

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 529 OF 2010

Pravin s/o Bhaskarrao Borkute, “Bhaskar-  
Bhagirathi”, Plot No.R-20, Laxminagar,  
Nagpur

**Petitioner**

**-Versus-**

1. State of Maharashtra, through its  
Secretary, Urban Development  
Department, Mantralaya, Mumbai –  
400032.
  2. The Collector, Nagpur.
  3. Nagpur Improvement Trust, through its  
Chairman, Station Road, Nagpur.
  4. Maharashtra State Road Development  
Corporation, Near Patwardhan High  
School, Sitabuldi, Nagpur-12.
- Respondents**

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Mr. Anand Parchure, counsel for the petitioner.  
Mr.N.S.Rao, AGP for respondents-State.  
Mr.Girish Kunte, counsel for respondent-3.

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**CORAM : ROHIT B. DEO AND  
M.W.CHANDWANI, JJ.**

**DATE : 6<sup>TH</sup> JULY, 2023**

**ORAL JUDGMENT** (Per : Rohit B. Deo, J.)

Heard Mr. Parchure, the learned counsel for the petitioner, Mr. N. S. Rao, the learned Assistant Government Pleader for the respondents-1 and 2/State and Mr. Kunte, the learned counsel for the respondent-3.

2. The petitioner is assailing the order dated 28/08/2009 rendered by respondent-2-Collector, Nagpur whereby the application dated 08/04/2009 preferred by the petitioner for grant of Transferable Developmental Rights (TDR) is rejected.

3. The petition is amended and a direction is sought to grant proportionate compensation for the acquired land.

4. It would be necessary to briefly note the backdrop in which the Collector rendered the order impugned.

5. The petitioner claims that his father Mr. Bhaskarrao Borkute was the owner of land admeasuring 10.88 acres situated in Mouza Somalwada. Mr. Bhaskarrao Borkute expired on 27/08/1978 and the land devolved on his seven legal heirs including the petitioner.

6. The petitioner admits in paragraph 3 of the petition that the said land was already acquired by the State Government vide award dated 20/04/1990.

7. The petitioner claims that he was not served with the notice of the proceeding of the land acquisition and was not aware of the passing of the award.

8. The petitioner claims that it was only after 18 years of the award that he came to know of the award in May 2008, since pursuant to the order of the High Court in PIL respondent-4-Maharashtra State Road Development Corporation sought to take the possession of the subject land for construction of railway over bridge. The petitioner claims to have submitted representation dated 22/05/2008 to the Superintending Engineer, MSRDC, Nagpur. Perusal of the representation placed on record reveals that the petitioner claimed that by virtue of Will executed on 09/06/1994 by his mother Mrs.Bhagirathibai, he became the owner of the land. Interestingly, the petitioner makes no reference to the award in the representation dated 22/05/2008 and the intelligently drafted representation only states that the petitioner

has not received notice nor is compensation paid.

9. It appears that on 08/04/2009 the petitioner addressed representation to the Collector and the prayer clauses of the said representation read thus:

- 1. As per page 22 of the illegal land acquisition award the Special Concession Component at the rate of 12 percent per year should be given and the increased amount should be granted to me.*
- 2. After examining the aforesaid deficiencies. I should be granted T.D.R. in respect of the land required for Ring Road.*
- 3. Till the time I do not receive compensation in respect of the land the work of ring road in respect of the land in my ownership and possession should not be carried till orders are issued by you.*

10. The petitioner then approached this Court in Writ Petition 2588 of 2009 and told the High Court that a representation is already made and the Collector be directed to take a decision only in respect of prayer clause (1) by keeping the issue raised in prayer clause (2) open. Unfortunately, neither the petitioner nor the State Government told the High Court that the

attempt is to reopen the land acquisition award passed in 1990.

11. Be that as it may, it is prayer clause (1) which is considered and rejected by the Collector by the order impugned.

12. The Collector examined the entire record of the land acquisition proceedings. The Collector noted that Section 4 Notification was published in the Government Gazette on 12/05/1998. Section 6 Notification was duly published and the land owners were issued notices under Sections 9 and 10 of the Land Acquisition Act, 1894 (Act). A finding is recorded that notice was as a fact is issued to the owners of the subject land including petitioner-Pravin Bhaskar Borkute. The Collector found from record that section 9(1) notice was duly issued and was received by the land owners on 13/09/1998. The Collector further found that the possession of the subject land was taken on 12/09/1990.

The Collector then considered the submission that the land owners did not receive compensation. The Collector found from record that notice was issued under Section 12 (2) of the Act on 20/02/1991. The land owners did not receive the

compensation. Fresh notice dated 30/07/2009 was issued and the land owners were asked to remain present to receive the compensation on 10/08/2009. One of the land owners Mr.Dinkar did appear through his daughter and submitted an objection which *inter alia* incorporated refusal to receive the compensation.

13. The Collector further found that the solatium is correctly granted in the award and it would be impermissible to grant additional solatium *de hors* the statutory scheme, as a “special case”.

14. The State Government has filed affidavit in response dated 27/01/2010 contending that the limited direction which was issued by the High Court while disposing of the Writ Petition 2588 of 2009, was that the prayer clause of the representation dated 08/04/2009 be decided by the Collector, and the grievance stood redressed in view of the decision on the representation.

15. The respondent-2-Collector filed additional affidavit in response dated 07/03/2011 and we may extract paragraph-4, which reads thus -

“4. The award, which was passed on 20.4.1990, in Land Acquisition Case No. LND 47.87-88, was passed after following procedure prescribed under the Land Acquisition Act and notices were issued under section 9(1), however, the land holder did not raise any objection and notices were issued under section 12 (2), the land holder did not collect the compensation. Though, the notice was received by the land holder on 23.2.1991. The record further revealed that another notice was issued on 30.7.2009 to the land holder asking him to collect the compensation by remaining present in the office of Land Acquisition Officer on 10.8.2009. However, the land holder did not remain present for collecting the compensation but he forwarded the objection through third person. It is most respectfully stated before this Court that if the land holder remained present for collecting the compensation in lieu of the land acquired, the same will be immediately disbursed.”

16. It is irrefutable that the award is passed on 20/04/1990. It is observed in the order impugned, that in view of the death of Mr.Bhaskarrao, the names of all the legal heirs including petitioner-Pravin are reflected in the award dated 20/04/1990. While the other legal heirs whose names are reflected in the award dated 20/04/1990 except Dinkar do not appear to have any grievance, petitioner-Pravin claims that his mother Mrs.Bhagirathibai who

expired on 14/12/2003, bequeathed her share in the suit property in favour of the petitioner by virtue of Will dated 09/06/1994. Apart from the fact that the execution of the alleged Will has no significance whatsoever inasmuch as the subject land stood vested with the State Government, we find that it was for the first time after 18 years from the award that the petitioner addressed vague representation to the Collector. As we have noticed supra, unfortunately it does not appear to have been brought to the notice of the Coordinate Bench that stale issue is raked up. The petitioner prayed that the representation be decided and the Government did not contest.

17. Be that as it may, we are more than satisfied that the grievance of the petitioner to additional solatium and/or TDR is absolutely substanceless. We may further observe that if any of the seven legal heirs of deceased Bhaskarrao were to be aggrieved by the award, the statutory remedy could have been availed.

18. The petition is totally devoid of substance, and is dismissed.

19. However, in view of the statement in the affidavit in

response filed on behalf of the State that if any land owner has not received the compensation which was offered, and if such land owner is willing to accept the compensation, the same shall be paid, we direct that if any beneficiary covered by the award dated 20/04/1990 approaches the Authority claiming the compensation or part thereof, such claim shall be decided on its own merits as expeditiously as possible.

20. Rule stands discharged. No costs.

(M.W.CHANDWANI, J)

(ROHIT B. DEO, J)