



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 435 OF 2024
IN
REVIEW APPLICATION (STAMP) NO. 534/2024
IN
WRIT PETITION NO. 354 OF 2023

STATE OF MAHARASHTRA THROUGH SECRETARY
AND OTHERS
VERSUS
YUSUF AHMED HUSAIN NIZAM

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A.G.P for Applicants : Mr. R.K. Ingole
Advocate for Respondent : Mr. Amit Yadkikar, a/w Mr. Akshay Kulkarni

CORAM : MANGESH S. PATIL &
S. G. CHAPALGAONKAR, JJ.
DATE : 09.08.2024

ORDER : (MANGESH S. PATIL, J.)

The delay is condoned.

2. We have heard the review application finally at the joint request of the parties.
3. This is a review application preferred by all the five respondents from the writ petition, which was filed by the present respondent, seeking review of the order dated 11.01.2023, passed by us while disposing the writ petition finally.
4. The facts in brief can be narrated as follows:

The original petitioner was aggrieved by the fact that a 4 Are portion from his land Gat No. 206, totally admeasuring 26-Are of village Dharmabad was taken possession of for the expansion of State Highway No. 44. In spite of long persuasions, he was not paid any compensation. No due process of law was followed for acquiring the land. Ultimately, measurement was

carried out to ascertain if his land was taken possession of. The boundaries were fixed. A remeasurement for verification was done. A proposal was forwarded by respondent no. 5 from the writ petition, who is the Sub Divisional Engineer of the Public Works, Sub Divisional Office, Dharmabad, to his superior-original respondent no. 4, the Executive Engineer and competent authority PWD Bhokar Division, District Nanded.

5. It was also being alleged by the petitioner that the original respondent no. 2-District Collector took initiative, called a meeting with respondent nos. 3 to 5 and compensation was determined. Pursuant to such enquiry and the decision, respondent no.4-Executive Engineer addressed a letter to respondent no. 3-Superintending Engineer of the P.W.D., seeking approval for making over the payment. In spite of approval having been granted, petitioner was not paid anything.

6. It was the case of the petitioner that again another committee was appointed and undertook verification of the fact regarding use of the petitioner's land for expansion of State Highway No. 44. Even after such exercise resulting in holding the petitioner entitled to have the compensation for 4-Are portion of the land acquired from him, nothing fruitful happened. Hence he made following prayers by filing the petition :

“(B) By appropriate writ, order(s) or direction(s) in the like nature, all the respondents may be directed that, they shall prepare Award in respect of 4 R. land of the petitioner which is used for purpose of State High Way No.44, which runs from Mukhed, Umri, Dharmabad and the land Gut No.206 of petitioner which is used for the said High Way and about which, no any compensation amount is given to the petitioner.

(C) By appropriate writ, order(s) or direction(s) in the like nature, all the respondents may be directed that, they shall pay compensation amount to the petitioner to the tune of Rs.2.20 Crores about the 4 R. land which is used for State High Way

No.44 at Dharmabad/Ratnali under the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

(D) By appropriate writ, order(s) or direction(s) in the like nature, all the respondents may be directed that, they shall pay amount of interest @ 12% to the petitioner on the amount of Rs.2.20 Crores till its realization.”

7. After hearing the learned advocate for the original petitioner and the learned A.G.P, following order was passed disposing of the writ petition on 11.01.2023:

“ Heard.

2. The petitioner is aggrieved by the fact that in spite of his 4 Are portion having been affected by the State Highway, he has not been paid compensation. It appears that even the respondent No.2 - Collector has addressed a letter to the respondent No.3 Superintending Engineer Public Works Department, Nanded, dated 18.06.2022 to take appropriate steps, by precisely confirming that petitioner's 4 Are land has been affected. There is also a reference that rate for acquiring the land by private negotiation has also been determined.

3. We dispose of the writ petition by directing the respondents to act as expeditiously as possible and in any case, complete the acquisition process and pay the compensation to the petitioner within a period of six months.

4. It is made clear that we are not expressing anything in respect of the petitioner's claim for payment of compensation according to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which issue is kept open.”

8. The original respondents have preferred this review application on the ground that subsequent to the direction of the Collector dated 18.06.2022, the original respondent no. 3-Superintending Engineer by a communication dated 22.08.2022 had tried to explain to respondent no. 2-

Collector as to how the property of the petitioner was never used for the road whose width has been 30 meters since long. However, this fact was not brought to the notice of the Court and the order was passed on the first date.

10. The learned A.G.P would submit that this subsequent correspondence between respondent nos. 2 and 3 dated 22.08.2022 was not brought to the notice of the Court and the order was obtained by suppressing it. It has caused serious prejudice to the respondents. No proper process was followed for resorting to acquisition and still the petitioner has been claiming compensation and even preferred a contempt proceeding therefor. The learned A.G.P would take us through the record and tried to buttress his submission and the stand of the original respondents that no portion of petitioner's land was ever acquired/used and still he was able to have the order under review. It was an error apparent on the face of the record and the order be reviewed.

11. Per contra, the learned advocate for the petitioner, by referring to his affidavit in reply, would submit that an innocuous order is being sought to be reviewed without there being any error on the face of the record or having discovered any additional material. There is no sufficient cause.

12. The learned advocate Mr. Yadkikar, would further take us through the record of the writ petition and would try to demonstrate that, not once but twice the respondents had resorted to measurement and verification of actual utilization of petitioner's property. The Executive Engineer was also satisfied pursuant to the enquiry and had expressly raised a demand with respondent no.3-Superintending Engineer. Ultimately, the Collector had to take initiative and had by the communication dated 18.06.2022 called upon the respondent no.3-Superintending Engineer to take appropriate steps for payment of compensation to the petitioner to the tune of Rs. 44,00,000/-. He would submit that the very conduct of the original respondents in

resorting to review application is objectionable and tainted with *mala fides*. It is only after the petitioner filed the contempt proceeding for disobedience of the order under review that as an escape root, the review application has been filed. He would, therefore, pray to dismiss the review application.

13. As can be seen, there has been a long history. The petitioner's claim was subjected to verification and reverification. The measurements were carried by the office of the D.I.L.R. Even all the respondents were satisfied about his claim. There were exchange of questionnaire. Even the Chief Engineer of the P.W.D. had raised certain queries, which were objectively responded to by the Superintending Engineer vide a communication dated 14.01.2013 *inter alia* expressly informing that the possession of 4-Are portion of the petitioner's land was taken over in the year 2010. It was decided to be acquired by private negotiations. Even the Collector had fixed the rate at Rs. 11000/- per square metre, and the possession was taken on 19.10.2010. Even a possession receipt was executed and written consent from the petitioner was obtained. Even a bar chart was annexed to this communication (Exh. 'J' in Writ Petition). When all the respondents have been alive to these happenings and the Collector merely took initiative to obviate any further hardship to the petitioner by issuing a communication dated 18.06.2023, it cannot be said that there has been any error apparent on the face of record or any other sufficient cause for exercising the power of review.

14. Admittedly, the respondents have woken up after the petitioner was required to initiate a contempt proceeding. It is unbecoming of the State functionaries to take possession of the individual's land/property without following due process of law and to now try to obviate the responsibility of paying compensation. The stand of the original respondents in this review application is highly objectionable and would be demonstrative of their adamant approach and abduction of duty.

15. There is no substance in the review application.
16. The Review Application is dismissed with a direction that pursuant to the order under review, the steps shall be taken for making over the compensation to the petitioner within four weeks.
17. Civil Application No. 435/2024 is disposed of.

(S. G. CHAPALGAONKAR, J.)

(MANGESH S. PATIL, J.)

mkd/-