

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10743 OF 2022

Ek Nath Umaji Gotekar & Ors. ... Petitioners

Versus

Sub-Divisional Officer, Thane & Ors. ... Respondents

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Mr. Vachan Bodke with Ms. Pinky Sharma, Ms. Namita Shinde and Ms. Ankita Vishvkarma i/b. V & M Legal for the Petitioners.

Ms. Akshaya Puthran with Ms. Mansi Pawar i/b. S.K. Singh & Co. LLP Advocates for Respondent No.5.

Mr. C.D. Mali, AGP for the State.

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**CORAM : NITIN JAMDAR &
SHARMILA U. DESHMUKH, JJ.**

DATED : 19 SEPTEMBER 2022

P.C. :-

The learned Counsel for the Petitioners states that the grievance of the Petitioners is that in spite of issuing an Award under Section 23 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the compensation is not being paid. In the sense, therefore, what is sought is an execution of the Award.

2. The execution proceedings for enforcement of an Award is an effective remedy. The Hon'ble Supreme Court in the case of *National*

*Highways Authority of India versus Sheetal Jaidev Vade & Ors.*¹ has observed as follows :

“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”.

(emphasis supplied)

3. The Hon’ble Supreme Court has observed that aggrieved party has a

¹ Civil Appeal No. 5256 of 2022 dated August 24, 2022

remedy of execution of the Award. Nothing is shown to us why the Petitioners cannot resort to this remedy. In fact, execution remedy is effective as for non-payment of the compensation the Court can direct attachment.

4. If the execution proceedings are filed by the Petitioners in the concerned Court, the same be taken on priority basis and if the amount is not deposited in time stipulated by the Court, the Court will be entitled to proceed to take coercive steps for enforcement including attachment. Keeping that remedy open to the Petitioners, writ petition is disposed of.

(SHARMILA U. DESHMUKH,J.)

(NITIN JAMDAR, J.)