

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

VASANT
ANANDRAO
IDHOL

Digitally signed by
VASANT
ANANDRAO IDHOL
Date: 2023.03.09
17:32:38 +0530

WRIT PETITION NO.5593 OF 2022

1.	Shri Shrikant Govind Taklikar, Age 51 years, Occupation : Agriculturist.	
2.	Shri Shashikant Govind Taklikar, Age 48 years, Occupation : Agriculturist.	
3.	Sajit Narsinh Gaklikar, Age 46 years, Occupation : Agriculturist. Nos.1 to 3, R/at : Village Valsang, Taluka South Solapur, District Solapur.	...Petitioners
	...Versus ...	
1.	State of Maharashtra, through its Secretary Department of Mantralaya, Mumbai.	
2.	District Collector, Solapur, Solapur.	
3.	Competent Authority @ Deputy Collector (Land Acquisition) No.1, Solapur.	
4.	Project Director, National Highways Authority, Office at E-2, Jay Jalaram Nagar, Jule Solapur, Behind Shivdari Pharmacy College, Solapur.	...Respondents

Mr.Manoj A. Patil for the Petitioners.

Mr.Rajan S. Pawar, AGP for State - the Respondent Nos.1 to 3.

Mr.Chandan Athani i/b Mr.Siddharth Ambegaonkar / Hinge and Deshmukh Associates for NHAI - Respondent No.4.

CORAM : R.D. DHANUKA &
M.M. SATHAYE , JJ.
DATE : 28TH FEBRUARY, 2023.

ORAL JUDGMENT (Per R.D. Dhanuka, J.) :-

1. Rule. Mr.Pawar, learned AGP waives service for the Respondent Nos.1 to 3. Mr.Athani waives service for the Respondent No.4. Rule is made returnable forthwith. By consent of parties, the Petition is heard finally.

2. By this Petition filed under Article 226 of the Constitution of India, the Petitioners have prayed for a writ of certiorari for quashing and setting aside the impugned Modified Supplementary Award dated 25th March, 2021 passed by the Competent Authority, Deputy Collector Land Acquisition No.1, Solapur and also pray for quashing and setting aside the impugned notice dated 22nd September, 2021 issued under Section 3(G)(1)(2) and 3 (H) (2) (3) and 3(E)(1) (2) by the Deputy Collector Land Acquisition No.1, Solapur.

3. The Petitioners also prayed for a declaration and direction against the Competent Authority to restore and confirm the Award dated 25th March, 2021 under Section 3(G) of the National Highways Act, 1956 and also to restore and confirm the notice dated 26th July,

2021, issued by the Deputy Collector Land Acquisition No.1, Solapur.

4. The Petitioners also prayed for a writ of mandamus against the Respondent No.4 to deposit the deficit award amount of Rs.21,21,649/- for acquisition of the Petitioners' area admeasuring 900 sq. mtrs. of Gat No.37/1/2, situated at Village Valsang, Taluka South Solapur, District Solapur. Some of the relevant facts for the purpose of deciding this Petition are as under :

5. The Petitioners are the owners of the land admeasuring 4 acres of Gat No.37/1/2 situated at Valsang, Taluka South Solapur, District Solapur.

6. The Executive Engineer, National Highways Authority, Solapur submitted a proposal on 30th March, 2016 to the District Collector, Solapur for acquisition of the land admeasuring 67.67 k.m. for extension for four lane highway in between Solapur to Gulbarga, National Highway No.150. The District Collector thereafter appointed the Deputy Collector (Land Acquisition) No.1 as a Competent Authority for acquisition proceedings.

7. On 25th March, 2021, the Respondent No.3 declared an award under Section 3(G)(1) of the National Highways Act and determined compensation of Rs.1,49,04,561/- for acquisition of additional area admeasuring 2360 sq. mtrs. Insofar as the Petitioners area admeasuring 800 sq. mtrs. is concerned, the Competent

Authority determined the compensation at the rate of Rs.1,520/- per sq. mtrs. and determined the compensation and fixed the compensation of Rs.55,45,310/-. Neither the Petitioners nor the National Highway Authority challenged the said award by invoking Section 3(G)(5) of the National Highways Act, 1956.

8. The Respondent No.3 however, issued a notice on 6th August, 2021 calling upon the Petitioners to remain present for receipt of compensation amount. In the month of August / September, 2021, the Respondent No.3 – Nagesh Patil took charge and declared Modified Supplementary Award dated 25th March, 2021. On 22nd September, 2021, the said Nagesh Patil decreased the Petitioners' compensation amount from Rs.55,45,310/- to Rs.34,23,661/- without following due process of law.

9. The Petitioners called for the information under Right to Information Act on 24th September, 2021, when the Petitioners were informed that the Authority did not have any information as called upon the provisions of the Right to Information Act.

10. The Petitioners thus filed this Petition for various reliefs.

11. Mr.Patil, learned counsel for the Petitioners invited our attention to the original award, notice issued by the Respondent No.3, who took charge only for a period of one month and the supplementary award and submitted that the original award having

been made determining the compensation in the sum of Rs.55,45,310/- for acquisition of the Petitioners' private land admeasuring 900 sq. mtrs., the Respondent No.3 could not have made any such supplementary award. He submitted that there is no such power prescribed under the provisions of the National Highways Act, 1956 in the Competent Authority to issue supplementary award. He submitted that the Petitioners have been paid the reduced amount, which is accepted by the Petitioners without prejudice to the rights and contentions of the Petitioners and seek differential amount by filing this Petition.

12. Mr.Pawar, learned AGP for the State submitted that in the supplementary award, the Respondent No.3 has reduced the compensation amount in respect of 500 sq. mtrs. and has determined the compensation at the rate of Rs.1030/- and for Rs.300/-, Rs.824/- as against the original rate of Rs.1520/- per sq. mtrs.

13. Learned AGP could not point out any provision under National Highways Act empowering the Authority to issue supplementary award and to reduce the amount originally computed by the Competent Authority in the original award.

14. We have also noticed that after making the original award on 25th March, 2021 by Mr.Dipak Shinde, a notice came to be issued by Mr.Appasaheb Samindar on 26th July, 2021 calling upon the

Petitioners to collect the amount of compensation as per the original award. However, in the month of September, 2021, Mr.Nagesh Patil took charge and declared the supplementary award with retrospective effect i.e. on 25th March, 2021 illegally. The Government shall conduct an enquiry as to how Mr.Nagesh Patil has made a supplementary award without any authority of law and that also with retrospective effect and more particularly after notice dated 26th July, 2021 issued by Mr.Appasaheb Samindar calling upon the Petitioners to collect the compensation as per the original award. We are sure that the Government will take appropriate action seriously against the erring officer, who has illegally passed the said supplementary award with a view to harass the Petitioners. A copy of this order shall be forwarded through the Registrar of this Court to the Revenue Minister in his office for information and necessary action.

15. Learned counsel for the National Highway Authority fairly submitted that his client has already deposited the amount of compensation as assessed by the Competent Authority in the original award i.e. in the sum of Rs.1,49,04,561/- with the Competent Authority. He also pointed out that his client has not challenged the said award by invoking the provisions under Section Section 3(G)(5) of the National Highways Act, 1956 by filing an application for determination by the Arbitrator to be appointed by the Central

Government. He submitted that the National Highway Authority is not aware as to why the Competent Authority has issued the supplementary award and has reduced the original payment of compensation as assessed and determined by the Competent Authority in the original award.

16. We have perused Section 3(G)(5) of the National Highways Act. A perusal of the said provision clearly indicates that the complete mechanism is provided under Section 3(G) of the National Highways Act including the remedy for redressal of the grievance arising out of an award and the amount determined by the Competent Authority under Sub-Section 3(G)(1) and (2) by filing an application before the learned Arbitrator to be appointed by the Central Government. If the National Highway Authority would have been aggrieved by the amount of compensation awarded by the Competent Authority at the rate of Rs.900/- per sq. mtrs., there was a remedy available to the National Highway Authority for reduction of the amount and at the same time remedy also available to the land owner for enhancement of the amount. Admittedly, in this case the National Highway Authority did not challenge the said award under Section 3(G)(5) and did not apply for reduction of the compensation amount by filing an application before the learned Arbitrator by invoking the provision under Section 3(G)((5).

17. A Division Bench of this Court in case of **Bhupendrasingh .vrs. Competent Authority and Others (2020) AIR Bombay R 645** has held that the provisions of Section 33 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short “Fair Compensation Act, 2013”) are not available to the Competent Authority constituted under Section 3(A) of the National Highways Act, 1956 in the process of acquisition of the land under the National Highways Act, 1956 and thus it is impermissible for the Competent Authority to make any correction or for that matter to pass any order in the nature of correction of an award or for that matter an amended award. Once the award has been passed by the Competent Authority, the Competent Authority loses any authority to tinker with it in any manner whatsoever.

18. It is further opined that none of the First, Second and Third Schedules to the Act of 2013 contemplate or take into its compass or relate to, the provisions of Section 33 of the Act of 2013. This Court accordingly held that it would, thus, be apparent that neither the Amendment Ordinance No. 9 of 2014 nor the notification dated 28th August, 2015 make the provisions of section 33 of the Act of 2013, applicable to acquisition proceedings under the National Highways Act, 1956, in absence of which, it cannot be held that the

Competent Authority under the National Highways Act, 1956, would have any power or authority to either correct the award for any reason whatsoever or for that matter, to pass an additional award or to review the same.

19. In our view, the principles laid down by the Division Bench of this Court in case of **Bhupendrasingh** (supra) apply to the facts of this case. The National Highways Act, 1956 being the self-contained code, the provisions of Section 33 of the Fair Compensation Act, 2013 granting the limited powers in respect of the award declared under the provisions of the Fair Compensation Act, 2013 cannot be extended to the award declared under the provisions of the National Highways Act, 1956. We do not propose to take a different view in the matter. The supplementary award is thus totally without jurisdiction and deserves to be quashed and set aside.

20. We accordingly pass the following order :

a). The Writ Petition is allowed in terms of prayer clauses (b) to (d). The balance amount i.e. Rs.21,21,649/- shall be released by the Respondent No.3 to the Petitioners within one week from the date of Petitioners' producing the authenticated copy of this order.

b). If the entire amount as awarded in the original award is not deposited by the National Highway Authority with the Respondent No.3, the same shall be deposited within two weeks from today.

c). The Writ Petition is allowed in aforesaid terms. Rule is made absolute. No order as to costs. All concerned parties to act on the authenticated copy of this order.

(M.M. SATHAYE , J.)

(R.D. DHANUKA, J.)