



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 533 OF 2024

**BHAGWAT GOPINATH KADAM AND OTHERS
VERSUS
THE UNION OF INDIA THROUGH ITS SECRETARY AND
OTHERS**

...

**AND
WRIT PETITION NO. 14745 OF 2023**

**DILIPKUMAR RAGHUNATH PANDHARE AND ANOTHER
VERSUS
THE UNION OF INDIA THROUGH ITS SECRETARY AND
OTHERS**

...

**AND
WRIT PETITION NO. 15305 OF 2023**

**BABAN SUKHDEV KAKADE AND OTHERS
VERSUS
THE UNION OF INDIA THROUGH ITS SECRETARY AND
OTHERS**

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Shri A.B. Kale, Advocate i/by Shri Sambhaji B. Tarde, Advocate and Shri A.B.Kharosekar, Advocate for the Petitioners in the respective petitions.

Shri R.B. Bhosale, Shri Madhur A. Golegaonkar and Shri R.R. Bangar, Standing Counsel for Respondent Nos.1 and 3/UoI.

Shri S.K. Tambe, AGP for Respondent No.2/State.

Shri Anand P. Bhandari, Advocate a/w Shri Vikas Hinge and Shri K.D. Mundhe, Advocates i/by Hinge and Deshmukh Associates, for Respondent No.4.

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**CORAM : RAVINDRA V. GHUGE
&
Y. G. KHOBRADE, JJ.**

DATE :- 09th September, 2024

Per Court :-

1. In all these matters, the Petitioners are before the Court with an identical grievance. The Acquiring Authority has challenged the award before the Arbitrator under Section 3G(5) of the National Highways Act, 1956. After lodging of the proceedings, no steps have been taken by the Acquiring Authority for conducting the matters. No interim relief has been sought, much less, granted. The grievance is that, neither the amount is deposited before the Arbitrator, nor is it paid to the Claimants.

2. Having considered the submissions of the learned Advocates and having perused the affidavit in reply, there are several contentious issues as regards the alleged escalation of the price of the land, the plantations made and the purported improvements carried out, etc., with an object of orchestrating an unusual and unjustified rise in the compensation.

3. With the assistance of the learned Advocates, we have perused Sections 9 and 17 of the Arbitration and Conciliation Act, 1996, which read as under:-

- “9. *Interim measures, etc., by Court.—*
- (1) *A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—*
- (i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or*
 - (ii) for an interim measure of protection in respect of any of the following matters, namely:—*
 - (a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;*
 - (b) securing the amount in dispute in the arbitration;*
 - (c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;*
 - (d) interim injunction or the appointment of a receiver;*
 - (e) such other interim measure of protection as may appear to the Court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.*
- (2) *Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such*

order or within such further time as the Court may determine.

- (3) *Once the arbitral tribunal has been constituted, the Court shall not entertain an application under subsection (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.]”*

“17. *Interim measures ordered by arbitral tribunal.—*

- (1) *A party may, during the arbitral proceedings, apply to the arbitral tribunal—*
- (i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or*
 - (ii) for an interim measure of protection in respect of any of the following matters, namely:—*
 - (a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;*
 - (b) securing the amount in dispute in the arbitration;*
 - (c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;*
 - (d) interim injunction or the appointment of a receiver;*
 - (e) such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient, and the arbitral tribunal shall have the same power for making orders, as the court has for the purpose of, and in relation to, any proceedings before it.*

- (2) *Subject to any orders passed in an appeal under section 37, any order issued by the arbitral tribunal under this section shall be deemed to be an order of the Court for all purposes and shall be*

enforceable under the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were an order of the Court.”

4. A party can make an application for securing the amount in dispute in arbitration. There is no dispute that the arbitration proceedings are pending since April, 2023. Notices have been issued and the parties have appeared in the said proceedings.

5. Thus, there is a statutory provision, which is engrafted in the Arbitration and Conciliation Act, 1996, for the purposes of securing the interest of the party, and that provision enables the Claimants before us to seek an order from the Arbitrator for securing the amount, granted by the competent authority, during the pendency of the proceedings in arbitration. Such applications have still not been made by these Petitioners.

6. In the affidavit in reply, it is seriously canvassed by NHAI, that these Petitioners have caused improvements in the form of plantation of fruit bearing trees, construction of compound wall, construction of concrete road, sheds,

underground storage water tank, etc. after publication of the notification under Section 3-A of the National Highways Act, 1956. It is also canvassed that bloated or exaggerated sale instances have been cited in order to orchestrate higher compensation amount. According to the NHAI, the assets are improved and created after the notification under Section 3-A and this needs proper investigation.

7. The learned Advocates for the Petitioners have informed us that in some cases, some Claimants have filed their applications seeking a direction from the Arbitrator to the Acquiring Body to deposit the amounts before the Arbitrator. Such applications are invariably kept pending.

8. In view of the above, **these Writ Petitions are disposed off** with the following directions:-

(a) Keeping in focus several contentious issues, we deem it appropriate to direct these Petitioners to tender their applications for seeking directions from the Arbitrator to order the NHAI to deposit the amounts before the Arbitrator. Such applications shall be filed until 18.09.2024.

(b) The Advocate representing the NHAI or any Authority concerned, before the Arbitrator, shall collect such applications, which would be filed until 18.09.2024.

(c) The NHAI shall enter their replies, on or before 23.09.2024.

(d) The Arbitrator would permit the learned Advocates to canvass their submissions on 25.09.2024 and thereafter, pass an order on the said applications, on 04.10.2024.

(e) The parties to the arbitration shall, accordingly, appear before the Arbitrator on 18.09.2024, 23.09.2024, 25.09.2024 and 04.10.2024. Notices are dispensed with.

(f) Needless to state, if the Arbitrator directs the NHAI to deposit any portion of the compensation amount, it shall specify a particular duration, in view of Rule 3 of the National Highways (manner of depositing the amount by the Central Government; making requisite funds available to the competent authority for acquisition of land) Rules, 2019.

(g) Since we are informed that there are several such applications pending, we deem it appropriate to record that such applications, either for interim stay or for securing the amount in dispute in arbitration, shall not be kept pending beyond 60 days

from the date of appearance of the parties.

(h) Adjournments should not be granted on unreasonable or trivial ground and the Arbitrator would endeavour to decide such applications, within 60 days.

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(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)