
IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10765 OF 2023

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Avinash Balaram Bhoir]
Since deceased through legal heir :]
Shri Mithil Avinash Bhoir,]
Age 33 yrs., Occu.: Agriculturist,]
R/at , Nandap, Tal. Kalyan, Dist. Thane] ...Petitioner

Versus

1. The State of Maharashtra,]
Through Principal Secretary,]
Revenue & Forest Department,]
Mantralaya, Mumbai - 400 032.]
 2. National Highway Authority of India]
through its Chairman,]
Having its office at G 5 & 6 Sector,]
10, Dwarka, New Delhi - 110 075.]
 3. The Competent Authority]
@ Sub-Divisional Officer, Kalyan,]
Sub-Division, Kalyan, Taluka Kalyan,]
Dist. Thane]
- Respondent Nos.1 to 3 to be served]
Through Government Pleader's Office]
(Writ Cell), P.W.D. Building,]
High Court, Fort, Mumbai.]
4. Shri Mangal Mukund Shelar,]
Age 37 yrs., Occ. Kalyan,]
R/at Nandap, Tal. Kalyan,]
Dist.Thane] ...Respondents

Mr. J.D. Khairnar a/w. Mr. Vikas Shivarkar & Ms Ankita Hajare, Advocates for Petitioner.

Mr. A.I. Patel, Addl.G.P. a/w. Mr. R.P. Pawar, AGP for Respondent Nos.1 & 3.

Ms Heena Shaikh i/b. M.V. Kini & Co., Advocates for Respondent No.2/NHAI.

Mr. Mohansinh U. Rajput a/w. Mr. Sachin A. Ambulkar, Advocates for Respondent No.4.

**CORAM : B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.**
DATE : DECEMBER 13, 2023

P. C.

1. Rule. Ms Heena Shaikh, the learned counsel waives service on behalf of Respondent No.2/NHAI, Mr. Mohansinh U. Rajput, the learned counsel waives service for Respondent No.4 and Mr. A.I. Patel, the learned Addl.G.P. waives service for Respondent Nos.1 & 3. With consent of parties, Rule made returnable forthwith and heard finally.

2. The above Writ Petition is filed seeking to challenge the order dated 26.04.2023 passed by Respondent No.3 [**“Competent Authority”**] under the National Highways Act, 1956 [for short "**NH Act 1956**”). Initially, the property was acquired by passing an Award u/s. 3G of the NH Act, 1956 dated 10.09.2018. It is the case of the Petitioner that after this Award, though unaware of it, the Petitioner’s father by a notarized Sale Deed dated 01.10.2018 purchased the acquired property from one Dinesh Bhagwan Gaikar.

Since compensation in respect of the structure on the acquired land was not passed, a supplementary Award came to be passed on 01.04.2022 by Respondent No.3 in respect of the subject property, by which he awarded compensation to the Petitioner's father to the tune of Rs.1,03,82,764/-. This amount was thereafter disbursed to the Petitioner's father. Thereafter, on 05.05.2022 the Petitioner's father passed away as he was suffering from cancer. It appears that much thereafter, Respondent No.4 made complaints to Respondent No.3 on 28.12.2022 and 20.02.2023, alleging that there was no structure standing on the acquired land as clarified by the office of the Public Works Department. Therefore, it was alleged, that the compensation awarded against the alleged non-existing construction had been obtained by fraud and by producing false documents, and therefore, the same must be cancelled and recovered from the Petitioner. The Petitioner thereafter received a notice from Respondent No.3 when he appeared and opposed the said complaints on substantive grounds alongwith documentary evidence, proving that the structure was very much in existence as on the date of the acquisition, and therefore, the compensation awarded was legal and justified and that the same had not been obtained by playing any fraud or fabricating any documents. After hearing the parties, the impugned order dated 26.04.2023 came to be passed by

Respondent No.2 partly allowing the complaint and directing the Petitioner to deposit the compensation as received, with his office within 10 days from the date of the orders and further directed initiation of criminal action against all the persons involved in the said fraud. It is this order that is challenged in the present Writ Petition.

3. The main ground in the Writ Petition is that the Competent Authority, having passed an order disbursing the amount to the Petitioner, had no power to ask the Petitioner to refund the amount and/or initiate any criminal action against the Petitioner. The learned counsel appearing on behalf of the Petitioner submitted that this is nothing but the Competent Authority (Respondent No.3) reviewing its earlier order under which compensation was paid to the Petitioner. This apart, the learned counsel submitted that in any event, Respondent No.4 had absolutely no locus to file any complaint before Respondent No.3 as he was not in any way concerned with the land or the structure and has not claimed any title or interest therein. Therefore, and in any event, the complaint filed by Respondent No.4 ought not to have been entertained by Respondent No.3 at all. He, therefore, submitted that for all the aforesaid reasons, the impugned order dated 26.04.2023 passed by Respondent No.3 cannot be

sustained and ought to be quashed and set aside.

4. An affidavit-in-reply is filed by Respondent No.3. In the said reply, it is stated that after the complaint was filed, Respondent No.3 issued notice to both parties and after giving sufficient opportunity, the matter was closed for final decision on 17.04.2023. The affidavit goes on to narrate all that was done by Respondent No.3 before passing the impugned order. It is stated that at the time of conducting the hearing in the office of Respondent No.3, Dinesh Bhagwan Gaikar [the predecessor-in-title of the Petitioner] submitted that his signatures were obtained by the Petitioner by misrepresentation. It is for this reason that Respondent No.3 has come to the conclusion that though there was construction of Survey No.25/4 [the subject property] and compensation in relation thereto would have to be paid, it is revealed that the Petitioner had submitted false and fabricated documents in respect of the subject property. It is on this basis that the impugned order dated 26.04.2023 is sought to be justified by Respondent No.3.

5. As far as Respondent No.4 is concerned, he has not filed any affidavit-in-reply. In fact, by our orders dated 25.10.2023 and 29.11.2023, we had twice given Respondent No.4 time to file his

affidavit in reply and explain his locus to file the complaint. Today, the learned Advocate appearing on behalf of Respondent No.4 has fairly stated that Respondent No.4 has no real locus because he admittedly has no interest in the subject property namely Survey No.25/4. He submitted that the complaint was filed only because according to him a fraud was played on the exchequer, and he being a taxpayer, was entitled to file the complaint.

6. We have heard the learned Counsel for the parties at some length. We have also perused the papers and proceedings in the above Writ Petition. It is not in dispute that two Awards have been passed in the present case, namely, first in 2018 and the second on 01.04.2022. After the passing of the supplementary Award, compensation has also been disbursed to the Petitioner. In such a situation and especially at the instance of Respondent No.4, who had absolutely no locus, we failed to understand how Respondent No.3 could have passed any order directing the Petitioner to refund the amount disbursed and initiate criminal action against the Petitioner. We find that this is way beyond the scope of the power and authority of the Competent Authority under the NH Act, 1956. This is more so in the facts of the present case because the Competent Authority seeks to justify its order on the basis that the original owner of the

property had submitted that his signatures had been obtained by misrepresentation. However, an affidavit of the original owner dated 01.04.2022 is submitted before us, which states that the complaint made by him before the Competent Authority on 29.03.2022 was based on some misunderstanding and that he is withdrawing the complaint. Once this is the position, we find that the impugned order is wholly unsustainable.

7. It is now well settled, that the Competent Authority appointed under the NH Act, 1956, Act has absolutely no power to review his own orders. This has been so held by several decisions of this Court. If one requires any authority on the subject, we may refer to a Division Bench Judgment of this Court (Aurangabad Bench) in the case of *Bhupendrasingh Sardarsingh Parmar V/s. Competent Authority for National High Way No.6 and the Deputy Collector (Gen.), Land Acquisition (Gen.), Dhule & Ors., [2020 (2) Bom. C.R. 296]*. This decision of Bhupendrasingh [supra] has thereafter been followed by our Court in the case of *Sau. Sangeeta Natwarlal Karwa & Anr. Vs. The State of Maharashtra & Ors. [Writ Petition No.5327 of 2022 decided on 28.02.2023]* and in the case of *Ramesh Ganpat Gaikwad & Ors. Vs. Dilip Dattu Jadhav & Ors, [Writ Petition No.7858 of 2022 decided on 23.06.2023]*.

8. For all the forgoing reasons, we are of the opinion that the impugned order cannot be sustained and it has to be set aside. Accordingly, the Writ Petition is allowed in terms of prayer-clauses [b] and [c], which read thus:-

"[b] That this Hon'ble Court be pleased to issue writ in the nature of certiorari and/or any other writ, order and/or direction, thereby calling for the record in respect of the impugned order dated 26.4.2023 passed by the Respondent No.3, being Exhibit E to this Petition.

[c] That after perusing the records and proceedings in respect of the impugned order dated 26.4.2023 passed by the Respondent No.3, this Hon'ble Court be pleased to quash and set aside the impugned order dated 26.4.2023 passed by Respondent No.3 being bad-in-law and illegal."

9. Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof. However there shall be no order as to costs.

10. 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.

[SOMASEKHAR SUNDARESAN,J.]

[B.P. COLABAWALLA, J.]