



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 6989 OF 2023

1. Sarla w/o Dilipchand Kothari,
aged 54 years, Occ. Household work,
R/o at post Kalamb, Tq. Kalamb, Dist.
Yavatmal
2. Pravin S/o Shantilalji Lodha
aged 58 years, Occ. Doctor,
R/o at post-Ner, Tq. Ner, Dist. Yavatmal ...Petitioner

// VERSUS //

1. The Project Director, National Highway
Authority of India, Project Implementation
Unit, Chandan Niwas, Kolhe Layout, Darwha
Road, Yavatmal
2. The Arbitrator (Additional Collector) Collector
Officer Compound, Yavatmal
3. The Competent Authority, Sub Divisional
Officer, Land Acquisition, for NHAI-361,
Ralegaon, Dist. Yavatmal ... Respondents

Shri Gunjan Kothari, Advocate for the petitioners.
Shri A.A.Kathane, Advocate for the respondent No. 1.
Mrs. Mrunal Naik, AGP for the respondent nos. 2 and 3/State.

CORAM : ANIL S. KILOR, J.
DATED : 18th DECEMBER, 2023.

ORAL JUDGMENT :

1. Heard.

2. RULE. Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

3. The present petition is filed for a short relief of modification of the order dated 01/04/2023 passed below Exh.16 by the Principal District Judge, Yavatmal asking the petitioners to furnish solvent surety of double amount of the amount which has been permitted to be withdrawn by the petitioners.

4. Shri Kothari, learned counsel for the petitioners submits that the amount which is allowed to be withdrawn by the petitioners was deposited by National Highway Authority of India towards the enhancement granted in favour of the petitioners by the Arbitrator. He submits that there is no justifiable reason given by the Court below asking the petitioners to furnish solvent security of double amount. He, accordingly, prays for modification of the same.

5. He further submits that the petitioners are ready to furnish an Undertaking that if he fails in the Arbitration Appeal, they are ready to pay back the amount along with simple interest @ 6% per annum from the date of withdrawal of the amount till the amount is repaid

6. On the other hand, the learned counsel for the respondent National Highway Authority of India has raised preliminary objection to the maintainability of the present writ petition on the ground that alternate remedy is available way of an appeal. He further submits that the learned Court below ought not to have granted permission to withdraw

the amount in view of the provisions of Rule 3-B of the National Highways (Manner of Deposits) Rules, 2019. He, accordingly, prays for dismissal of the present writ petition.

7. The learned A.G.P. for the respondent Nos.2 and 3 supports the impugned order.

8. Considering the nature of the prayer made in the present writ petition and further in view of the well settled principle of law that there is no complete bar to entertain the writ petition, even if the alternate remedy is available, I am of the opinion that the preliminary objection raised by the respondent No.1 needs to be rejected and the same is accordingly rejected.

9. As far as modification of Clause (i) of the impugned order dated 01/04/2023 to the extent of asking the petitioners to furnish solvent security of double amount is concerned, I am of the opinion that in view of the statement made by the learned counsel for the petitioners that the petitioners are ready to furnish undertaking for 50% amount that if they fail in the appeal, they will repay the amount along with simple interest @ 6% per annum on the amount directed to be repaid, I am of the opinion that it will protect the interest of National Highways Authority of India.

10. In similar matters, the Supreme Court of India vide judgment dated 01/08/2016 in the case of Bahubali Ravaji Doshi & Ors ..vs.. State

of Maharashtra & Anr. in Civil Appeal No.7193/2016 (SPL © 20414/2016) has held thus :

“ 1. Leave granted.

2. In the nature of the order we propose to pass, it is not necessary to issue notice to the respondents. In all connected matters, this Court has directed the Reference Court to release 50% of the amount deposited by the State without security and the remaining 50% with security to the satisfaction of the Court.

3. That order will govern the case of the appellants as well. The High Court may adopt the same pattern in all the connected cases, so that parties do not have to unnecessarily travel to this Court.

4. In view of the above, the appeal is disposed of.

No costs.”

11. The Supreme Court of India vide judgment dated 26/09/2018 in the case of Manish..vs..Godawari Marathawada Irrigation Development Corporation in Petition for Special Leave to Appeal (C) No(s). 11760-11761/2018 has held thus :

“This Court, on 16.07.2018, passed the following order:

“No one appears for the respondent, even though served. The Bombay High Court has ordered 60% deposit, pending the Section 37 appeal. We have passed orders stating that since these are money decrees there should be 100% deposit, with the respondent being entitled to withdraw the amount deposited and furnish solvent security to the satisfaction of the High Court.

Accordingly, we set aside the impugned orders dated 19.03.2018 and mandate a 100% deposit be made within a period of eight weeks from today.

The Special Leave Petitions are disposed of accordingly.”

Upon being mentioned by learned counsel for the petitioner, the following sentence is incorporated in the aforesaid order before the last line:

“The deposit so made may be allowed to be withdrawn on furnishing solvent security to the satisfaction of the Registrar of the High Court.”

12. In the circumstances, I am of the opinion that Clause (i) of the impugned order dated 01/04/2023 needs to be modified. Accordingly I pass the following order:

- i. The writ petition is allowed;
- ii. The impugned order dated 01/04/2023 passed below Exhibit 16 by learned Principal District Judge, Yavatmal is hereby quashed and set aside;
- iii. Clause (i) of operative order dated 01/04/2023 passed below Exhibit 16 passed by the learned Principal District Judge, Yavatmal is modified to the extent that “(i) amount of 50% of Rs.32,68,441/- along with accrued interest, if any, be given to the non-applicant nos.3 & 4 by issuing account payee cheque in their name. The non-applicant nos.3 & 4 shall file an Undertaking to the effect that in case they fail in the appeal, they shall repay the amount as directed by the Court, along with simple interest thereupon @ 6 per annum. That in addition to that, liberty is granted to the non-applicant nos. 3 & 4 to move an application for withdrawal of remaining 50% of the amount whenever they would be in a position to furnish solvent surety of remaining 50% of the amount.”

v. In view of Section 34(6) of the Arbitration and Conciliation Act, 1996, the learned Principal District Judge, Yavatmal is directed to expedite the hearing and decide the same within four months from the next fixed date.

The Writ Petition is disposed of in the above terms. No order as to costs.

[ANIL S. KILOR, J.]