

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO. 9491 OF 2022

Tarabai Shubhash Sonawane.

... Petitioner.

V/s.

National Highway Authority of India
and others.

... Respondents.

Ms.Pooja Malik i/b. N.R.Bubna for the Petitioner.

Mr.Anil C. Singh, Senior Advocate with Mr.Rakesh Singh and
Heena Shaikh i/b. M.V. Kini & Co. for Respondent No.1.

Mr.V.M.Mali, AGP for Respondent Nos.2 to 4.

SANJAY
KASHINATH
NANOSKAR

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

DATE : 29 April 2024.

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SANJAY KASHINATH
NANOSKAR
Date: 2024.05.06
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P.C. :

By this petition filed on 11 March 2020, the Petitioner has made a grievance regarding shortfall in the payment of deposit of consideration for the acquisition of her land. The Petitioner's land bearing Gat No.595/B at village- Zodage, taluka- Malegaon, district- Nashik was acquired for the purpose of the national highway. An award was declared in favour of the Petitioner under the National Highways Act, 1956 and an amount of Rs.46,00,197/- was determined. Respondent No.1, however, deposited an amount of Rs.40,94,027/-. Respondent no. 1 did so commenting on the

amount arrived at in the arbitral award as being incorrect. Respondent No.1 was informed by the State that as per the arbitral award the amount to be deposited by Respondent No.1 was Rs.44,66,211/-. Out of the said amount, only an amount of Rs.40,94,027/- was deposited. The balance amount is Rs.3,72,184/-.

2. The issue of concern was the stand taken by Respondent No.1 of questioning the arbitral award and depositing less amount on the ground that the award was erroneous is permissible. If such a stand is permitted to be taken, there will be serious issue of administrative discipline and also illegal and contrary to the statutory scheme. Therefore, on 3 August 2024, the following order came to be passed:

“ The grievance of the petitioner is two fold. Firstly, the Arbitral Award in respect of acquisition to the tune of Rs.44,66,211/- was issued in favour of the Petitioner, however, amount of only Rs.40,94,027/- has been released. Second contention is that no compensation is paid in respect of 800 sqr.mtrs. of petitioner’s land. On both the counts, reply-affidavit is filed by the Deputy Collector. As regards shortfall of payment, the Deputy Collector has commented on the merits of the Award stating that the Petitioner is not entitled to a particular component. Nothing is shown to us as to how the Deputy Collector can take such a stand without challenging the Award. Therefore, the Respondents are bound by the arbitral award and are bound to pay the entire amount pursuant thereto.

2. On the second aspect, the Deputy Collector has stated that 800 sqr.mtrs was part of service road, which the petitioner had to surrender pursuant to the layout and, therefore, the Petitioner would have no rights over the said land, and, is not

entitled for the compensation on the factum of existence of service road.

3. The learned Counsel for the Petitioner seeks time to file rejoinder. At his request, stand over to 20 October 2022.

4. By the next date, the Respondents will pay the balance amount of the arbitral award to the Petitioner. If it is not to be paid for any justifiable legal reason, an affidavit of the Deputy Collector to that effect be filed.”

Then another detailed order came to be passed on 21 June 2023 reading as under:

“ Mr. Bubna, the learned counsel appearing on behalf of the Petitioner has brought to our attention the order dated 3rd October, 2022 passed by this Court in the above Writ Petition. This order clearly records that the Arbitral Award in respect of acquisition to the tune of Rs.44,66,211/- was issued in favour of the Petitioner. However, despite this Award, only the amount of Rs.40,94,027/- was released. The stand taken by the Deputy Collector was that the balance amount was not released on the basis of the comments made in the merits of the Award. This Court recorded that nothing was shown how the Deputy Collector can take such a stand without challenging the Award. This Court, therefore, was of the view that the Respondents are bound by the Arbitral Award and are bound to pay the entire amount pursuant thereto. It therefore directed that the Respondents will pay the balance amount of the Arbitral Award to the Petitioner by the next date. Despite this order, Mr. Bubna pointed out that the balance amount of Rs.3,72,184/- has not yet been released.

2 There is also a second issue in the above Writ Petition regarding 800 sq. meters of the Petitioner’s land for which no compensation has been paid. As far as this is concerned, it is the case of the Deputy Collector that the same is part of a service road which the Petitioner had to surrender pursuant to

the layout and therefore the Petitioner would have no rights over the said land and is not entitled to any compensation.

3 The learned AGP appearing on behalf of the Respondent State brought to our attention page 34 of the Petition wherein it has been brought to the attention of Respondent No.1 (NHAI) that though the amount to be paid is the sum of Rs.44,66,211/- [under the Arbitral Award], Respondent No.1 [NHAI] has transferred only a sum of Rs.40,94,027/-. The AGP has submitted that if NHAI transfers the aforesaid balance amount of Rs.3,72,184/- to the Respondent State, they would then be in a position to pay over the same to the Petitioner.

4 Today when the matter is called out, none appears on behalf of Respondent No.1 (NHAI). We find from the record that on 3rd October, 2022 [when the order was passed to pay the balance amount of Rs.3,72,184/-], Mr. Rakesh Singh along with Ms.Heena Shaikh i/b M/s. M. V. Kini & Co appeared on behalf of Respondent No.1. In these circumstances, it is directed that Mr. Rakesh Singh shall appear before this Court on the next date.

5 A copy of this order shall be served by the advocate for the Petitioner on Mr. Rakesh Singh as well as on M/s M. V. Kini & Co.

6. Stand over to 28th June, 2023.

7 This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.”

Still no steps were taken by Respondent No.1, therefore, on 2 February 2024 reproducing the earlier orders, the following order was passed:

“..... As regard second part i.e. 800 sq mtrs road, the Respondents are contesting this issue, but however regarding the first part i.e. compliance with arbitral award, the above direction is clear. The amount was to be paid by 20 October 2022. It is now almost one and half years since then.

2. When the Petition came up on board yesterday, learned counsel for Respondent- National Highway, based on reply affidavit sought to justify the stand of the Respondent- Officer for questioning Award without taking any steps to challenge the same. The Petition was placed on board today for learned counsel for Respondent- National Highway to take instructions, as to whether the Respondent- authority would take necessary steps or the Court would take serious view of the matter.

3. Today a request for twelve weeks time is made to comply with the order. Arbitral Award is of 29 April 2017. That there is short transfer of disbursal amount which is brought to the notice of the Respondent- National Highways Authorities as far back as on 15 January 2018.

4. We find that this is a clear case of administrative indiscipline which needs to be looked into by the senior officers of the National Highway Authorities. Therefore, we refuse the request of learned counsel for the Respondent- National Highways Authorities for grant of twelve weeks time. We grant two weeks to pay requisite amount to the Petitioner and place the receipt thereof on record.

5. If the steps are not taken within stipulated period, we would be constrained to refer the matter to the superior authority of the concerned officer apart from initiating proceeding for breach of the order dated 3 October 2022. If action such as present one is not taken seriously, the entire structure of the Act which provides for compensation to the person whose property is taken over would be rendered nugatory.

6. Stand over to 22 February 2024 under the caption “ For Directions”.

Yet, no seriousness was shown, which led us to pass another order on 22 February 2024 whereby we have noted that the matter needs to be looked into by the senior officers of the National Highways Authority as we found that such a conduct on the part of the concerned officer would amount to administrative indiscipline. Thereafter an additional affidavit is filed by the Project Officer. In order dated 27 March 2024, we noted that the affidavit was entirely perfunctory. We observed that if no justifiable reason is found in the affidavit filed by the Project Officer, then the Court may proceed to consider the prayer of the Petitioner for interest at the rate of 9% for delay in payment of the shortfall.

3. Today, Mr.Singh, learned Senior Advocate appears for Respondent No.1 and tenders an affidavit sworn by Respondent No.1; wherein all that stated is that the concerned officer was overloaded by the project work and has tendered an apology. The impugned action was not as a result of the overload of the work, but it was a clear decision to deposit the amount less than the amount arrived at in the arbitral award on officer's own opinion on the correction of the arbitral award.

4. Section 3H of the National Highways Act has a self-contained machinery for arriving at the compensation and for further challenge. There is no power or jurisdiction vested in the

concerned officer to deposit less amount than that is arrived at in the arbitral award by taking a decision himself that the award is not correct.

5. We are informed that amount of shortfall is now paid. In these circumstances, to inculcate the discipline that such a conduct does not recur, we direct that the Respondent- National Highways Authority will pay interest at the rate of 9% on the amount of shortfall from the date the compensation amount was deposited till the balance amount was deposited. Interest be paid to the Petitioner by 8 July 2024. It is open to the Respondent- Authority to fix the responsibility on the individual officer as ultimately the interest amount will have to be paid from the public fund.

6. Writ petition is accordingly disposed of in the above terms.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)