



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10269 OF 2023

1. Shri Ramdas Baburao Avhad)
Age 53 years, Occ. Agri.,)
 2. Shri Balu Baburao Avhad)
Age 40 years, Occ. Agri.,)
 3. Shri Pandurang Baburao)
Avhad)
Age 38 years, Occ. Agri.,)
 4. Shri Sukdeo Baburao Avhad)
Age 50 years, Occ. Agri.,)
 5. Shri Shivaji Baburao Avhad)
Age 46 years, Occ. Agri.,)
All residing at Dodi Bk.,)
Tal. Sinnar, Dist. Nashik)
- Petitioners

Versus

1. The State of Maharashtra)
Through Government Pleader)
High Court, Mumbai)
 2. The Competent Authority)
The National Highway)
Authority and Deputy)
Collector [Land Acquisition])
Nashik)
- Respondents

Mr. Sachin Gite, for Petitioners.
Mr. R. S. Pawar, AGP for Respondents/State.

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

RESERVED ON : OCTOBER 9, 2023

PRONOUNCED ON : OCTOBER 13, 2023

JUDGMENT (Per M.M. SATHAYE, J.)

1. This matter was heard on 26/09/2023 and we informed the parties that we would pass the order. However, after going through the papers, we required some clarifications and therefore, we placed the matter on board on 09/10/2023 in the Chambers, when both parties appeared and cleared our doubts and the judgment was reserved. This is duly recorded in our Order dated 09/10/2023.

2. Rule. The learned AGP waives service for Respondents. Rule made returnable forthwith. Heard finally with the consent of the parties. By this Petition under Articles 226 and 227 of the Constitution of India, the Petitioners are seeking direction to Respondents (The State and the Competent Authority under the National Highways Act, 1956) to forthwith release the enhanced amount of compensation in favour of the Petitioners as per Order dated 15/02/2023 passed by Respondent No. 2. The subject matter of this petition is compensation receivable for land acquisition for construction of National Highway.

CASE & SUBMISSIONS

3. Heard Mr. Gite, the learned counsel for the Petitioners. He submitted that the Petitioners' lands are situated at Village Dodi Bk;

Taluka Sinnar, District Nashik, which are more particularly described in paragraph 3 of the Petition. It is the case of the Petitioners that the subject matter lands were acquired for the purpose of construction of Nashik Pune Highway under the provisions of National Highways Act, 1956 (“**the said Act**” for short). It is contended by the Petitioners that Respondent No. 2 - the Competent Authority declared the final Award on 06/11/2013 and awarded compensation to the Petitioners @ Rs. 727/- per square meter. A copy of the Award is produced on record. It is further contended that at the time of publication of the Award, only the Petitioners appeared in the Award as interested persons/owners. It is contended that by Notice dated 31/12/2013 the Competent Authority called upon the Petitioners to receive the amount of compensation. It is further contended that they have executed compensation receipts about their respective shares in the subject matter land. Copies of the compensation receipts as well as notice for receiving payment, are produced on record. It is contended that they filed reference u/s. 3G of the said Act before the learned Arbitrator constituted under the said Act and claimed enhanced rate of compensation and led evidence in support thereof. It is contended that after considering submissions of the Petitioners, the learned Arbitrator by its Order dated 18/04/2017 passed an Order of enhancement of compensation @ Rs. 2191/- per

square meter. The said order of the Arbitrator is produced on record. It is further contended that since only the Petitioners were entitled to receive enhanced compensation, the Competent Authority again issued notice dated 07/10/2022 to the Petitioners to receive enhanced amount of compensation.

4. The Petitioners further contended that at this stage, they received one notice dated 14/11/2022 from the Office of the Competent Authority which indicated that one Smt. Kachhabai @ Kasabai Ananda Avhad and Shankar Ananda Avhad have raised objections about the disbursement of the amount of compensation to the Petitioners. It is contended that these Objectors have no right to claim any amount of the compensation. It is contended that these Objectors have never raised objections in the past, either in the year 2013 when the Award was passed or thereafter during the process of enhancement. It is contended that the Petitioners filed their reply and pointed out how the said Objectors have no right to claim any share in the compensation amount. It is contended that the Petitioners pointed out that the subject matter land was recorded in their name in the year 1986 by a mutation entry, which has not been challenged by the Objectors till date and it was also pointed out that the Objectors have never filed any civil suit claiming title over the subject matter land.

5. It is contended that the Competent Authority by its Order dated 15/02/2023 rejected the objections raised by the said Objectors by a reasoned Order and directed that the enhanced amount of compensation as per the Order of the Arbitrator, be paid over to the Petitioners. It is contended that despite this Order the amounts were not released in favour of the Petitioners and therefore, the present Petition was filed.

6. After hearing the parties, it is recorded by our Order dated 12/09/2023 that it appears from the record that the Officer who was the Competent Authority at the time of passing the Order dated 15/02/2023 who rejected the objections, is now changed and the new Officer in charge seems to be taking a different view of the matter i.e. referring the dispute between the Petitioners and the objectors to a Civil Court. In these circumstances, we had directed the affidavit to be filed by the Respondents.

7. Heard Mr. Pawar, the learned AGP for the Respondents. He invited our attention to the affidavit in reply filed by the present Deputy Collector (Land Acquisition) National Highway Project, Nashik affirmed on 15/09/2023. He pointed out that the present Competent Authority has referred the dispute to the Civil Court as per the Circular dated

18/11/2022, especially under Clauses 1, 2, 3 & 4 thereof, which are reproduced in the affidavit in reply. He further submitted that the said circular is based on interim guidelines issued pursuant to certain orders passed by this Court, in Writ Petition No. 3551 of 2021 with other petitions. It was pointed out that the Competent Authority has already referred the dispute to the Civil Court on 07/07/2023 and deposited the enhanced amount of compensation in the Civil Court on 11/09/2023. The copies of the said circular, communication with the concerned Civil Court and deposit cheque are placed on record.

8. Mr. Gite, the learned counsel for the Petitioner has brought to our notice, Orders passed in said Writ Petition No. 3551 of 2021 including the Order dated 21/10/2022, which is apparently the basis for issuance of the said circular. He submitted in rejoinder that the circular dated 18/11/2022 is in fact contrary to the provisions of law itself. He submitted that it firstly provides that once the determination of objection U/s. 3H(3) takes place, the decision must be intimated to all claimants and thereafter the authority must wait for a period of minimum four weeks for the claimants to either accept the decision or raise a dispute. He submitted that secondly, it provides that the Competent Authority cannot proceed with disbursement till all the claimants accept such determination. He submitted that it further

provides that if any of the claimants raise any dispute about such a decision, within four weeks, the Competent Authority will have to refer the matter to the Civil Court in terms of Section 3H(4) of the said Act. He submitted that if this circular is interpreted to mean that by mere raising objection or dispute to the decision U/s.3H(3) of the said Act, the Competent Authority must refer the dispute to the Civil Court, it will run contrary to the provisions of the said Act itself. He submitted that this is not the true purport of law contemplated under Section 3H(3) and 3H(4) of the said Act, which provide for separate and distinct considerations. He further submitted that the circular dated 18/11/2022 provide only interim guidelines which is borne out from the language of the circular and they are subject to the final guidelines. He therefore, submitted that the explanation given in the affidavit ought to be rejected.

9. Mr. Gite further pointed out that a letter dated 07/07/2023 produced by the State along with its affidavit in reply, shows that a passing reference is made to one more person viz. Ms. Sangita Dhattrak who is stated to have raised an objection to disbursement of the compensation in favour of the Petitioners. He submitted that without verifying the truthfulness of such a claim, merely because someone has raised an objection, the matter cannot be referred to the Civil Court.

Mr. Gite, on instructions from his client present in Court, orally submitted that Ms. Sangita Dhatrak is a daughter of the said Objectors whose objection was already rejected vide Order dated 15/02/2023 and therefore, even prima facie that objection has no meaning.

10. Mr. Gite has also raised an issue that once the Authority has already ruled u/s. 3H(3) of the said Act, it can not review its own order and therefore could not have referred the dispute to the Civil Court.

REASONS & CONCLUSION

11. We have carefully considered the submissions of both the sides and perused the record. Although it is brought to our notice that the said Order dated 15/02/2023 is challenged by the said objectors, the same is not stayed. It is a settled position of law that the Competent Authority exercising its jurisdiction u/s. 3H of the said Act, cannot review its own order. The power to review has to be statutorily provided. There is no such provision in the said Act, under which the Competent Authority can review its own decision. In fact, this Court in the matter of **Bhupendra Singh Vs Competent Authority [2020(2) Bom CR 296]** has already held it expressly, after considering the entire scheme of the said Act. A 3 Judges' Bench of Madhya Pradesh High Court has also

considered this Judgment and has confirmed the said view, in the matter of **Indrakala Agrawal and Ors. Vs State of Madhya Pradesh and Ors. [(2021) AIR CC 1582]**. We have also followed the said view in the case of **Ramesh Ganpat Gaikwad and Anr. Vs Dilip Dattu Jadhav and Anr. (W.P. No. 7858 of 2022 Order dated 23/06/2023)**. What is sought to be now done by the Competent Authority by referring the matter to the Civil Court and depositing the compensation amount there, amounts to review of its own Order under the garb of the said circular dated 18/11/2022.

12. From the language of the said circular, it is apparent that the guidelines issued thereunder are only interim in nature. No further information about any other guidelines, whether final or otherwise has been brought to our notice from the Respondent / State. It is, therefore, obvious that the Competent Authority, has acted upon such interim guidelines, for which no final guidelines have been issued. In that view of the matter, it becomes even more important to consider these guidelines to check whether they are in conformity with the provisions of the said Act. For the sake of convenience, the said interim guidelines are reproduced below :

“1. The Competent Authority is required to determine not only the entitlement but also

apportionment amongst several claimants claiming interest in the amount of compensation that is determined by the Competent Authority.

2. Once such determination takes place, each of the claimants ought to be informed/intimated of such determination and ought to be given time of at least four weeks after receipt of the intimation, either to accept the same or dispute the same.

3. In the meanwhile, Competent Authority cannot act upon such determination and distribute the amount in accordance with the same. If within the period of four weeks of the receipt of intimation, referred to hereinabove, either all the claimants accept such determination or do not communicate in writing, after obtaining in writing the acknowledgment in that regard, of their dispute and/or disagreement of such determination, the Competent Authority ought to make payment in accordance with the same.

4. Whereas, if an objection and/or dispute is raised in respect of such determination by any of the claimants, within four weeks of the date of receipt of such intimation, the Competent Authority will have to refer it to the competent Civil Court in terms of sub-section (4) of Section 3H of the Act.

5. The Competent Authority will have to give adequate time of at least four weeks to the claimants, either for agreeing with such determination or for disputing with the same. Resultantly, the Competent Authority ought not to act upon its determination and distribution of amount of compensation amongst the claimants unless the claimants get a reasonable time or opportunity to take appropriate steps in that regard, including raising, of a dispute.”

(Emphasis supplied)

13. In this respect, it appears from the perusal of the Orders passed in the said Writ Petition No. 3551 of 2021 (along with a bunch of other Petitions) that the then Division Bench of this Court was given to

understand that the State Government is considering issuance of certain guidelines in respect of dealing with the rival claims received by the Competent Authority under the said Act. It is clear from the Order dated 21/10/2022 passed therein that certain interim guidelines were submitted before the Court. It further appears that time was sought a few times for finalization of the guidelines. It further appears that by Order dated 29/03/2023, it was finally submitted to this Court that no further guidelines are necessary to be issued. For the sake of clarity, the said Order dated 29/03/2023 is reproduced below :

“CORAM : R. D. DHANUKA & GAURI GODSE, JJ.

DATED : 29 MARCH, 2023.

P.C. :-

1. Learned Advocate General for the State states that State Government is not required to issue any further guidelines or Government Resolution as the existing guidelines would cover the field. Statement is accepted.

2. Place these matters on board for directions on 7th June 2023 to enable this Court to fix an early date for final hearing of these Petitions. Interim relief granted by this Court, if any, to continue till the next date.”

Apparently, the guidelines incorporated in the English language in the said Circular dated 18/11/2022 are derived from interim guidelines informed to this Court under Order dated 21/10/2022, albeit with a change from “2 weeks” to “4 weeks” waiting period.

14. The power to decide entitlement U/s. 3H(3) and the mandate to refer the dispute as to apportionment to the Civil Court U/s. 3H(4) are two different and distinct provisions of law. The difference between the two is authoritatively concluded by the Hon'ble Supreme Court in the recent case of **Vinod Kumar and Ors. Vs. District Magistrate, Mau and Ors. [(2023) SCC OnLine SC 787]** arising out of acquisition for National Highways. The concluding paragraph No. 34 reads thus:

“34. Our final conclusion is as under:- If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, then, the competent authority shall refer the dispute to the decision of the Principal Civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated. The competent authority possesses certain powers of the Civil Court, but in the event of a dispute of the above nature, the summary power, vesting in the competent authority of rendering an opinion in terms of sub-section (3) of Section 3H, will not serve the purpose. The dispute being of the nature triable by the Civil Court that the law steps in to provide for that to be referred to the decision of the Principal Civil Court of original jurisdiction. The dispute regarding apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, would then have to be decided by that Court.”

Therefore, there cannot be a situation that by mere raising of dispute about the decision U/s. 3H(3) of the said Act, the Competent Authority has to refer the dispute to the Civil Court.

15. From bare reading of the said guidelines, it is clear that they are not in consonance with the provisions of the said Act itself. If what is provided in the said circular is accepted at its face value, it would mean that after every decision u/s. 3H(3) of the said Act, the Competent Authority will have to wait for 4 weeks and if any of the parties dispute it or raise objection thereto, automatically the matter will have to be referred to the Civil Court. Such a situation is not contemplated under Section 3H of the said Act, especially in the teeth of Judgment in Bhupendrasingh's case (supra), which holds that competent authority can not review its own order. So far as the guideline of waiting for 4 weeks after the decision U/s. 3H(3) is concerned, we are afraid that the interpretation suggested by Respondents that they have to wait for 4 weeks after each decision, cannot be accepted. We say so for the simple reason that in a given case, if during that 4 weeks' time, a fresh objection is raised by some other third party, then again after decision thereon, the Competent Authority will have to wait for further 4 weeks and this situation can go on and on without any finality. We cannot countenance such an interpretation of law. Therefore, the action of the Respondents based on the said Circular dated 18/11/2022 can not be sustained.

16. For all these reasons, The Petition succeeds and the following Order is passed:

Page 13 of 15
OCTOBER 13, 2023

Husen

- i] Respondent No. 2 is directed to apply to the Civil Court at Nashik, where the amount of compensation has been deposited, seeking its withdrawal within a period of two weeks from today.
- ii] The concerned Judge of the Civil Court at Nashik, is requested to pass appropriate Order for refund of the amount deposited by Respondent No. 2 within 2 weeks from the date of receipt of application as per clause [i] above.
- iii] Respondent No. 2 is further directed to pay the amount of compensation to the Petitioners within a period of two weeks from the date of its receipt from the Civil Court.

17. It is clarified that if the objectors file or have already filed a civil suit against the Petitioners claiming right in the subject matter land/s or its compensation, the same will be decided on its own merits and the concerned Civil Court will be at liberty to pass appropriate orders in accordance with law, including about compensation received by Petitioners.

18. Rule is made absolute in the above terms. No order as to cost.

19. All concerned to act on production of an authenticated or digitally signed copy of this order.

[M.M. SATHAYE, J.]

[B. P. COLABAWALLA, J.]