

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

WRIT PETITION NO.4152 OF 2022

**TANAJI KALIDAS PUNJARI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...

Advocate for Petitioner : Mr. Sambhaji S. Wakure
AGP for Respondents: Mr. S.B. Yawalkar.
Advocate for respondent No.2 : Mr. R.B. Bhosle.

**CORAM : NITIN W. SAMBRE
& S.G. CHAPALGAONKAR, JJ.**

DATE : 10th MARCH 2023

P.C.:-

The challenge in this petition is to the order dated February 22, 2022 passed by the competent authority i.e. Deputy Collector of Land Acquisition, National Highways.

2. The petitioner claims to be the President of a Trust whose land was subjected to acquisition for the purpose of construction of National Highway No. 361 (Tuljapur to Ausa). After the acquisition proceedings were over, the amount of compensation came to be deposited with the competent authority on 19.03.2018. The petitioner applied for withdrawal of the said amount in the capacity of the President of the Trust, who was owner of the property which was acquired. It was the request of the petitioner before the competent authority to disburse 50% of the amount to the Trust and remaining 50% amount to the petitioner.

3. It appears that the amount accordingly was disbursed upon the petitioner executing an Indemnity Bond.

4. Lateron, pursuant to the complaint as regards non-entitlement of the petitioner to the aforesaid amount of compensation, this Court, passed an order dated November 17, 2021, deciding the writ petition preferred by the present petitioner being W.P. No. 346 of 2020.

5. As a consequence of the order dated November 17, 2021, the petitioner has re-deposited the amount of compensation received by him. Specific directions were issued in the said writ petition, which read thus :-

“In view of the above, Writ Petition is disposed off on the following terms :-

(I) The petitioners shall appear before respondent No.2 on 23.12.2021 at 11.00 a.m. If any other party is required to be heard, respondent No.2 would ensure that notices are served on those parties, so as to remain present on 23.12.2021.

(ii) The hearing on the dispute would be concludes, as expeditiously as possible and respondent No.2 would pass an appropriate order, as is prescribed in law, on or before 28.02.2022.

(iii) Respondent No.2 will issue a communication to the Manager of Shri Vishal (Bhaiyya) Rachkari Taluka Urban Co-operative Credit Society Ltd., Tuljapur for issuing a bankers cheque for the amount deposited with it by the petitioners in

the name of respondent no.2.

(iv) The directions set out in paragraph No.6 herein above, shall be complied with, on or before 23.12.2021.”

6. In compliance with the aforesaid directions of the Division Bench of this Court, the competent authority re-adjudicated the claim as regards claim for the compensation, particularly, about its apportionment and passed a reasoned order on 22.02.2022, which is impugned in the present petition.

7. Vide the impugned order, the respondent authority has directed the petitioner to deposit the interest on the amount of compensation which he has utilized, as under law the petitioner was not entitled to receive and enjoy the amount.

8. While assailing the said order, the counsel for petitioner made two fold submissions.

[a] That the adjudication, qua entitled of the petitioner is pursuant to the provisions of sub-clause(3) of Section 3H of the National Highways Act, 1996. According to him, once the adjudication is carried out, this section does not empower the competent authority to issue directions to the petitioner to pay interest on the amount which the petitioner allegedly and illegally enjoyed.

[b] It is the claim of the petitioner that even while deciding the issue involved in earlier round of litigation i.e. in W.P No. 346 of 2020 on November 17, 2021, there are no positive directions by this court to recover the amount from the petitioner or direction to the petitioner to

deposit the amount with interest and as such, according to him, the authority has exceeded the jurisdiction in directing to deposit the amount with interest.

9. Additional submission of the counsel for petitioner is that the Indemnity Bond executed by the petitioner at the time of initial release of the amount of compensation pursuant to the provisions of Section 3H(3) does not contain an assurance by the petitioner that the amount which is withdrawn by the petitioner shall be re-adjusted pursuant to the aforesaid Indemnity Bond alongwith interest.

10. As such, the sum and substance of the submissions of the counsel for the petitioner are that, the petitioner in law, cannot be mandated or directed to deposit the interest on the amount of which he was in temporary possession.

11. The counsel for respondent would oppose the prayer, as according to them, the amount of compensation was withdrawn by the petitioner without authority of law, and he has enjoyed the same.

12. We have considered the rival submissions.

13. Pursuant to directions of this Court in W.P. No. 346 of 2020, decided on November 17, 2021, the petitioner has agreed to deposit the amount of compensation which he has received. The competent authority vide impugned order has adjudicated that the petitioner was custodian of the said amount in the sense, the amount was enjoyed by him for a period of more than 1000 days. Fact remains that the petitioner is

unable to demonstrate as to under law, how he is entitled to enjoy the said amount.

14. The Division Bench of this Court has directed adjudication of claim of the petitioner, as to whether, in law, he is entitled for such amount of compensation and the authority has noticed that the petitioner was not entitled to such amount for the specific reasons recorded in the order impugned.

15. Merely because the provision of sub clause (3) of Section 3H or the Indemnity Bond executed by the petitioner in compliance with the conditions for re-deposit of the amount does not contain a clause as regards interest payable by the petitioner, that by itself, will not entitle the petitioner to claim before this court that the authority without any powers have directed him to pay interest on the amount which he has enjoyed.

16. Rather, this court is required to be sensitive to the scheme of the provisions of the National Highways Act, particularly, when the delayed compensation to a party who is lawfully entitled, is also entitled for interest over the same. Once the petitioner is held to be not entitled in law for the amount of compensation and the third party is entitled for such compensation, the interest payable to such party by the acquiring body, has to be recovered from the petitioner, as so rightly ordered vide the impugned order.

17. That the party who is entitled for compensation under Section 3G, which is to be determined by the competent authority is not

in agreement with the amount of compensation, is entitled to refer the dispute to an arbitrator. In case, if the arbitrator is of the opinion that the amount awarded in the form of compensation is inadequate, the arbitrator can award compensation with interest @ 9% to either of the parties in the sense, that the acquiring body or the land owner. As such, the statute itself contemplates the interest payable either to the acquiring body or to the party who is entitled for compensation.

18. In view of the above, particularly, having regard to the scheme of Sections 3G and 3H of the National Highways Act, we do not see that the competent authority has passed the impugned order of deposit of amount of interest, without authority in law.

19. No illegality could be noticed with the order impugned in the petition. Hence, same stands dismissed. Pending civil application, if any, stands disposed of.

[S.G. CHAPALGAONKAR]
JUDGE

[NITIN W. SAMBRE]
JUDGE

grt/-