



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1 WRIT PETITION NO. 112 OF 2021

RAM DNYANOBA BASTAPURE

....Petitioner

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

.....Respondents

.....

Mr. T. M. Venjane, Advocate for the Petitioner

Mr. S. K. Tambe, AGP for the Respondents-State

Mr. B. M. Dhanure, Advocate for Respondent No. 2,

Mr. V. D. Gunale, Advocate for Respondent No. 3

CORAM : RAVINDRA V. GHUGE &
Y. G. KHOBRAGADE, JJ.

DATE : 12th February, 2024

ORDER:

1. The short issue raised in this Petition is, as to whether the authority which has passed an order under section 3(H)(4) of the National Highways Act, 1956 (for short, 'the 1956 Act'), can review its order by entertaining a review application filed by one of the disputants.

2. It is undisputed that Respondent No.2 passed an order under Section 3H(4) of the 1956 Act on 12.10.2020, referring the dispute to the Court of original jurisdiction as prescribed in law. For 40 days, he did not transfer the amount of compensation to the Civil Court. On 23.11.2020, almost after 41 days, that Respondent No.3 moved an eight pages application seeking review of the order dated 12.10.2020.

The Petitioner tendered a reply to the same. On 16.12.2020, the Second Respondent passed an order and reviewed his earlier order dated 12.10.2020 and disbursed an amount Rs.1,86,68,228/- to Respondent No.3 herein, within 48 hours. Being aggrieved by this order, the Petitioner who contends that the review application was opposed, is before us.

3. We have heard the learned Standing Counsel for Respondent No.2 and the learned Advocate for Respondent No.3. Both are at sea in pointing out as to whether Respondent No.2 had any authority to review his order passed under Section 3-H(4). Respondent No.3 contends that under Section 3-I, certain powers of the Civil Court are vested in Respondent No.2 and the case of Respondent No. 3 would be covered by sub section (b) to Section 3-I of the 1956 Act. This is wholly a falacious argument.

4. Sections 3-G, 3-H and 3-I of the 1956 Act read as under:

"3G. Determination of amount payable as compensation.--

(1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent, of the amount determined under sub-section (1), for that land.

(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government--

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration--

(a) the market value of the land on the date of publication of the notification under section 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or

place of business, the reasonable expenses, if any, incidental to such change.

3H. Deposit and payment of amount.--(1) The amount determined under section 3G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land.

(2) As soon as may be after the amount has been deposited under sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

(3) Where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(4) 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, 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.

(5) Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent, per annum on such excess amount from the date of taking possession under section 3D till the date of the actual deposit thereof.

(6) Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under sub-section

(5) shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority and the provisions of subsections (2) to (4) shall apply to such deposit.

3I. Competent authority to have certain powers of civil court.--The competent authority shall have, for the purposes of this Act, all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:--

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) reception of evidence on affidavits;
- (d) requisitioning any public record from any court or office;
- (e) issuing commission for examination of witnesses."

5. We are not convinced by the contention of Respondent No.3 that the application seeking review can be considered under Section 3-I(b). There is no power of review vested in the Second Respondent. It is a crystallized position of law that an order on a review application can be passed only if the statute provides or vests power in a particular authority to review its order. The contention of Respondent No. 2 is that there was an understanding between Respondent No.3 and the Petitioner. The Petitioner vehemently refutes the said statement.

6. Be that as it may, merely because two parties may come hand in hand before an authority and seek review of an order without the statute vesting any power in that authority to pass an order on a review application, consent of the parties would not create jurisdiction in the

Second Respondent. When matters involve disbursement of money, the statutory authorities have to be extremely careful, diligent and vigilant. We strongly disapprove of the conduct of Respondent No.2 and this is a fit case to direct the District Collector to initiate disciplinary proceedings against the said officer, namely Shri Sunil Yadav. The learned Standing Counsel for the Union of India representing Respondent No.2, submits that this is the first reported case wherein the said authority has passed such an order.

7. **This Petition is allowed.** The impugned order dated 16.12.2020 is quashed and set aside and the review application filed by Respondent no.3, stands dismissed.

8. Since the Third Respondent has given an undertaking to Respondent No.2 to refund the amount if there is any order of any authority or the Court, we direct Respondent No.3 to re-deposit the entire amount with Respondent No.2 within a period of three weeks from today, failing which the said amount will carry interest @ 6% per annum from 18.12.2020, when the amount was released by the Second Respondent within 48 hours of the passing of the order. After the amount is deposited, the entire amount shall immediately be forwarded by Respondent no.2, to the Civil Court of original jurisdiction in tune with the order dated 12.10.2020 passed under Section 3-H(4).

9. Though the Standing counsel has requested us not to issue a direction for initiating disciplinary proceedings against the Second Respondent since he has now been transferred, we find the following factors to be glaring:-

- A) On 12.10.2020, the Second Respondent passes an order under section 3-H(4), referring the dispute to the Civil Court.
- B) The total amount of Rs.1,99,28,739/- was supposed to be transmitted to the Civil Court, expeditiously. The Second Respondent retained the amount for 41 days, despite passing the order referring the dispute to the Civil Court and after signing it.
- C) Thereafter, Respondent No.3 filed a review application on 23.11.2020. An order on the review application is passed on 16.12.2020 and within 48 hours, an amount of Rs.1,86,68,228/- is disbursed to Respondent No.3, by taking an undertaking.

10. As such, on the one hand, the Second Respondent does not transfer the amount to the Civil Court for 41 days and, on the other hand, disburses a huge sum of Rs. 1,86,68,228/- to Respondent No.3, within 48 hours. We, therefore, direct the Chief Secretary of the State of Maharashtra not to allot any matter with regard to land acquisition and payment of compensation under any statute, to Respondent No.2 namely Sunil Yadav.

11. We direct the learned Registrar Judicial of this Court, to officially place a copy of this order before the Chief Secretary of the

State of Maharashtra for compliance. A compliance report from the office of the Chief Secretary shall be placed before us on 11th March, 2024.

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)

JPChavan