

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6616 OF 2021**

Popat Narayan Gawade

.. Petitioner

Versus

State of Maharashtra & Ors.

.. Respondents

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Mr.J.D. Khairnar a/w Mufeez Ansari & Vikas Shivarkar,
Advocates for the Petitioner.

Ms.M.S. Bane, AGP for Respondents.

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

DATE : SEPTEMBER 11, 2023

P. C.

1. The above Writ Petition is filed challenging the order dated 7th July, 2016 passed by Respondent No.3. By the impugned order, Respondent No.3 had directed the Petitioner to refund the amount of Rs. 1,90,449/-, and which, according to the Competent Authority, was paid in excess to the Petitioner. This recovery was sought because whilst disbursing the compensation in respect of the acquired land, due to an arithmetical mistake, an additional amount of Rs. 3,96,579/- came to be disbursed/paid to the Petitioner and the other co-owners under the heading "Interest" as per the Award dated 14th November, 2014. The

other co-owners have accepted the impugned order and refunded an amount of Rs. 2,06,130/- to the Government and hence the impugned order now only seeks recovery of Rs. 1,90,449/- from the Petitioner.

2. The further prayer that is sought in the above Petition is that Respondent No.3 be directed to pay the compensation amount as per the corrected Award as it would be due and payable to the Petitioner according to his share. This relief is sought on the basis that the solatium amount on the total compensation payable has not been considered by Respondent No.3 while calculating the compensation under the Award dated 14th November, 2014 or the revised/corrected Award dated 21st April, 2016.

3. Despite these prayers, the short question in this Writ Petition and which is to be decided by us is whether the impugned order dated 7th July, 2016 passed by Respondent No.3 is erroneous and therefore requires to be quashed. We do not need to set out very many facts in the present matter. Suffice it to state that the Petitioner along with the other co-owners were the owners of land bearing Gat No. 593 (Part), admeasuring 0 H. 12 R, situated at Village Karhavagaj, Tal. Baramati, Dist. Pune. This land came to be acquired by the Respondents

along with some other lands for the purpose of construction of a road. Accordingly, an Award came to be passed on 14th November, 2014 in respect of the acquired lands as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [for short “**the 2013 Act**”]. While passing this Award, Respondent No.3 applied the multiplier factor of 1.10. Thereafter, pursuant to the directions given by this Court [Aurangabad Bench] in Writ Petition No. 4274 of 2014 [decided on 09/03/2015], the Award dated 14th November, 2014 came to be revised on 21st April, 2016. This was done because now Respondent No.3 applied the multiplier factor of 1.50.

4. Since Respondent No.3 came to know about the arithmetical errors [in relation to the computation of interest awarded and disbursed to the Petitioner and the other co-owners], Respondent No.3 held an inquiry under Section 33(1) of the 2013 Act. After this inquiry, Respondent No.3, vide impugned order came to the conclusion that excess amounts have been paid to the Petitioner and the other co-owners as more particularly set out hereinabove. After passing of the impugned order, Respondent No.3 issued notices dated 19th January, 2019 and 29th January, 2019, to the Petitioner [under Section 33(3) of

the 2013 Act] *inter-alia* calling upon the Petitioner to refund and/or deposit an amount of Rs.1,90,449/- with the Government.

5. It is the case of the Petitioner that on receipt of these notices, the Petitioner sought a clarification in respect thereof, and it is then that the Petitioner became aware of the impugned order dated 7th July, 2016.

6. In this factual backdrop, the learned Counsel appearing for the Petitioner firstly submitted that no notice was issued to the Petitioner before passing the impugned order and therefore the same is bad in law. To support this argument, the learned Counsel appearing for the Petitioner placed reliance on Section 33 of the 2013 Act. He submitted that though Section 33 of the 2013 Act gives powers to the Competent Authority to correct the Award, the Competent Authority must give an opportunity to the affected party to make a representation before any such correction is ordered/carried out. He submitted that in the present case, no notice has been given and therefore impugned order cannot be sustained.

7. Apart from the aforesaid argument, the learned Counsel appearing for the Petitioner submitted that this apart, Respondent No.3 has made another gross error in the Award passed. He submitted that whilst calculating the total compensation payable to the Petitioner and the other co-owners, the amount of compensation payable towards the structures has not been considered while calculating the solatium amount. On this basis also the impugned order is bad in law and is required to be quashed and set aside, was the submission.

8. We have heard the learned Counsel appearing for the Petitioner as well as the learned AGP appearing for the State.

9. As far as the issue of notice is concerned, the same need not detain us any further. We say this because it is the case of the AGP and which is not disputed by the Petitioner that since the Petitioner refused to accept the notice, the same was duly pasted on the house of the Petitioner. Once this is the case, we do not think that the learned Counsel appearing for the Petitioner is correct in his submission that no notice was served on the Petitioner as required under the proviso of Section 33(1) of the 2013 Act.

10. As far as second argument of the learned Counsel appearing for the Petitioner is concerned, namely, that solatium was not granted for compensation payable towards the structures, we find this argument to be factually incorrect. We have gone through the Award and in fact we find that solatium has been granted on the total compensation. In fact, when we pointed this out to Mr. Khairnar, the learned Counsel appearing for the Petitioner, has fairly stated that this argument was made on a wrong reading of the Award and in light of what the Award says, he is not pressing the aforesaid argument.

11. At this juncture, Mr. Khairnar, the learned Counsel appearing for the Petitioner submitted that the Petitioner be granted some time to refund the amount of Rs. 1,90,449/- to the Government. He submitted that since the Petitioner, is an agriculturist and having no other source of income, 12 weeks' time be granted for the aforesaid refund.

12. In light of the discussion above, we find that the impugned order does not require any interference under Article 226 of the Constitution of India. Hence, the challenge to the said impugned order is rejected/repelled.

13. Since the impugned order is upheld, the Petitioner is now directed to refund the amount of Rs. 1,90,449/- to the Government within a period of eight weeks from the date of this order, failing which, the Respondents are at liberty to proceed to recover the same as per the provisions of the Maharashtra Land Revenue Code, 1966 as if these are arrears of land revenue.

14. The above Writ Petition is accordingly disposed of. No order as to costs.

15. 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.]