

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1025 OF 2024

Kavita Baliram Patil

Age: 47 Years, Occu: Agriculturist,

Residing at: Village Adane,

Tal.Vasai, Dist. Palghar.

... Petitioner

Versus

1. The Competent Authority and Sub-Divisional Officer, Vasai

Mumbai -Vadodara National Express

Highway, Tal. Vasai,

Add: SDO Office, Near Vasai Court,

Vasai West, Tal. Vasai,

Dist. Palghar – 401 201.

2. State of Maharashtra

3. The Thane District Central Co-op.

Bank Ltd., At Post – Chandip,

Shirsad Vajreshwari Road,

Tal. Vasai – 401 303.

... Respondents

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Mr.S.S.Redekar for the Petitioner.

Ms.Nisha Mehra, AGP for Respondent Nos. 1 and 2-State.

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**CORAM: NITIN JAMDAR &
M.M.SATHAYE, JJ.**

DATE : 3 April 2024

JUDGMENT : (Per: Nitin Jamdar, J.)

Rule. Rule made returnable forthwith. The Respondents waive service. Taken up for disposal.

2. This Petition concerns a direction issued by the Sub-Divisional Officer, Vasai, on 5 January 2024 to certain Co-operative Banks.

3. The Petitioner is one of the owners of agricultural lands bearing Survey Nos. 35/9, 35/4, 40/1, 38 and 13 situated at Village - Adane, Tal. Vasai, Dist. Palghar. Respondent No.1 is the Competent Authority and Sub Divisional Officer, Vasai; Respondent No.2 is the State of Maharashtra; and Respondent No.3 is the Thane District Central Co-op. Bank Ltd.

4. Under Section 3-A of the National Highways Act, 1956 (the Act of 1956), the Central Government has the power to acquire land where it is satisfied that for a public purpose, it is acquired for the building, maintenance or operation of a national highway or part thereof. The Central Government is empowered to issue a notification declaring its intention to acquire land concerning the subject land. Under Section 3-G of the Act of 1956, the methodology is provided for the determination of the amount payable as compensation. The final Award was declared on 22 January 2021.

5. The National Highways Authority of India and the Union of India published a notification under Section 3-A of the Act of 1956. The acquisition was the purpose of the Mumbai- Vadodara National

Express Highway. The proposed Mumbai Vadodara National Express Highway involves the development of 379 km and passes through various areas, including Thane- Palghar Districts, where the Petitioner's lands are situated.

6. Respondent No.1—the Sub-Divisional Officer was appointed as Competent Authority for land acquisition. The notification specified that the Petitioner's land had been acquired. The Competent Authority determined the compensation amount along with other lands at Village Adane. Accordingly, the Competent Authority issued a final Award under Section 3-G of the Act of 1956.

7. After the Award is declared under Section 3-G, the steps have to be taken under Section 3-H of the Act of 1956 regarding the deposit and payment of the amount. On 18 February 2021, the Competent Authority issued notice to the Petitioner calling upon the Petitioner and other co-owners to accept the amount of compensation. On 5 January 2024, Respondent No.1- the Sub Divisional Officer, deposited the amount of compensation of Petitioner's share in the Petitioner's bank account.

8. On 5 January 2024, Respondent No.1- the Sub Divisional Officer, issued the impugned direction to the Petitioner's Bank and others not to disburse more than Rs. 1 lakh from the Petitioner's Bank account for four months and if any amount is required, then it

should be brought to the notice of the Sub Divisional Officer. Challenging this direction, the Petitioner is before us.

9. Heard Mr. Redekar, the learned Counsel for the Petitioner and Ms.Mehra, the learned AGP.

10. On 30 January 2024, we had issued notice to Respondent No.1- the Sub Divisional Officer, to demonstrate the source of power for issuing the impugned direction. No affidavit is filed by the State and Respondent No.1- the Sub Divisional Officer. Nothing is shown to us as to how this direction is traceable to any provision of law. The learned AGP only submitted that the direction was issued with the good intention of protecting the interest of the Petitioner and others.

11. Under the Act of 1956, a scheme for the acquisition of the land is introduced. Under Section 3-A of the Act of 1956, the Central Government issued a notification declaring its intention to acquire land. Thereafter, a person authorised by the Central Government can inspect, carry out measurements and set out boundaries. Hearing of objections is contemplated under Section 3-C of the Act of 1956. Section 3-D of the Act of 1956 deals with the declaration of acquisition. Section 3-E of the Act of 1956 empowers the Central Government to take possession of the land vested upon deposit of the amount. Section 3-G of the Act of 1956 is regarding the

determination of the amount payable as compensation. The Competent Authority has to give a public notice requiring persons to appear, and then the amount is to be deposited. If the amount is not acceptable, then the application can be made by the parties to be determined by the Arbitrator appointed by the Central Government. Section 3-H of the Act of 1956 deals with the deposit and payment of an amount which reads as follows:

“3H. Deposit and payment of amount.—

(1) The amount determined under section 3G shall be deposited by the Central Government in such a manner as may be laid down by rules made on 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".

Thus, when a dispute arises, the Competent Authority has to refer the same to the Competent Court. Otherwise, after the amount is deposited, the Competent Authority is under mandate to pay the amount to the person entitled. Section 3-H mandates the Competent Authority to pay the compensation to the person rightfully entitled to it. When a person is rightfully entitled to the compensation, it becomes his property thereof, and unless expressly provided under the Statute or Rule, the Competent Authority cannot withhold the said amount or let alone regulate its use after payment.

12. In the present case, on 5 January 2022, Respondent No.1 deposited the amount of compensation of the subject property bearing Survey Nos. 35/9 and 35/4. Respondent No.1 then addressed the impugned direction to the concerned Co-operative

Banks, where money was deposited into the accounts of the Petitioners and others that out of the money deposited, only Rs. 1 lakh p.m. should be paid to the Petitioner and others, and the remaining amount should be kept for a period of four months and if the Petitioner required more money, then he should seek permission from Respondent No.1.

13. The impugned direction is completely ill-advised and patently illegal. Respondent No.1 is under a misconception about the extent of his power. The Respondent No.1, under the Act of 1956, does not possess any sweeping or benevolent jurisdiction. By this completely illegal direction, Respondent No.1 has restrained the Bank from permitting the Petitioner to utilise the Petitioner's own money. Once the amount of compensation was deposited, unless it was the case of fraud, misrepresentation or that the Petitioner was not entitled, the Sub Divisional Officer could not have restrained the withdrawal of the amount that, too, if any statute permitted such exercise.

14. The Petitioner has not requested any protection in regard to the potential misuse of compensation by the tribal communities due to their lack of knowledge. This matter falls under social issues, which should be handled by the appropriate department-Tribal Welfare or a non-governmental organisation. It is a fundamental legal principle that all authorities must remain within their

jurisdiction and cannot exceed it based on their intentions. The Competent Authority did not have the power to control the use of the compensation received by the Petitioner and others, nor could he instruct them to apply for permission to withdraw an amount of over Rs.1 lakh from their bank accounts.

15. The impugned direction being entirely illegal and without jurisdiction is required to be quashed and set aside. The concerned sub-divisional officer will be well advised to be careful in the future.

16 Accordingly, the direction dated 5 January 2024 issued by Respondent No.1 - the Sub Divisional Officer annexed at Exhibit D to the Petition is quashed and set aside.

17. Rule is made absolute in the above terms.

18. The Writ Petition is accordingly disposed of.

(M.M.SATHAYE, J.)

(NITIN JAMDAR, J.)