

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

922 WRIT PETITION NO. 10565 OF 2018

DATTATRAYA S/O BABURAO ROHIDAS
VERSUS
THE COLLECTOR, OSMANABAD AND OTHERS

...
Advocate for Petitioner : Mr. S. B. Choudhari
AGP for Respondent-State : Mr. A. R. Kale
Advocate for Respondent No.2 : A. N. Patale
Advocate for Respondent No.3 : Mr. D. S. Manorkar
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**CORAM : NITIN W. SAMBRE AND
S. G. CHAPALGAONKAR, JJ.**

DATED : 23 MARCH 2023

PER COURT :-

1. The petitioner claims to be the owner of plot no.15 having north-south length 18.3 meters and width in east-west direction 15.25 meters, total area 278.80 square meters. Adjacent to the plot of the petitioner are plot no. 16 and plot no. 14.

2. It appears that the aforesaid property was acquired by the respondent for the purpose of expansion of National Highway and accordingly notice dated 12.04.2016 under the provisions of the National Highways Act, 1956 came to be issued to him stating that in the award for acquisition, his name was shown at serial number 185, the valuation was carried out on 21.08.2012 and the land of the

petitioner was shown to be from survey/gat no.217. The area affected was shown as 179 square meters. The compensation payable to the petitioner was determined at Rs.10,02,982/- which, we are informed, till date is not paid.

3. It appears that the petitioner having noticed the error in the mention of survey no.217 instead of 216, joint measurement was carried out and the respondent-competent authority issued corrective order dated 06.01.2018. After having noticed that the compensation was released in favour of the owner of plot nos. 14 and 16, the petitioner claimed for release of compensation. However, it appears that vide the impugned communication and also the communication issued on 26.04.2018 by the Superintendent of Land Records, the compensation is refused to be awarded.

4. The basis for such refusal is that, the land of the petitioner is not subjected to acquisition.

5. So as to substantiate his claim, the learned counsel for the respondent has relied on the joint measurement carried out by the respondent which is produced at page no. 84. It appears that the dimensions of the National Highway passing through the survey no.

216 and 217 is not affecting the property of the petitioner being plot no. 15.

6. The petitioner has specifically come with a case and the pleadings in paragraph no. 9 that in spite of the aforesaid factual matrix, compensation is paid to the holders of the plot nos. 14 and 16.

7. The aforesaid factual matrix is not denied by the respondents.

8. As a sequel of above, it is brought on record that the adjacent plots on both sides, i.e. northern and southern, being plot nos. 14 and 16 respectively, stood vested in the National Highway authority whereas, the single plot in between the aforesaid two plots remained to be acquired and claimed to have been not acquired or not required for the purpose of expansion project.

9. In this background, what was expected of respondent authorities is, either to release the property of the petitioner from acquisition by taking recourse to such steps as are permissible and available in the Land Acquisition Act, 2013 or award damages akin to the provisions of Section 48 of the Land Acquisition Act, 1894. Admittedly, respondents have failed to take any such action in the

matter and at their own level, have decided not to pay compensation to the petitioner in spite of there being an award way back in 2016. It is surprising that for last 8 years, though the land of the petitioner is shown to have been affected by the acquisition at the behest of the respondent National Highway authority and there being a valid award in favour of the petitioner, the compensation is not released by the competent authority for the facts referred above, which is his own creation.

10. In this background, we are left with no other option but to allow the petition by directing the respondent to forthwith release the compensation to the petitioner as has been awarded under the award in question.

11. The petition as such stands allowed in the above terms.

12. Needless to clarify that the amount shall carry interest at the rate of 9% from the date of the award till the same is released to the petitioner.

[S. G. CHAPALGAONKAR, J.]

[NITIN W. SAMBRE, J.]