal/Court, by initiating an appropriate execution proceeding before the competent Executing Court, the High Court ought to have relegated the original writ petitioners to avail the said remedy instead of entertaining the writ petition under Article 226 of the Constitution of India which was filed to execute the award passed by the Arbitral Tribunal/Court. If the High Courts convert itself to the Executing Court and entertain the writ petitions under Article 226 of the Constitution of India to execute the award passed by the Arbitral Tribunal/Court, the High Courts would be flooded with the writ petitions to execute awards passed by the learned Arbitrator/Arbitral Tribunal/Arbitral Court.

7. We disapprove the entertaining of such writ petitions under Article 226 of the Constitution of India to execute the award passed by the learned Arbitral Tribunal/Court, without relegating the judgment creditor in whose favour the award is passed to file an execution proceeding before the competent Executing Court.

7.1 In view of the above discussion, we would have set aside the impugned judgment and order passed by the High Court on the aforesaid ground alone. However, taking into consideration the similar order passed by this Court in the case of Saraswatibai Chandrakant Shinde (supra), we deem it appropriate to dispose of the present proceedings/appeal with the following directions:

(i) The NHAI shall deposit 50 per cent of the compensation amount, as awarded by the Arbitral Court, with the Executing Court within a period of four weeks. The said amount shall be released to the land owners unconditionally

(ii) The learned District Court, before whom the proceedings under Section 34 of the Arbitration Act

are pending, shall make an endeavour to decide such proceedings within a period of six months from the next date of hearing before the said court.

(iii) The balance amount of compensation as per the Award to be passed under Section 34 of the Arbitration Act, 11 shall be deposited by the NHAI with the Executing Court within four weeks after such determination. The said amount shall also be released by the Executing Court in favour of the land owners subject to the rights and remedies available to the parties in law."

5. In view of the above, this petition is disposed off with liberty to the petitioner to avail of the remedy as may be permissible in law, in view of the judgment of the Hon'ble Supreme Court in **National Highway Authority of India Vs. Sheetal Jaidev Vade and Ors.**

(SANJAY A. DESHMUKH)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE