

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 2981 OF 2021

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| <p>1. National Highways Authority of India
Through its Project Director, Project
Implementation Unit, Yavatmal Having its
office at Chandan Niwas, Plot No.13,
Kolhe Layout Part-2, Darwha Road,
Yavatmal</p> <p>2. Government of India through Secretary,
Ministry of Road Transport & Highways,
New Delhi</p> | } | .. Petitioners |
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Versus

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| <p>1. Sub-Divisional Officer cum Land
Acquisition Officer, Yavatmal</p> <p>2. Shyamsundar Shribhagwan Jaipuria,
Aged about : major, r/o : 404, Krushna
Apartments, Gadge Nagar, Yavatmal</p> <p>3. Saurabh Nandkishore Jaipuria
Aged about : major, through its Power of
Attorney Holder : Shyamsundar
Shribhagwan Jaipuria r/o : 404, Krushna
Apartments, Gadge Nagar, Yavatmal</p> <p>4. Naman Naval Agrawal
Aged about : major, through its Power of
Attorney Holder : Shyamsundar
Shribhagwan Jaipuria r/o : 404, Krushna
Apartments, Gadge Nagar, Yavatmal</p> <p>5. Manjushri Nilesh Tibedwal,
Aged about : major, through its Power of
Attorney Holder : Shyamsundar
Shribhagwan Jaipuria r/o : 404, Krushna
Apartments, Gadge Nagar, Yavatmal</p> | } | .. Respondents |
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6. Purvi Sanjay Agrawal,
Aged about : major, through its Power of
Attorney Holder : Shyamsundar
Shribhagwan Jaipuria r/o : 404, Krushna
Apartments, Gadge Nagar, Yavatmal

Mr. Saurabh A. Choudhari, Advocate for petitioners.

Mr. H. D. Dubey, A.G.P. for respondent No.1.

Mr. S. P. Khirsagar, Advocate for respondent Nos.2 to 6.

CORAM : **MANISH PITALE, J.**

RESERVED ON : **07/04/2022**

PRONOUNCED ON : **28/04/2022**

JUDGMENT

Rule. Rule made returnable forthwith. Heard finally
with consent of the learned counsel appearing for the rival parties.

(2) The National Highways Authority of India and the
Government of India through the Ministry of Road Transport and
Highways have filed the present petition challenging order dated
16.03.2021, passed by the respondent No.1 – Sub-Divisional Officer
cum Land Acquisition Officer, Yavatmal. By the said order an
application filed by respondent Nos.2 to 6 i.e. land owners, under
Section 3C of the National Highways Act, 1956, has been allowed and

specific directions have been given to the petitioners in the context of 0.88 HR land located in Gut No.4, Mouza Madkona, Tahsil and District – Yavatmal.

(3) The petitioners undertook a project for constructing National Highway No.361 passing through Gut No.4, Mouza Madkona, and for that purpose provisions of the aforesaid Act were invoked for acquisition of land. Petitioner No.2 issued declaration under Section 3A of the aforesaid Act, declaring intention to acquire 1.8261 HR of land from Gut No.4, in Mouza Madkona. Respondent Nos.2 to 6 raised objections under Section 3C of the said Act in respect of the acquisition proposed to be undertaken for construction of the aforesaid National Highway. It was the case of respondent Nos.2 to 6 that 0.62 HR and 0.26 HR lands from the aforesaid Gut No.4, Mouza Madkona, were utilized by the petitioners for construction of the said National Highway No.361, but in the process no steps were taken for follow-up action regarding acquisition under the provisions of the said Act.

(4) It was claimed that there were documents on record to show that joint measurement was undertaken, identifying the aforesaid lands admeasuring 0.62 and 0.26 HR i.e. total 0.88 HR from

Gut No.4, Mouza Madkona, belonging to respondent Nos.2 to 6, that was utilized during construction of the said National Highway and yet, the petitioners had not taken appropriate steps for compensating respondent Nos.2 to 6. In this backdrop, the said application under Section 3C of the aforesaid Act was filed, which was allowed by the impugned order dated 16.03.2021.

(5) The petitioners filed the present petition, wherein notice was issued for final disposal by order dated 17.08.2021. The respondent No.1 entered appearance through the Assistant Government Pleader and respondent Nos. 2 to 6 were also represented by counsel.

(6) Mr.Saurabh Choudhari, learned counsel appearing for the petitioners submitted that the impugned order dated 16.03.2021, passed by respondent No.1 was without jurisdiction in the light of law laid down by the Hon'ble Supreme Court as regards the nature of objections that could be entertained under Section 3C of the aforesaid Act. It was submitted that the findings rendered in the impugned order were well beyond the scope of Section 3C of the said Act and the direction given in the impugned order for rendering Award

and disbursing compensation to respondent Nos. 2 to 6, was clearly beyond the jurisdiction of respondent No.1. It was claimed that although declaration under Section 3A of the said Act was issued, there was no follow-up action as expected under Section 3D of the said Act pertaining to the aforesaid pieces of land and therefore, there was no question of rendering a land acquisition Award and disbursing compensation to respondent Nos.2 to 6.

(7) It was further submitted that 0.26 HR land concerned a service lane and insofar as 0.62 HR land was concerned, the same was never acquired by the petitioners and an earlier litigation initiated by respondent No.2 against the Public Works Department of the State Government claiming that the said piece of land was utilized for construction of State highway, had met with failure before this Court. Attention of this Court was invited to order dated 29.06.2010, passed in Writ Petition No.2282 of 2009, wherein this Court had dismissed the writ petition filed by respondent No.2 concerning the very same piece of land admeasuring 0.62 HR in Gut No.4, Mouza Madkona. The respondent No.2 had claimed that the said piece of land was utilized for construction of State highway and that therefore, the State Government through the Public Works Department ought to

be directed to complete acquisition proceedings in respect of the same and to pay compensation. The writ petition was dismissed on the ground that disputed questions of fact were involved, which could not be decided in writ jurisdiction. On this basis, it was submitted that the respondent No.1 had erred in passing the impugned order.

(8) The learned counsel for the petitioners further submitted that due to the direction given in the impugned order, land acquisition Award dated 31.05.2021 was passed, determining compensation payable to respondent Nos.2 to 6 for the aforesaid pieces of land, but since the Award was consequential to the impugned order and the impugned order was itself unsustainable, the Award passed by respondent No.1 also deserved to be set aside.

(9) The learned counsel for the petitioners relied upon judgment of the Hon'ble Supreme Court in the case of ***Competent Authority Vs. Barangore Jute Factory and Others (2005) 13 SCC 477*** and judgment of the Karnataka High Court in the case of ***Dr. V.S.Shukal and Ors Vs. National Highways Authority of India (Ministry of Road Transport and Highways) and Ors. AIR 2013 Karnataka 65.***

(10) On the other hand, Mr.S.P. Kshirsagar, learned counsel appearing for respondent Nos.2 to 6 opposed the contentions raised on behalf of the petitioners. It was submitted that a joint measurement report on record and the order passed in an appeal preferred by petitioner No.1, as regards the said aspect of the matter had met with dismissal at the hands of the Deputy Superintendent of Land Records, Yavatmal and the said order had attained finality. In the said order, it was specifically recorded that the joint measurement of the land in question taken place in the presence of the representative of petitioner No.1 and that it was found, as a matter of fact, that both pieces of land admeasuring 0.26 HR and 0.62 HR in Gut No.4, Mouza Madkona, belonging to respondent Nos.2 to 6 were utilized in construction of National Highway No.361. This material was specifically appreciated by respondent No.1 while passing the impugned order and therefore, the said finding of fact could not be interfered with in the present petition. It was submitted that the petitioners were unable to deny the fact that 0.88 HR land in Gut No.4, Mouza Madkona, was indeed utilized for construction of National Highway No.361 and therefore, it could not lie in the mouth of the petitioners that since there was no order/declaration issued

under Section 3D of the aforesaid Act, the direction to pay compensation could not be claimed by respondent Nos.2 to 6. It was submitted that the material on record was correctly appreciated by respondent No.1 while passing the impugned order.

(11) Insofar as the aspect that respondent No.1 had exceeded jurisdiction under Section 3C of the said Act, it was submitted that the petitioners could not support their claims on facts before the said authority and it was on the basis of material brought on record that the respondent No.1 correctly exercised jurisdiction in favour of respondent Nos.2 to 6. It was submitted that challenge to the Award at the behest of the petitioners for whose benefit the acquisition proceedings were undertaken, was unheard of and totally unsustainable.

(12) Mr.H.D. Dubey, learned Assistant Government Pleader appeared on behalf of respondent No.1 and defended the impugned order.

(13) Before dealing with contentions raised on behalf of the petitioners concerning findings on merits rendered by respondent

No.1, it would be appropriate to first deal with the contention regarding the scope of jurisdiction under Section 3C of the said Act. The learned counsel for the petitioners relied upon the judgment of the Supreme Court in the case of *Competent Authority Vs. Barangore Jute Factory and Others* (supra) and that of the Karnataka High Court in the case of *Dr. V.S. Shukla Vs National Highways Authority of India* (supra). A perusal of the aforesaid judgments would show that it has been laid down that the scope of jurisdiction under Section 3C of the said Act, is not as wide as the jurisdiction exercised under Section 5A of the Land Acquisition Act, 1894. It is laid down that the land owner has a very limited right to object under Section 3C of the aforesaid Act and such an objection can only be limited to the question of use of the land under acquisition for the purposes other than those declared under Section 3A of the said Act. It is laid down that Section 3C of the said Act confers no right to object to the acquisition as such. This position has been followed by the Karnataka High Court and it is laid down that the land owners are not entitled to get the acquisition proceedings invalidated on the ground that some of their objections were not considered.

(14) Thus, it becomes clear that under Section 3C of the

said Act, the nature of objections that can be raised is limited and the very acquisition cannot be challenged. In the present case, respondent Nos.2 to 6 as owners of the aforesaid pieces of land, together admeasuring 0.88 HR in Gut No.4, Mouza Madkona, raised detailed objections under Section 3C of the said Act. A perusal of the objections raised on behalf of respondent Nos.2 to 6 along with the documents placed on record before respondent No.1 would show that they raised serious concerns about being deprived of the aforesaid pieces of land, without being compensated for the same. In fact, the tenor of the entire objections was that they ought to be compensated, not only for possession of the said pieces of land being taken for construction of Highway No.361, but also for the reason that the remaining area of land belonging to the said respondents had been rendered either unmarketable or inaccessible, thereby diminishing the utility of the remaining area of land belonging to them.

(15) It was also indicated that fair compensation was due to them and it was claimed that the whole designing of the National Highway was “eccentric” thereby indicating that the said pieces of land need not have been utilized for construction of National Highway No.361. A number of documents were annexed with the said

objections in support of the issues raised therein. This Court is convinced that the nature of objections raised on behalf of respondent Nos.2 to 6, did fall within the scope and jurisdiction of respondent No.1 under Section 3C of the said Act. Therefore, the contentions raised on behalf of the petitioners that respondent No.1 exceeded its jurisdiction while passing the impugned order, cannot be accepted.

(16) The petitioners have also vehemently contended that the observations made in the impugned order were uncalled for and the direction to pay compensation by preparing land acquisition Award for having utilized the aforesaid pieces of land could not have been granted, particularly when proceedings under Section 3D of the said Act were not undertaken in respect of the said two pieces of land in Gut No.4, Mouza Madkona.

(17) A perusal of the impugned order shows that the respondent No.1 has stated in great detail, the rival contentions and specific issues raised by the parties. In the context of the material placed before respondent No.1, it was found as a matter of fact that both pieces of land i.e. 0.26 HR and 0.62 HR in Gut No.4, Mouza Madkona, belonging to respondent Nos.2 to 6 had been indeed utilized

for construction of National Highway No.361. The report pursuant to exercise of joint measurement, where the representative of petitioner No.1 was present and so were respondent Nos.2 to 6, was placed on record before respondent No.1. It was appreciated in the context of the map on record and order dated 04.10.2018, passed by the Deputy Superintendent of Land Records, Yavatmal, wherein specific findings were given, that both the aforesaid pieces of land were indeed utilized for construction of National Highway No.361.

(18) The respondent No.1 found that the petitioners could not dispute such documents on record and it was clear that both the aforesaid pieces of land belonging to respondent Nos.2 to 6 had indeed been utilized for construction of National Highway No.361 and that the said respondents had been deprived of the said pieces of land. In fact, the respondent No.1 found from the documents on record that the petitioner No.1 was collecting toll for construction of the said stretch of National Highway No.361, in respect of which respondent Nos.2 to 6 stood dispossessed from 0.62 HR of land in Gut No.4, Mouza Madkona. On the basis of such finding of fact, the respondent No.1 concluded that since the two pieces of land belonging to respondent Nos.2 to 6 had been undisputedly utilized for construction

of National Highway No.361, the objections and apprehensions expressed by the said respondents were justified. It is in this context that the direction was given by respondent No.1 for rendering land acquisition Award and suitably compensating respondent Nos.2 to 6 for utilization of the said two pieces of land. It is also undisputed that declaration under section 3A of the said Act was issued for acquisition of the said pieces of land. Hence, this Court is of the opinion that the findings of facts rendered by respondent No. 1 on the basis of material on record cannot be found fault with.

(19) This Court also perused the documentary material placed on record. It clearly shows that the joint measurement report and the map prepared pursuant thereto undeniably establish the fact that the aforesaid two pieces of land belonging to respondent Nos.2 to 6 were indeed utilized in the said project of the petitioners. The respondent Nos.2 to 6 stood dispossessed and deprived of the said pieces of land. There can be no dispute about the fact that the said respondents deserved to be suitably compensated for the same. The order dated 04.10.2018 passed by the Deputy Superintendent of Land Records, Yavatmal, shows that the appeal filed by petitioner No.1 as regards the joint measurement report was dismissed and it was

specifically recorded that the aforesaid pieces of land admeasuring 0.26 HR and 0.62 HR from Gut No.4, Mouza Madkona, belonging to respondent Nos.2 to 6, were indeed utilized for the project concerning National Highway No.361. The said order was admittedly not challenged any further by petitioner No.1, thereby showing that the same attained finality.

(20) Much emphasis was placed on behalf of the petitioners on order dated 29.06.2010, passed by this Court whereby Writ Petition No.2282 of 2009 filed by respondent No.2 was dismissed. A proper appreciation of the said order passed by this Court would show that the respondent No.2 had claimed that the State Government through the Public Works Department had encroached upon 0.62 HR land from Gut No.4, Mouza Madkona, for construction of the State highway and that no compensation was paid for the same. The State Government had denied the aforesaid claim of respondent No.2. A Division Bench of this Court while considering the writ petition under Article 226 of the Constitution of India found that in the light of the rival claims made by the parties, disputed questions of fact were involved, which could not be gone into in the said writ petition. On this basis, the writ petition was dismissed.

(21) Even if the said writ petition filed by the respondent No.2 was dismissed, the effect of the same was that the respondent No.2 failed to establish the fact that the State Government through the Public Works Department had utilized 0.62 HR land from Gut No.4, Mouza Madkona, for construction of the State highway. But, the same would not result in any finding that could be positively rendered in favour of the petitioners in the present case. It appears from the tenor of the contentions raised on behalf of the petitioners before this Court that it was the State Government, which may have utilized 0.62 HR land from Gut No.4, Mouza Madkona, which thereafter, may have been subsumed or utilized in construction of National Highway No.361, and that therefore, the petitioners could not be held responsible for payment of compensation for utilization of said pieces of land. The aforesaid contention and approach adopted by the petitioners, cannot be accepted, particularly because when this Court put pointed queries to the learned counsel for the petitioners, he could not demonstrate that National Highway No.361 did not run through the aforesaid pieces of land belonging to respondent Nos.2 to 6. On the contrary, respondent Nos. 2 to 6 proved that the said pieces of land were indeed utilized for construction of the said highway, as per the

joint measurement report and the order of the Deputy Superintendent of Land Records.

(22) By the said order, the Deputy Superintendent of Land Records found that the aforesaid pieces of land were utilized for construction of National Highway No.361. In fact, on the basis of joint measurement report, wherein the representative of petitioner No.1 was also present and he signed the same, it was recorded as a matter of fact that the aforesaid pieces of land belonging to respondent Nos.2 to 6 were indeed utilized for construction of National Highway No.361 and this material was appreciated by the Deputy Superintendent of Land Records while dismissing the appeal filed by petitioner No.1. In the face of such material available on record, it becomes clear that dismissal of Writ Petition No.2282 of 2009, by the Division Bench of this Court cannot be of any assistance to the petitioners in this case.

(23) Having appreciated the material available on record, the respondent No.1 in the impugned order correctly allowed the application/objection filed by respondent Nos.2 to 6. Having come to specific finding of facts that the aforesaid pieces of land belonging to respondent Nos.2 to 6 were indeed utilized for construction of

National Highway No.361, it was a logical corollary for respondent No.1 to have directed payment of appropriate compensation to respondent Nos.2 to 6. The petitioners cannot hide behind the excuse that appropriate proceeding under Section 3D of the Act was never undertaken regarding the said pieces of land and therefore, there was no question of rendering an Award for payment of compensation to respondent Nos.2 to 6.

(24) In fact, it is an admitted position that Award dated 31.05.2021, was passed by the respondent No.1 determining the compensation payable to respondent Nos.2 to 6 for utilization of the aforesaid two pieces of land admeasuring 0.26 HR and 0.62 HR from Gut No.4 in Mouza Madkona. A copy of the said Award was not placed before this Court with the writ petition on behalf of the petitioners and it was respondent Nos.2 to 6 who placed the same on record. It is surprising that the petitioner,s having utilized the aforesaid pieces of land for construction of National Highway No.361, have challenged the very Award determining compensation payable to respondent Nos.2 to 6. The petitioner No.1 is the authority for whom the entire exercise of acquisition and utilization of the lands in question took place and when the material on record undeniably

demonstrated that the said two pieces of land were indeed utilized for construction of National Highway No.361, the petitioners could not have challenged the Award dated 31.05.2021, in the present writ petition.

(25) In view of the above, this Court is convinced that there is no substance in the contentions raised on behalf of the petitioners. Land owners whose lands are acquired ought to be suitably compensated for the same. It is the right of respondent Nos.2 to 6, for being suitably compensated and the said right is guaranteed under Section 300-A of the Constitution of India. Hence, the petition is found to be without any merit.

(26) Accordingly, the writ petition is dismissed. Rule is discharged. No costs.

[MANISH PITALE J.]

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