

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

WRIT PETITION NO. 15562 OF 2019

Hemant Brijraj Lalwani
Age 55 years, occ. Agri & Business,
Permanent R/o. Parola Tq. & Dist.
Jalgaon, at present residing at
1/A, Moti Super Market, Peth Road,
Panchwati, Nashik, Tq. & Dist. Nashik.

... **Petitioner**

VERSUS

- 1) The Government of India,
Notice to be served on
Deputy Secretary,
Ministry of Shipping Road
Transport & Highway,
New Delhi.
- 2) The State of Maharashtra,
Through Secretary Road and
Transport Ministry, Mantralaya
Mumbai.
- 3) The Collector Jalgaon,
Collector Office Jalgaon.
- 4) Competent Authority and
Special Land Acquisition Officer
and Sub Divisional Officer,
Amalner, Division Amalner.
- 5) Project Director,
National Highway Authority of
India, PIU, Aurangabad

... **Respondents**

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Advocate for the Petitioner : Mr. Ajeet B. Kale a/w Sakshi A. Kale
Advocate for Respondent No. 1 : Mr. Bhosle Ramdas B.
Government Pleader for Respondent Nos. 2 to 4 : Mr. D.R. Kale
Advocate for Respondent No. 5 : Mr. Manorkar Deepak S.

**CORAM : MANGESH S. PATIL &
S. G. CHAPALGAONKAR, JJ.**

DATE : 15.02.2023

JUDGMENT : (PER : MANGESH S. PATIL, J.)

Heard. Rule. The Rule is made returnable forthwith. At the joint

request of the parties, the matter is heard finally at the stage of admission.

2. The petitioner claims to be the owner of land Gat No. 187/2 to the extent of 1-Hectare 11 Are of village Parola Tq Parala Dist. Jalgaon. It is his case that some portion of the land was acquired by the National Highway Authority (respondent No. 5) for a national highway. The competent authority (respondent No. 4) passed an award under Section 3G of the National Highways Act, 1956 (the Act) on 29.05.2013. Observing that the land belongs to the State Government by making a specific observation in paragraph No. 9 of the award he did not ascertain the compensation of not only the land Gat No. 187/2 but few other lands mentioned therein and that whatever valuation of these lands would be ascertained, the respondent No. 5-National Highway Authority will have to deposit it with the State Government independently as per the supplementary proposal since those lands were lands of the State Government.

3. The petitioner claims that for his failure to pay the revenue assessment, by resorting to the provisions of the Maharashtra Land Revenue Code, 1966 (MLRC) the State Government had resumed his land and its name started appearing in the revenue record. He thereafter approached the Tahsildar Parola, deposited the amount of arrears of revenue on 04.08.2014 and also in respect of the current year and by the order dated 13.08.2014 the Tahsildar directed the name of the State Government to be removed from the revenue record and replaced by his name. He, therefore, claims that he cannot be deprived of having the compensation being the owner of the land.

4. The learned advocate Mr. Kale would vehemently submit that there is no dispute about the fact that the petitioner is the original owner of the land Gat No. 187/2. There is also no dispute about the fact that the State Government had resumed the land but subsequently by the order of the Tahsildar, after accepting the arrears of the land revenue and the non-

agriculture charges, a specific order was passed by Tahsildar Parola in purported exercise of the powers under Section 72 of the MLRC. Though the right to property is no longer a fundamental right still it continues to be a right under Article 300A of the Constitution and the petitioner is entitled to have the compensation to the extent of 2000 square meters from land Gat No. 187/2 acquired by the respondent No. 5 under the Act.

5. The learned Government Pleader would submit that there is no dispute regarding the fact that the petitioner's land was resumed by the State Government. There is also no dispute about the fact that by passing appropriate order the Tahsildar after accepting the arrears of revenue directed the name of the State Government to be replaced by the petitioner's name and the Mutation Entry No. 1825 was accordingly taken on record on 13.08.2014.

6. The learned advocate Mr. Manorkar for the respondent No. 5 would start his arguments questioning the legality of the order passed by the Tahsildar dated 13.08.2014. He submits that the order is *non est* inasmuch as Tahsildar does not have any authority under Section 72 of the MLRC to pass such order. The power vests with the Collector. Besides, once the property vests in the respondent No. 5-National Highway Authority, even otherwise Tahsildar had no power to pass the order that too behind the back of the National Highway Authority.

7. Mr. Manorkar then by referring to the affidavit-in-reply submits that though a portion admeasuring 1513 square meters from land Gat No. 187/2 was acquired. By following necessary procedure prescribed under the National Highways Act the acquisition has taken place. A notification under Section 3D of the Act was published on 08.11.2012. On such publication the land vested absolutely in the Central Government free from all encumbrances and in due course the award was passed since as on the date of notification, the name of the State Government was appearing in the

revenue record, no separate valuation/compensation in respect of that portion of land was assessed. Any change thereafter in the revenue record is inconsequential. Even otherwise in view of the decision of this Court in the matter of **Bhupendrasingh Sardarsingh Parmar Vs. Competent Authority for National Highway and others; 2020(2) BCR 296**, the respondent No. 4 competent authority has no power to alter, review or revise the award. The only remedy available for the petitioner is to approach the Arbitrator under Section 3G(5) of the Act. It is an alternate and efficacious remedy. In similar matters, this Court had permitted the petitioners therein to file appropriate proceeding under Section 3H(4) and directed the competent authority to make a reference to the Court of ordinary original civil jurisdiction.

8. By filing rejoinder Mr. Kale would submit that some portion of the land Gat No. 187/2 was acquired initially by the award dated 29.05.2013. Some additional portion was acquired by a separate award on 21.01.2015. The petitioner had raised specific objections pursuant to the notification issued under Section 3A of the Act during this second acquisition which was published on 04.05.2013. It was specifically informed to the respondent No. 4-competent authority that steps were being taken by the petitioner for paying the revenue and was getting the land once again in his name. He would further submit that pursuant to such passing of two awards the petitioner even preferred an arbitration proceeding as contemplated under Section 3G(5). The respondent No. 5 had opposed that petition and the Arbitrator dismissed it being not maintainable. He would, therefore, submit that the respondent No. 5 is changing the stand.

9. We have carefully gone through the papers and considered the rival submissions.

10. At the outset it is necessary to note that the respondent/State Government is not disputing the fact that the petitioners land was resumed

for non payment of revenue and was directed to be restored by the order passed by the Tahsildar under Section 72 of the MLRC. It is to be noted that independent of this, the awards specifically mention that since this property was recorded in the name of the State Government, the compensation would be determined independently and would be deposited with the State Government in due course. Meaning thereby that assuming for the sake of arguments that the land stood in the name of State Government, still the respondent No. 5 continues to be under obligation to compensate the State Government if not the petitioner. Consequently, it would not be befitting for the respondent No. 5 to contend that since the land stood in the name of the State Government it was exempt from paying any compensation.

11. The submission of Mr. Manorkar questioning legality of the order passed by the Tahsildar is absolutely devoid of any foundation in the affidavit in reply and is liable to be ignored.

12. The State Government under the MLRC had resumed the land for non payment of revenue. It would be a matter of issue *inter se* between the petitioner on the one hand and the State Government on the other. The respondent No. 5 being a National Highway Authority would have no right or claim in respect of that dispute. When the State Government is not disputing the fact that pursuant to the payment of revenue, in view of the provisions of Section 72 of the MLRC the land has been restored to the petitioner being the original owner on payment of the arrears of the revenue, when that order has reached finality, nothing further is required to be considered much less on the objection being raised on behalf of the respondent No. 5.

13. Even if pursuant to the provisions of Section 3D(2) of the National Highways Act, the land would vest in the Central Government, such a right and vesting would occur subject to the payment of compensation to the rightful owner as contemplated under Section 3H. When admittedly, no

compensation has been paid pursuant to the acquisition of land Gat No. 187/2, the submission of learned advocate Mr. Manorkar that land would vests in the respondent No. 5 will have to be appreciated in the light of the aforementioned state of affairs. The respondent No. 5 cannot be allowed approbate and reprobate

14. Needless to state that though the right to property is no longer a fundamental right, it is still recognized by the Constitution under Article 300A. When there is no dispute between the petitioner and the respondents/ State as far as the title to the land Gat No. 187/2, the petitioner would be entitled to claim the compensation.

15. True it is that in view of the decision in the matter of **Bhupendrasingh Parmar (supra)**, the respondent No. 4-Competent Authority would not have the power and jurisdiction to review/modify/revise the award. But when admittedly, as mentioned in the award the compensation to the extent of the land Gat No. 187/2 has not at all been determined, the respondent No. 4 which is a competent authority under the National Highways Act can certainly be directed to pass a suitable supplementary award to that extent which will not run afoul to the decision in the matter of **Bhupendrasingh Parmar (supra)**.

16. We allow the writ petition and direct the respondent No. 4-Competent Authority to pass appropriate award in the light of the above observations to the extent of portion admeasuring 2000 square meters from land Gat No. 187/2 situated at Parola Dist. Jalgaon, as expeditiously as possible and in any event within four months.

17. The Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR, J.)
mkd/-

(MANGESH S. PATIL, J.)