

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

**REVIEW APPLICATION NO.143 OF 2022  
IN  
WRIT PETITION NO.5049 OF 2019**

1. Shamkumar Manohar Kadam,  
Age : 47 years, Occu: Agri.,
2. Ravsaheb Nivrutti Shelke  
Age : 69 years, Occu: Agri.,
3. Shobha Shitalrao Pawar  
Deceased through LR's namely
- 3-A. Reshma w/o Mahesh Anpat,  
Age :     years, Occu.
- 3-B. Seema w/o Dipak Londhe,  
Age :     years, Occu.
- 3-C. Mahesh s/o Shitalrao Pawar,  
Age:     years, Occu.
- 3-D. Rishikesh s/o Shitalrao Pawar,  
Age:     years, Occu.
4. Dagadu Narayan Surwase,  
Age : 56 years, Occu.
5. Balu Vithoba Lawate  
Age: 64 years, Occu. Agri.,
6. Kashinath Madhav Lavate  
Age: 57 years, Occu. Agri.,
7. Vitthal Shankar Kulkarni,  
Deceased through L.Rs. namely,
- 7-A. Sindhutai w/o Vitthal Kulkarni,  
Age: 77 years, Occu. Household,
- 7-B. Hemant s/o. Vitthal Kulkarni,  
Age: 46 years, Occu.
- 7-C. Madhura w/o Makarant Godbole,  
Age: 54 years, Occu.
- 7-D Sangita w/o. Sanjay Joshi,  
Age: 52 years, Occu.

- 7-E. Vininita w/o Ganesh kulkarni  
Age: 49 years, Occu.
- 7-F. Sujata w/o. Shrikant Kulkarni,  
Age: 49 years, Occu.
- 7-G. Manali d/o Shrikant Kulkarni,  
Age : 20 years, Occu. Education,
- 7-H. Sayali d/o. Shrikant Kulkarni,  
Age: 16 years, Occu : Education,

Since minor through natural  
guardian i.e. Applicant No.7-F,

- 8. Bhagwat Madhav Lavate  
Age : 69 years, Occu. Agri.,
- 9. Shaukat Imam Patel  
Age : 44 years, Occu: Agri.,
- 10. Balkrushna Ambadas Shelke  
Age : 65 years, Occu: Agri.,
- 11. Vasant Maruti Nalawade,  
Deceased through LR/s namely
- 11-A. Sunil s/o Vasant Nalawade,  
Age: 51 years, Occu:
- 11-B. Sudarshan s/o. Vasant Nalawade,  
Age: 45 years, Occu:
- 11-C. Chandan s/o. Vasant Nalawade  
Age: 43 years, Occu:
- 11-D. Aparna w/o. Vishwanath Gore,  
Age: 49 years, Occu:
- 11-E. Aruna w/o. Dipak Mohite  
Age: 47 years, Occu:
- 12. Bhalchandra Rama Pawar  
Age: 67 years, Occu: Agri.,
- 13. Subhash Vinayak Shinde,  
Age: 52 years, Occu: Agri.,
- 14. Ganesh Kisan Pawar  
Age : 47 years, Occu: Agri.,
- 15. Janabai Shrirang Pawar  
Age : 42 years, Occu: Agri.,
- 16. Arvind Limba Shelake  
Age: 69 years, Occu: Agri.,
- 17. Dilipkumar Abasaheb Patil  
Age: 64 years, Occu: Agri.,
- 18. Tanaji Yeshwant Pawar  
Age : 74 years, Occu: Agri.,
- 19. Anand Changdev Jeve  
Age : 54 years, Occu: Agri.,
- 20. Madhukar Pralhad Nalawade

21. Age : 50 years, Occu: Agri.,  
Sharad Krushnaji Nalawade  
Age : 54 years, Occu: Agri.,

All R/o. Village Yedshi,  
Tq. & Dist. Osmanabad.

... APPLICANTS

VERSUS

1. Union of India,  
through its Secretary,  
Ministry of Road Transport & Highways,  
New Delhi.
2. Project Director,  
Implementation Unit,  
National Highway Authority of India,  
Plot No.80, Old Santosh Nagar,  
Opposite Devika Gas Agency,  
Jule, Solapur-413003.
3. Deputy Collector,  
Land Acquisition (Competent Authority)  
Medium Project No.2, Osmanabad.
4. State of Maharashtra,  
through its Principal Secretary,  
Public Work Department,  
Mantralaya, Mumbai – 32.

... RESPONDENTS

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Mr. A.N. Nagargoje advocate for the petitioners/applicants.  
Mrs. Sudha S. Kulthe for the respondents nos. 1 and 3  
Mr. Sagar Varma h/f. Mr. Sagar Ladda Advocate for respondent No.2.  
Ms. Vaishali N. Patil Jadhav AGP for respondent No.4

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**CORAM : MANGESH S. PATIL &  
SANDEEP V. MARNE, JJ.**

**Reserved on : 25.08.2022**

**Pronounced on : 30.08.2022**

**JUDGMENT (MANGESH S. PATIL, J.) :**

We have heard the learned advocate Mr. Nagargoje for the applicants, Mrs. S.S. Kulthe for the respondent Nos.1 and 3, Mr. Sagar

Varma holding for Mr. Ladda for respondent No.2 and learned AGP for respondent No.4,

2. By way of this review the applicants who are the petitioners in Writ petition No.5049/2019 are seeking review of the order dated 29.04.2019 whereby the petition was disposed of with liberty to them to take recourse to a remedy provided under sub-section 5 of Section 3-G of the National Highways Act, 1956.

3. The checkered history which, in our considered view, is important to be noted is as under:

i. The petitioners' land was acquired for a national highway. An award was passed under the provisions of Section 3-G(1) of the National Highways Act, 1956 (hereinafter the Highways Act) on 14.01.2015. Since they were not satisfied with the award they preferred Writ Petition No.4227/2016 with following prayer :

*“A] For writ of mandamus order of direction in the nature of mandamus, directing the respondent No.1 to 3 herein to pay the compensation to the petitioners by applying the multiplier provided in the Schedule-I of 2013 Act on the amount of compensation, which is already determined and paid to the petitioners in pursuance to the award dated 14.1.2015 (Exhibit-A) within such stipulated period as this Hon’ble High Court may deem fit and proper.”*

ii. This Court disposed of the Writ Petition by order date 20.04.2016 which reads as under :

*“1] Heard. Rule. Rule made returnable forthwith. Heard finally by consent of parties.*

*2] Mr. Nagargoje, learned counsel submits that the award has been passed on 14.1.2015, in respect of the land owned by the petitioners which was acquired under the National highways*

*Act. Learned counsel for the petitioners submits that Section 105 of the Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation and Resettlement Act, 2013 has been amended. Learned counsel submits that by virtue of the said amendment, provisions of the Act of 2013 are made applicable to the acquisition under the National Highways Act as and from 1.1.2015. As such, the compensation to be paid to such acquisition would be computed as per the Act of 2013.*

*2] We have heard Mr. Nagode and Mr. Manorkar for the National Highways Authority.*

*3] It is not disputed that the land of the petitioners has been acquired under the National Highways Act and the award is passed on 14.1.2015 as per Section 3(g) of the National Highways Act. On perusal of the award it is manifest that the compensation has not been computed as per the Act of 2013. As the award has been passed after 1.1.2015, compensation even in respect of acquisition under the National Highways Act has to be computed as per the Act of 2013. It is submitted that the amount under the award is already received by the petitioners. Naturally, the amount already paid will have to be adjusted while calculating the difference of the amount of compensation to be paid.*

*4] In the result, we pass the following order :-*

*[a] Respondent authority shall re-determine the amount of compensation payable to the petitioners for their respective land acquired vide award dated 14.1.2015. As per the Act of 2013, the amount of difference of the amount shall be paid to the petitioners, after adjusting the amount already paid.*

*[b] The said exercise would be done expeditiously by the respondents, preferably within six months.*

*[c] Writ petition is accordingly disposed of. No costs.”*

iii. Pursuant to such directions the respondents undertook the exercise and passed another award on 17.06.2017 under Section 3-G(1) of the Highways Act.

iv. Even with this second award the petitioners were not satisfied and filed Writ Petition No.5049/2019 with following prayers :

*“A] For writ of mandamus order or direction in the nature of mandamus, directing the respondent no.1 to 3 herein to pay the compensation to the petitioners for their respective land by giving effect of Schedule-I of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 by considering the basic rate of compensation for land as Rs.1737/- per sq. meter, which is already determined in the Award dated 14.01.2015 alongwith all consequential benefits.*

*B] For writ of certiorari order of direction in the nature of certiorari, calling for the record and proceeding of the notices dated 31.01.2019 (Exhibit-H Colly) issued by the respondent no.3 and after examining the legality, validity and propriety thereof; the notices dated 31.01.2019 (Exhibit-H Colly) issued by the respondent no.3 may kindly be quashed and set aside.*

*C] For writ of certiorari order of direction in the nature of certiorari, calling for the record and proceeding of the Award dated 17.06.2017 (Exhibit-F) passed by the respondent no.3 and after examining the legality, validity and propriety thereof; the Award dated 17.06.2017 (Exhibit-F) passed by the respondent no.3 may kindly be quashed and set aside.”*

v. By the order dated 27.04.2019 this Court disposed of the Writ petition No.5049/2019 *inter alia* observing that remedy to take recourse to the provision of sub-section 5 of Section 3-G of the Highways Act was available to them.

vi. The petitioners challenged the order dated 29.04.2019 before the Supreme Court in Special Leave Petition (Civil) Diary No.8060/2020. The Supreme Court passed following order on 25.10.2021 :

*“The grievance of the petitioners is that the High Court has not dealt with the basic issue raised by the petitioners that it was not open to pass successive awards. This contention has been specifically taken by the petitioners in the writ petition filed before the High Court.*

*It is also urged that in another case the High Court had set aside such award passed in similar circumstances.*

*In that case, it is appropriate that the petitioners ought to approach the High Court by way of review petition. We permit the petitioners to take recourse to remedy of review which need to be considered by the High Court on its own merits and in accordance with law.*

*The High Court shall deal with the review petition without non-suiting the petitioners on the ground of limitation, considering the fact that the petitioners had approached this Court against the impugned judgment by way of special leave petition.*

*We are informed that one of the petitioners has expired during the pendency of this special leave petition. It will be open to the legal representatives of the deceased petitioner to pursue appropriate remedy before the High Court.*

*As aforesaid, all contentions available to the petitioners are left open.*

*If the review petition is decided against the petitioners, it will be open to the petitioners to challenge the said decision as well as the impugned judgment by way of fresh Special Leave Petition before this Court. This special leave petition is disposed of in the above terms.*

*Pending applications, if any, stand disposed of.”*

vii. Pursuant to such liberty granted by the Supreme Court the petitioners have preferred this review.

4. Mr. Nagargoge would submit that the petitioners were vehemently questioning legality of the second award on the ground that no such power to pass a second award vests with the respondent No.3. This Court in catena of judgments have consistently concluded the issue. He would refer to the decision in the matter of **Yasminbegum w/o Bakshulla Khan and Ors. Vs. The State of Maharashtra and Ors.** (WP No.1883/2018 with connected matters decided on 08.11.2019), **Bhupendrasing s/o Sardarsingh Parmar Vs. The Competent Authority and Ors.;** (WP No.5286/2018 decided on 20.12.2019). He would therefore submit that the issue was specifically raised before this Court in Writ Petition No.5049/2019 but was not

considered while passing the order under review. The Supreme Court therefore expects this Court to consider that aspect.

5. *Per contra*, Mr. Varma for the respondent No.2 would vehemently submit that the petitioners are blowing hot and cold at the same time. They had challenged the first award and at their request this Court had issued the directions in Writ Petition No.4227/2016 pursuant to which the exercise was undertaken second time, resulting in passing of the second award. He would submit that in all the other matters cited on behalf of the petitioners such was not the fact situation. The second award has been passed as per the request of the petitioners and as ordered by this Court and consequently, the petitioners cannot be allowed to turn around and question the second award on the ground of its competency. The learned advocate would submit that the fact regarding such passing of the second award pursuant to a direction of this Court that too by an order passed in the petitioners petition was apparently not brought to the notice of the Supreme Court that is why it appears that it was impressed upon the Supreme Court that this Court in above mentioned cases has set aside the awards which were passed second time and the same course should have been followed.

6. Having considered the rival submissions and after noticing all the aforementioned state of affairs, it needs to be observed at the inception that the Supreme Court has granted liberty to the petitioners to apply for review of the order dated 29.04.2019, only on the ground of competence of the respondent No.3 to pass a second award which jurisdiction does not vest

in him pursuant to Section 33 of the Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation and Resettlement Act, 2013 (hereinafter the Land Acquisition Act, 2013). Therefore, according to us the scope for review is very limited and we are expected to decide the issue as to the power and jurisdiction of the respondent No.3 to pass the second award.

7. In the matters of **Yasminbegum w/o Bakshulla Khan** and **Bhupendrasing s/o Sardarsingh Parmar** (supra) this Court has concluded that there is no power under Section 33 of the Land Acquisition Act, 2013 to undertake any review of the award passed earlier or even to modify it. Therefore at the first blush it does appear that the second award suffers the vice of lack of jurisdiction.

8. However, it is pertinent to note and bear in mind that admittedly, at the request of the petitioners in Writ Petition No.4227/2016 and as per the order passed by this Court in that matter on 20.04.2016, the respondent No.3 was called upon to redetermine the amount of compensation payable to them. Therefore, it is quite evident that the second award has not been passed by the respondent No.3 on his own motion. He has apparently exercised the jurisdiction having been called upon to do so by this Court.

9. Admittedly, neither the petitioners nor the respondents put up any challenge to the order of this Court passed in Writ Petition No.4227/2016. This being the state of affairs, wherein the second award

has been passed pursuant to the directions of this Court in the peculiar circumstances, the petitioners are not entitled to assail it on the ground of competence of the authority to pass it, otherwise the latter would have been blamed even for the contempt.

10. We, therefore, conclude that the only ground on which the petitioners are entitled to seek a review pursuant to the liberty granted by the Supreme Court, fails.

11. The Review Application is dismissed.

**(SANDEEP V. MARNE, J.)**

**(MANGESH S. PATIL, J.)**