



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 228 OF 2021

Shantinagar Zopadpattidharak Sangh
through its President Adv. Amol K. Kotiwale &
its slum dweller Members

1. Kasimali Mahiboob Shaikh
Age- 49, Occu. - Business.
R/o-Zopadi No. 2, Shanti Nagar,
Near Siddheshwar Market Yard,
Hyderabad Road, Solapur.
2. Shakilabegam Masumali Shaikh
Age-53, Occu. - Household.
R/o- Zopadi No. 62, Shanti Nagar,
Near Siddheshwar Market Yard,
Hyderabad Road, Solapur.
3. Masumali Bashamiya Shaikh
Age- 67, Occu. - Business.
R/O- Zopadi No. 63, 64, 65, 66,
Shanti Nagar, Near Siddheshwar
Market Yard, Hyderabad Road,
Solapur.
4. Bhimrao Laxaman Dupargude
Age- 46, Occu. - Worker.
R/o- Zopadi No. 27-A, Shanti Nagar,
Near Siddheshwar Market Yard,
Hyderabad Road, Solapur.
5. Babasaheb Shekumber Dupargude
Age-33, Occu. - Business.
R/o- Zopadi No. 27-B, Shanti Nagar,
Near Siddheshwar Market Yard,
Hyderabad Road, Solapur
6. Jagannath Narayan Gadpalli (Galpalli)
Age- 60, Occu.- Business.
R/o- Zopadi No. 111, Shanti Nagar,

Near Siddheshwar Market Yard,
Hyderabad Road, Solapur.

7. Anil Kalyani Kotiwale
Age-27, Occu. – Business.
R/o- Zopadi No. 60-B, Shanti Nagar,
Near Siddheshwar Market Yard,
Hyderabad Road, Solapur.
8. Sanjay Vithhalrao Kulkarni
Age-46, Occu. – Business.
R/o- Zopadi No. 46 & 58, Shanti Nagar,
Near Siddheshwar Market Yard,
Hyderabad Road, Solapur.
9. Prabhakar Sidram Gopale
Age-70, Occu. – Business.
R/o- Zopadi No. 43, Shanti Nagar,
Near Siddheshwar Market Yard,
Hyderabad Road, Solapur.
10. Pratap Anjayya Palli
Age-34, Occu. – Business.
R/o- Zopadi No. 59, Shanti Nagar,
Near Siddheshwar Market Yard,
Hyderabad Road, Solapur.

.. Petitioners

Versus

1. The Competent Authority and Deputy
Collector Land Acquisition Officer No. 11,
Krushna Khore Solapur, New Administrative
Building, 2nd Floor, Collector Office Compound
Solapur- 413001.
2. The Collector of Solapur,
Solapur- 413001.
3. The Project Director,
The National Highway Authority of India,
Solapur Plot No. E-2, Jia Jalaram Nagar,
Behind Shivdare College,
Jule Solapur- 413004
4. (a) Kamalabai Gurappa Deshmukh,

(b) Pratibha Mallikarjun Pasare,
(c) Basavraj @ Raju Gurrapa Deshmukh
(d) Drakshayani Sanjeev Jatti
(e) Sanjay Gurrapa Deshmukh
(f) Usha Shivprasad Manavi
Through their Power of Attorney Holder
Mr. Basavraj @ Raju Gurrapa Deshmukh
All R/o- 21/B/1, Budhwar Peth,
Solapur.

.. Respondents

Dr. Ramdas Sabban a/w Ms. Arundhati Sabban,
Advocates for the Petitioners.

Mrs. S.S. Bhende, AGP *for the Respondent Nos. 1 and 2 - State.*

Mr. Rakesh Singh a/w Ms. Heena Shaikh i/b M.V. Kini and Co., *Advocates for Respondent No.3.*

Mr. Sumit Kothari, *Advocate for Respondent No. 4.*

**CORAM : B. P. COLABAWALLA &
M.M. SATHAYE, JJ.**

**RESERVED ON : JULY 27, 2023
PRONOUNCED ON : August 18, 2023**

JUDGMENT: [PER M.M.SATHAYE, J.]

1. Rule. The learned AGP waives service for Respondent Nos. 1 and 2. Learned Counsel appearing for Respondent No. 3 (National Highway Authority) and for Respondent Nos. 4(a) to 4(f) waive service. Rule made returnable forthwith. Taken up for final disposal by consent of the parties.

2. By this Petition under Article 226 of the Constitution of India, the Petitioners are seeking a writ to quash and set aside the impugned order dated 20/01/2020, passed by Respondent No. 1 - Competent Authority under the National Highways Act, 1956 whereby the Petitioners' claim to share in land-compensation is rejected. The Petitioners are also seeking an appropriate writ directing the Respondent authorities to recover back the compensation (with interest) already paid to the Respondent-land owners [Respondent Nos. 4(a) to 4(f)] granted under section 3(G) of the National Highways Act, 1956 passed under original compensation order dated 08/05/2015 and supplementary compensation order dated 15/07/2017 and deposit the same in the Court or appropriate authority, for lawful apportionment.

3. It is the case of the Petitioners that they are 10 out of a total of about 60 slum-dwellers on the subject matter land, which is a land portion admesasuring 1436 sq. mtrs. situated at Gat No. 98-A (part) of village Kasbe Solapur (Shelgi), Taluka- North Solapur, District-Solpaur.

4. It is contended by the Petitioners that the subject matter land was acquired for Pune-Solapur National Highway No. 9 under Land Acquisition Case No. SR No.1 of 2013. It is contended that while determining the compensation payable to the land owners as well as the Petitioners [as slum dwellers], an amount of Rs. 1,15,21,028/- was determined to be awarded as land compensation and Rs.51,96,716/- was determined as compensation for the structures thereon. It is further contended that the Petitioners agreed not to claim any compensation payable for the land on the promise given by the Respondent-land owners that they will help the Petitioners financially, to buy other land for them and their displaced families in the acquisition. It is contended that the Respondents-land owners cheated the Petitioners and did not keep their promise. It is contended that because of this promise by the land owners, the Petitioners gave no objection to the land owners to receive the entire land compensation without any claim by the Petitioners therein. It appears from the Affidavit in Reply filed by Competent Authority that under the original compensation order dated 08/05/2015, the Petitioners have received compensation for the structures. This is also not disputed by the Petitioners.

5. The petitioners further contended that thereafter they had filed a writ petition (W.P. No. 10060/15) in this court, where an order dated 31/07/2017 came to be passed directing the respondents to decide the Petitioners' application for rehabilitation and resettlement benefits within a stipulated time. It is further contended that by order dated 20/05/2017 and 9/10/2017 the said application of the Petitioners were rejected, against which a contempt petition was filed, and which was withdrawn with liberty to challenge the rejection order dated 20/05/2017 passed by the competent authority.

6. It is further contended that thereafter the Competent Authority issued a supplementary compensation order dated 15/07/2017 granting land compensation of Rs. 86,00,204/- and Rs. 76,58,649/- towards compensation for the structures. It is clearly stated in petition (para 10) that the amount of compensation for structures was paid to the Petitioners in May 2018 under the supplementary compensation order.

7. It is further contended that thereafter the Petitioners issued notice to the respondent authorities demanding 75% share in land compensation, however no action was taken. It is contended that

therefore the Petitioners filed W.P. 6872/2018, which was decided on 14/01/2019 (a common order passed in a group of petitions), directing the Petitioners to file their objections/ appropriate applications/claim of interest etc. before the competent authority. It is contended that accordingly Petitioners filed their objections/applications, on which the impugned order dated 20/01/2020 is passed, rejecting the Petitioners claim.

8. Dr. Sabban, the learned counsel appearing for the Petitioners, has argued that the Petitioners are entitled to a share in the land compensation both under the original and supplementary compensation order because they are protected slum dwellers who have rights under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 [for short “**the said Act**”]. Based on this case, the Petitioners are seeking the prayers as already set out herein above.

9. On the other hand, according to Mr. Kothari, it is case of the Respondent- land owners that the Petitioners being slum dwellers are encroachers on the land and do not have any right to occupy the same. It is contended that the Petitioners do not have any

right, *per se* in the subject matter land. It is contended that whatever right the Petitioners have, is because of their structures (slum-units or hutments) and they have already been paid compensation for their structures.

10. Respondent Nos. 1 and 2, including the Competent Authority, by filing an affidavit-in-reply, has contended that the compensation is calculated for land and structures in accordance with law and the compensation for the structures has been paid over to the Petitioners and compensation for the land has been paid to the Respondents-land owners.

11. Mrs. Bhende, the learned AGP invited our attention to the additional affidavit-in-reply affirmed on 25/07/2023 on behalf of Respondent No. 1, by the Deputy Collector and Competent Authority-Solapur. She submitted that it is specifically contended in the said affidavit [in paragraph no. 5] that each of the Petitioners had executed an affidavit in the year 2016, before the Competent Authority stating therein that they have no objection if the compensation amount of the subject matter land (bearing Gat No. 98-A) is paid to the original owners. It is further contended that

thereafter the slum dwellers including the Petitioners had filed Writ Petition No. 10060/2015 in this Court and pursuant to an order dated 31.01.2017, hearing took place before the Competent Authority. It is further stated that after hearing the Petitioners and after going through the report submitted by the National Highways Authority, it was noticed that affected persons were entitled for additional compensation and hence supplementary compensation order was passed on 15/07/2017 and additional compensation for the structures has been paid to the Petitioners.

12. We have also heard Mr. Singh, the learned counsel appearing for Respondent No. 3- the National Highways Authority of India.

13. We must also mention that the Respondent-land owners have denied the case of alleged cheating or the case of alleged promise by them about financial help to the Petitioners for buying other land. The Respondents-land owners have also specifically contended that the Petitioners are just a handful of slum dwellers out of many who had occupied the subject matter land and who have received compensation for the structures. It is contended that the

present 10 slum dwellers who have come before the Court as a “Sangh” cannot legally represent the case of all the slum dwellers as the Petitioners are really not a lawful entity. He urged that the case of the Petitioners about the alleged promise by the land owners and case of cheating alleged against them, are disputed questions of fact and as such they cannot be considered in writ jurisdiction of this Court.

14. Dr.Sabban, the learned counsel for the Petitioners, in answer submitted that the Petitioner ‘Sangh’ is very much a legal entity and can maintain this Petition on behalf of all the slum dwellers.

15. Since we propose to consider the case made out by the Petitioners (although they are only few of the slum dwellers) on merits, we do not find it necessary to comment upon the aspect of locus and maintainability of the Petition.

16. In support of Petitioners’ case, Dr. Sabban relied upon the Judgment of the Hon’ble Supreme Court in the case of **Brij Behari Sahai Vs. State of U.P. [(2004) 1 Supreme Court Case 641]**.

He submitted that the Hon'ble Supreme Court has recognised the rights of the occupants in the said Judgment and a portion of land compensation was paid to the occupants. He submitted that the Petitioners stand on the same footing as being the occupants who are protected under the said Act. We are afraid, this argument cannot be accepted, for a fundamental reason that the Petitioners, who are the slum dwellers, are originally encroachers on the subject matter land, having no semblance of consent from the land owners in their induction or occupation of the property. In the case of **Brij Behari Sahai** (supra), the Hon'ble Supreme Court considered the rights of the lessee of the property who were occupants. The facts of the present case are clearly distinguishable in as much as, a lessee has a right to occupy the land under the consent of the lessor/ land owner and therefore was considered as a fit person to claim share in the compensation of the land. In the present case the Petitioners were not allowed to occupy the subject matter land by the owners and there is no element of consent. What the Petitioners are entitled to, is right to be rehabilitated as provided under the said Act and that too, if they are found eligible.

17. In this respect, perusal of affidavit in reply of National Highways Authority of India affirmed on 17/7/2021, shows that the competent authority vide a detailed order dated 20/05/2017, had found that the Petitioners are not entitled to resettlement benefits. The said order is produced on record along with the reply. Nonetheless, the Petitioners have in fact received compensation for their structures, both in the original compensation order as well as the supplementary compensation order. Once this is the position, the argument that mere occupancy of the subject matter land as a slum dweller would entitle the Petitioners for share in the compensation of land as well, cannot be countenanced and will have to be rejected.

18. There is one more reason why the Petitioners cannot be held entitled to any compensation of the land. We have perused the affidavits of Petitioners produced by Ld. AGP along with the additional affidavit in reply of Respondent No. 1, for our satisfaction. We find that the Petitioners, in those affidavits [affirmed in January 2016], specifically referred to subject matter land Gat No. 98-A and have stated that they had raised objection about land compensation but the same was withdrawn and they have given their no objection to the same being paid to the land owners and that they will not raise any dispute about it in future. Having found this, we have no

hesitation to hold that the Petitioners cannot be permitted to raise any contrary stand in the present Petition. Faced with this situation, Dr. Sabban sought to contend that the No Objection given in the affidavits affirmed in January 2016 was with reference to the original compensation order dated 8th May, 2015 and not the supplementary compensation order dated 15th July, 2017. Having heard Dr. Sabban on this aspect, we are unimpressed with this argument. The affidavits affirmed in January 2016 (by the Petitioners) have categorically stated that they have given their No Objection for compensation being paid for the subject land (Gat No.98-A) to the land owners and that they will not raise any dispute about it in the future. It would be ridiculous to suggest that for the very same land, and for which the Petitioners had given up their right to claim any land compensation, can today claim that by virtue of enhancement, they are entitled to any part thereof. Once they have given up their claim for any land compensation, it would certainly include any enhancement of that compensation also. In these circumstances, even this argument of Dr. Sabban cannot be accepted.

19. In any case, perusal of the impugned order shows that it has been passed by the Competent Authority under the National Highways Act, based on material available on record. In the light of

the aforesaid facts and circumstances, there is no perversity or error apparent on the face of record to interfere with it under our limited writ jurisdiction. The Petition is thus devoid of merits and the same is hereby dismissed. Rule is Discharged. There shall be no order as to costs.

20. We clarify that we have refrained from expressing any opinion on the Petitioners' case of alleged cheating by Respondent / land owners, being a dispute between private parties involving disputed questions of fact. If the Petitioners adopt any legal proceeding about said case against the land owners, the same shall be decided on its own merits and contentions of both parties in that regard are kept expressly open.

21. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[M.M. SATHAYE, J.]

[B. P. COLABAWALLA, J.]