

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

**908 REVIEW APPLICATION (CIVIL) NO.250 OF 2022
IN CP/592/2015 WITH CA/992/2020 IN CA/11832/2017**

**ABRAR AHMED MOHAMMAD ISHAQ DIED LRS NIKHAT SHABANA
SIDDIQUE AND OTHERS
VERSUS
NIDHI PANDE AND OTHERS**

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Advocate for Applicants : Mr. Thigale Girish K. (Naik)
AGP for Respondent Nos. 1 to 7 : Mr. S.B. Yawalkar
Advocate for Respondent No. 8 : Mr. Anjali Dube (Bajpai)

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 06.09.2023

PER COURT :

Heard the learned advocate for the review applicant, learned A.G.P. as also Mrs. Dube (Bajpai) for the respondent No. 1-Corporation.

2. The petitioners' land was taken possession of in the year 1997 without following due process of law. In Writ Petition No. 7739/2008 by the order dated 02.09.2009 the respondent No. 3 therein i.e. the Collector was directed to resort to appropriate proceeding under the Land Acquisition Act, determine the amount of compensation after hearing the respondent no. 1 therein namely Aurangabad Municipal Corporation and to pass award within three weeks. The amount of compensation was also directed to be paid to the petitioner without prejudice to his right to resort to reference for enhancement.

3. Since thereafter the matter is lingering inasmuch as the partly sum of Rs. 13,50,583/- of the amount of compensation is still to be deposited by the Municipal Corporation with the Special Land Acquisition Officer. It is this

order which was sought to be pressed into service due to the alleged disobedience by the Corporation. In Contempt Petition No. 592/2015 the petitioners were seeking to initiate a proceeding against the Corporation and its officers for their failure to deposit the amount of compensation. By the order dated 27.06.2017 we had disposed of that Contempt Petition with following observations :

“1. After having heard both sides, we do not think that in contempt jurisdiction the Petitioner can obtain substantive reliefs. The version of the Respondents including acquiring bodies is that the amount of compensation has been deposited with the Land Acquisition Officer.

2. We do not think that in contempt jurisdiction we can resolve any issue as to whether, the amount should be paid over to the Petitioner and why. The law has elaborate measures in the event the amount is not received actually by the Petitioner and is still lying deposited as claimed. We do not think that in contempt jurisdiction such issues can be resolved. We feel that this contempt petition is entirely misconceived and is dismissed. All the contentions are kept open.”

4. Though we had disposed of the Contempt Petition by the above mentioned observations, the fact remains that this was a matter of enforcement of an award passed under Section 18 of the Land Acquisition Act, 1894 and the Act did not provide for any execution of that award, the only remedy could be either preferring a contempt petition or else another writ petition. It is in view of such peculiar circumstances, in our considered view, the order under review will have to be understood in the context in which it was passed. There would not be any other appropriate remedy to recover the amount of award which has been passed pursuant to the directions of this Court under Section 18 of the Land Acquisition Act, 1894. For this reason, we are inclined to review that order.

5. Taking into consideration all other aspects, on the last date (30.08.2023) we had passed following order :

“After hearing both the sides, it transpires that even according to the Special Land Acquisition Officer, the acquiring body namely Aurangabad Municipal Corporation is still to deposit an amount of Rs. 13,50,583/-. Keeping aside the dispute as to the entitlement of the rival claimants for which the Special Land Acquisition Officer may have to resort to Section 30 of the Land Acquisition Act, 1895, the Aurangabad Municipal Corporation will have to deposit that amount.

2. It does appear that the Municipal Corporation is insisting for some dues from the petitioners towards the development charges which he seems to have agreed to be appropriated from the amount of compensation to be received for which an undertaking was given to the Corporation on 03 March 1998. The amount of that development charges then agreed to be paid is Rs. 3,33,596/-. The Corporation is now claiming that amount together with the interest which according to its calculations is Rs. 52,14,661/-.

3. We do not find any provision or law which would enable the Municipal Corporation to charge such interest that too after the award itself was passed in the year 2015 and when it had agreed to appropriate the development charge of Rs. 3,33,596/- from the amount of compensation. Prima facie, even there is no demand at any point of time and it is only during the course of the present proceeding that the Corporation is coming with such a stand. Ex facie, even that demand/liability would be time barred.

4. Considering the whole gamut, it seems to be a straight forward case where the Municipal Corporation which had taken over possession way back in the year 1997 was required to be directed by this Court to take appropriate proceeding for acquisition. The order was passed by this

Court in the year 2009 but the award could be passed as belatedly as in the year 2015. If such is the state of affairs, we see no reason why the Municipal Corporation should not be directed to deposit the balance amount of compensation demanded by the Special Land Acquisition Officer mentioned herein above. Let the learned Advocate for the respondent – Municipal Corporation take instructions.

5. Stand over to 06 September 2023.”

6. Irrespective of the right of the respondent No. 1-Municipal Corporation to recover development charges, the fact remains that it is a matter of satisfaction of an award passed under the Land Acquisition Act. If the Corporation has some remedies it may resort to it to recover the development charges. However, that cannot be allowed to avoid depositing the balance amount of compensation with the Special Land Acquisition Officer without which he will not be able to make a reference under Section 30 of the Land Acquisition Act.

7. We, therefore, allow the Review Application. We modify our order dated 27.06.2017 and instead direct the respondent No. 1-Municipal Corporation to deposit the amount of Rs. 13,50,583/- with the Special Land Acquisition Officer within six weeks, failing which the contempt proceeding would stand revived.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-