

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

WRIT PETITION NO.15415 OF 2022

Jagannath Ramu Suroshi & Anr.

.. Petitioners

Versus

The State of Maharashtra & Ors.

.. Respondents

***Mr.J.D. Khairnar a/w Ankita Hajare, Mufeez Ansari,
Vikas Shivarkar, Advocates for the Petitioners.***

Ms.M.S. Bane, AGP for State-Respondent Nos. 1 & 3.

***Mr.Laxman Kulkarni, Advocates for Respondent No.2
(NHAI).***

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

DATE : JULY 26, 2023

P. C.

1. Rule. With the consent of the Petitioners and Respondent Nos.1, 2 & 3, Rule made returnable forthwith and heard finally. Respondent Nos. 4 to 9 have not appeared though duly served.

2. The above Writ Petition is filed challenging the impugned notices cum orders dated 1st November, 2022 & 21st November, 2022

issued by Respondent No.3 (the Competent Authority) under the National Highways Act, 1956 (for short "**the NH Act, 1956**"). By these notices cum orders the Petitioners are directed to deposit the compensation awarded to them vide an order of the Competent Authority on 27th September, 2022, and in default, to attach the movable and immovable properties of the Petitioners for recovery of the said amount. The short question in this writ petition is whether Respondent No.3, after passing an order under Section 3 H (3) of the NH Act, 1956, could review his own order.

3. The brief facts of this case would show that one Kanhu Suroshi had 2 sons, namely Hari and Ramu. The said Kanhu was deemed a tenant to lands bearing Survey Nos.99/2, 106/6 and 113/5. He was declared as the deemed purchaser of those lands pursuant to an order dated 7th September, 1961. According to the Petitioners, there are in all 9 properties owned by the Petitioners and his coparceners, being a joint Hindu Family, bearing Survey Nos.110/1, 110/3, 110/5, 113/5, 10/1, 86/6, 99/2, 106/6 and 109/6 being successor in title. The names of the Petitioners and other coparceners came to be mutated on Survey Nos.110/1, 110/3, 110/5, 113/5, 10/1, 86/6 and 109/6. However, the names of the Petitioners were not mutated in Survey Nos. 99/2 and

106/6. The subject matter of the present Petition, and which forms the subject matter of the acquisition, is Survey No.106/6 and which was in possession of the late Ramu Kanhu Suroshe and his legal heirs, including the Petitioners, since inception. Since, only the name of the late Hari Kanhu and his legal heirs was mutated on the 7/12 extract in respect of Survey Nos.99/2 and 106/6, the Petitioners were constrained to file a Civil Suit being R.C.S. No.84 of 2019 with the learned C.J.J.D. Kalyan, seeking partition, declaration and injunction. The said Civil Suit is pending.

4. Since 40 Aar land out of Survey No.106/6 was being acquired for the purpose of construction of the Vadodara-Mumbai Express Highway Project, the Petitioners filed an objection with Respondent No.3 herein for disbursement of amounts to the legal heirs of the late Hari Kanhu Suroshe. This objection was allowed by Respondent No.3 and vide its order dated 27th September, 2022, Respondent No.3 held that the Petitioners are entitled to 1/2 share in the compensation. Pursuant thereto an amount of Rs.55,22,326/- came to be disbursed and paid to the Petitioners and other legal heirs of the late Ramu Kanhu Suroshi. This order dated 27th September, 2022 has not been challenged by any party. Despite this, the Petitioners received a

notice dated 1st November, 2022 calling upon the Petitioners and the other legal heirs of late Ramu Kanhu Suroshi to answer as to why no criminal action can be initiated against them for obtaining an order on the basis of forged documents. Thereafter, on 21st November, 2022 the Petitioners were served with another notice which directed the attachment of movable and immovable properties of the Petitioners and other legal heirs of the late Ramu Kanhu Suroshi. On 6th December 2022, the officials appointed for the purpose of execution of the notice cum order dated 21st November, 2022 came to the house of the Petitioner for the purpose of taking possession. It is in these circumstances, the present Petition is filed challenging the order cum notices dated 1st November, 2022 and 21st November, 2022.

5. In this factual backdrop the learned advocate appearing on behalf of the Petitioners submitted that once Respondent No.3 passed the order dated 27th September, 2022 [under Section 3 H(3) of the NH Act, 1956], and decided the objection of the Petitioners and even awarded compensation, he could not have reviewed his own order and directed the Petitioners to refund the amount already disbursed to them. The learned advocate submitted that the power of review is not an inherent power and is a creature of the statute and cannot be

entertained in the absence of any provision in relation thereto. He submitted that under the provisions of the NH Act, 1956 or the Rules framed thereunder, the Competent Authority has no power to review his own order. If this be the case, then the notices issued on 1st November, 2022 and 21st November, 2022 are wholly without jurisdiction. In support of his submission, the learned advocate relied upon a decision of this Court in the case of **Ramesh Ganpat Gaikwad & Ors. V/S Dilip Dattu Jadhav & Ors. (Writ Petition No.7858 of 2022 decided on 23rd June, 2023)**. He submitted that in this decision, it is clearly held that the Competent Authority has no power to review its own order passed under Section 3 H(3). He therefore submitted that the writ petition be allowed and the impugned notices dated 1st November, 2022 and 21st November, 2022 be quashed and set aside.

6. The learned AGP appearing on behalf of Respondent Nos. 1 and 3, fairly submitted that in light of the law laid down by this Court in the case of **Bhupendrasingh V/S Competent Authority & Ors. [(2020) 2 Bom CR 296]** and in the case of **Ramesh Ganpat Gaikwad & Ors. (supra)**, the Competent Authority (Respondent No.3) had no power to review his own order passed under Section 3 H(3). She therefore submitted that appropriate orders be passed.

7. We have heard the learned counsel for the parties and we have also perused the papers and proceedings and the present case. It is not in dispute that the Petitioners filed objections before the Competent Authority for disbursement of amounts to the legal heirs of the late Hari Kanhu Suroshe (Respondent Nos. 4 to 9 in the present Petition). The objection of the Petitioners was allowed and by order dated 27th September, 2022 the Petitioner and other legal heirs of the late Ramu Kanhu Suroshi were declared as being entitled to 50% of the compensation. Pursuant thereto, an amount of Rs.55,22,326/- was also disbursed. Once this order was passed under Section 3 H(3) of the NH Act, 1956, the Competent Authority had no power or jurisdiction to review his own order. This has been clearly laid down by this Court in ***Bhupendrasingh V/S Competent Authority & Ors (supra)*** as well as in ***Ramesh Ganpat Gaikwad & Ors (supra)***. Once this is the position in law, then the Competent Authority could not have issued any notices either asking the Petitioners to refund the amount already disbursed or attaching any of their properties for recovery of the amounts disbursed.

8. In these circumstances, we find that the writ petition succeeds and the impugned notices cum orders dated 1st November, 2022 and 21st November, 2022 (Exhibits "G" and "H" to the Petition) are hereby quashed and set aside.

9. Rule is made absolute in the aforesaid terms and the writ petition is accordingly disposed of. 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.

[M.M. SATHAYE, J.]

[B. P. COLABAWALLA, J.]