



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

**CONTEMPT PETITION NO.192 OF 2024
IN
WRIT PETITION NO.8126 OF 2020**

Asif Khan s/o Haji Ismail Khan
Age : 54 years, Occ: Agri & Business,
R/o : Standard Silk Mills Compound,
Paithan Road, Aurangabad

...Petitioner

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Public Works Department,
Mantralaya Mumbai
2. Astik Kumar Pandey
The District Collector,
Aurangabad.
3. Rajesh Joshi
The Sub Divisional Officer and,
Competent Authority,
National Highway No. 211,
Aurangabad
4. Ravindra S Ingale
The Project Director,
National Highway, P.I.U.B-23,
Near Kamgar Chowk, Jaibhawani Nagar,
N-4, CIDCO, Aurangabad.
5. Vijay Chaujan
Upper Tahsildar, Aurangabad

... Respondents

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Mr. Ajeet B. Kale, Advocate for the Petitioner.
Mr. G. A. Kulkarni, AGP for Respondent/State.
Mr. Amol M. Patale, Advocate for Respondent No.3.
Mr. Deepak S. Manorkar, Advocate for Respondent No.4.

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**CORAM : SMT. VIBHA KANKANWADI AND
ROHIT W.JOSHI, JJ.**

RESERVED ON : 19th DECEMBER, 2024
PRONOUNCED ON : 14th JANUARY, 2025

JUDGMENT (Per Rohit W. Joshi, J.):

1. The Petitioner in the present contempt petition had initially filed a petition, being Writ Petition No.8126 of 2020. In the said Writ Petition the Petitioner contended that he was owner of a portion of land admeasuring 0 H. 81 R., being a part of Gut No.15 (total area 2 H. 37 R.) of village Malewada, Taluka and District Aurangabad.

2. The petitioner claimed that a portion admeasuring 0 H. 03 R. i.e., 300 sq.mtrs. of land owned by him was acquired for the purpose of widening of Dhule-Solapur stretch of National Highway No.211. He claims that although, he was entitled to receive compensation for the acquired land, the compensation was wrongly awarded to Smt. Subhadra Parasram Wagh and Shri. Sagar Bhagwanrao Hole on the basis of no objection issued by one Janardhan Gangadhar Dhating (minor, represented by guardian Chandrakala Gangadhar Dhating). He claims that notice of the acquisition proceedings was not served on him. However, when possession of the land was being taken he realised that land owned by him was acquired for the purpose of road widening and accordingly, he made application dated 14.05.2018 raising objection and claiming compensation for the acquired land.

3. Since, the efforts made through representations for claiming

compensation did not yield any positive results, the petitioner filed a petition before this Court, being Writ Petition No.8126 of 2020. It will be pertinent to mention that prior to filing of the said petition the petitioner had filed a suit, being Regular Civil Suit No.752 of 2019 claiming practically the same reliefs as were sought in the said petition. When this fact was confronted to the petitioner during the course of hearing of the petition on 27.09.2022 a statement was made on behalf of the petitioner that an application for withdrawal of the civil suit was already filed and that the suit would be withdrawn, accordingly, and on the basis of the aforesaid statement, the matter was taken up for hearing. The matter came up for hearing on 10.03.2023. Office note dated 09.03.2023 indicates that despite directions to place order regarding withdrawal of civil suit No.752 of 2019, no document was filed to indicate withdrawal of the said suit. The petition came to be decided finally by order dated 10.03.2023. The petition was not pressed and came to be disposed of accordingly vide order dated 10.03.2023. However, directions were issued to respondent No.4 in the said petition (it appears to be a typographical error and it should be respondent no.3-the competent authority under NHAI Act) to treat the petition as a representation and decide the claim of the petitioner with respect to payment of compensation for 0.03 HR land in Gut no.15. The said exercise was directed to be completed within a period of ten weeks

from 20.03.2023, i.e., the date fixed for appearance of the parties before respondent No.3.

4. The petitioner has filed the present contempt petition in which the substantive relief claimed is that the respondents should be directed to pay amount of compensation for 0.03 HR land in gut no.15 to him. He has also prayed that the respondent should be directed to carry out measurement of gut no.15 in order to determine exact area of land owned by him which has been utilized for the purpose of road widening with further directions to determine and pay compensation for the additional land.

5. The petitioner claims that the claim has been decided and partly allowed by the competent authority vide order dated 26.04.2023. This appears to be the foundation for the prayer for issuing directions for remittance of compensation with respect to 0.03 HR land. Perusal of the order dated 26.04.2023 passed by the Deputy Collector and Competent Authority (Land Acquisition), NHAI, Aurangabad indicates that the claim of the petitioner has been allowed to the extent of entitlement to receive compensation for 0.03 HR, i.e., 300 sq. mtrs. of land in Gut No. 15. Accordingly, directions were issued to the Project Director, NHAI, Aurangabad to deposit sum of Rs.22,29,268/- towards compensation to be paid to the petitioner for his 0.03 HR, i.e., 300

sq.mtrs of land in gut no.15.

6. In response to the directions dated 26.04.2023 issued by the competent authority, the Deputy General Manager (Technical) and Project Director, NHAI, Aurangabad has issued communication dated 5th August 2023 to the Competent Authority, *inter alia*, requesting that the amount of compensation initially paid to other persons should be recovered and the same should be paid to the person entitled to receive the same. Thus, respondent no.4 did not deposit the amount as directed by the competent authority.

7. At this stage, we may refer to the replies filed by respondent Nos.2 and 3 in the Writ Petition. Respondent No.3-the Competent Authority has stated in paragraph 11 of reply dated 28.07.2021 that as per re-measurement carried out by the office of Deputy Superintendent of Land Records, the area admeasuring 500 sq. mtrs. belonging to Janardhan Gangadhar Dhating was shown in the name of Jalba Abbas Gaikwad to the extent of 200 sq. mtrs and in the name of petitioner to the extent of 300 sq. mtrs. Thereafter, it is stated that since the re-measurement was done after passing of the award and disbursement of compensation amount, the petitioner was only entitled to recover the amount from the persons to whom it was paid and not from the Competent Authority or respondent No.4-National Highways Authority

of India (“NHAI”). The reply of respondent No.4 dated 19.07.2021 in the said petition is also on similar lines. Respondent No.4 has also accepted that in fact land of the petitioner was acquired to the extent of 0.03 HR, i.e., 300 sq. mtrs. However, it is stated that since the compensation has already been disbursed the compensation cannot be directed to be paid to the petitioner once again. In this context, when we refer to the order passed by respondent No.3 dated 26.04.2023 pursuant to the directions issued by this Court, we find that the said order is passed after hearing the petitioner as well as Smt. Subhadra Parasram Wagh and Shri. Sagar Bhagwanrao Hole. The order reflects that having realised that the compensation was erroneously paid to Smt. Subhadra Parasram Wagh and Shri. Sagar Bhagwanrao Hole, the respondent No.3 had already taken steps for initiation of RRC proceedings for recovery of amount of compensation paid to them. The respondent No.3 has also directed the respondent No.4 vide clause-3 of the operative order to deposit amount of compensation of Rs.22,29,268/- for payment to the petitioner towards acquisition of 300 sq.mtrs, i.e., 0.03 HR land in Gut No.15.

8. The submission of the learned Counsel for respondent No.4 is that the order dated 26.04.2023 does not decide the claim of the petitioner finally, in as much as, vide clause-2 of the order, joint re-

measurement is directed to be conducted by the office of Deputy Superintendent of Land Records in order to determine how much land of different co-owners of Gut No.15 is actually covered under acquisition for National Highway No.211. The contention of respondent No.4 is liable to be rejected. It is contrary to express statements made in the replies filed by respondent Nos.3 and 4 in the writ petition as also in the affidavit in reply dated 06.03.2024 filed in the present petition. The statements made in the replies on oath are completely binding on respondent No.4. The statements made in the replies of respondent Nos.3 and 4 are completely binding on them. We may refer to judgment of the Hon'ble Supreme Court in the matter of ***Nagindas Ramdas vs. Dalpatram Locharam Alias Brijram and Ors.*** reported in AIR 1974 SC 471, wherein, it is clearly stated that the admission in pleading is completely binding on the party and such admission by itself can be a foundation of any claim against the party concerned. The Hon'ble Supreme Court in para No.26 of the judgment has held as under:-

“26 ... Admissions if true and clear are by far the best proof of the facts admitted. Admissions in pleadings or judicial admission admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admission. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand evidentiary admissions which are receivable at the rival as evidence are by themselves not conclusive. They can be shown to be wrong.”

9. The fact that steps were taken for initiation of RCC against Smt. Subhadra Parasram Wagh and Shri. Sagar Bhagwanrao Hole would further fortify the case of the petitioner that it is his land to the extent of 300 sq. mtrs. which is acquired and accordingly he is entitled for compensation in lieu of the same.

10. The directions in the order dated 26.04.2023 regarding further re-measurement is in relation to finding out further area that might have been affected by the road. The said direction is independent of the direction issued for payment of compensation for 0.03 HR, i.e, 300 sq. mtrs. of the land of the petitioner. There are clear findings in the order to the effect that the petitioner is entitled to receive compensation for 300 Sq. Mtrs i.e. 0.03 HR land in Gut No.15.

11. Since respondent No.4 had not deposited the amount as directed by respondent No.3 vide order dated 26.04.2023, we have passed order dated 21.10.2024 directing respondent No.4 to deposit the amount in the Court. Respondent No.4 has accordingly deposited the amount. Since the land of the petitioner is acquired without his consent by exercising eminent domain and undisputedly compensation payable to him is not paid, we deem it fit to direct payment of compensation amount which is payable to him. In case Smt. Subhadra Parasram Wagh and Shri. Sagar Bhagwanrao Hole or any one of them

has challenged the order dated 26.04.2023, the disbursement will be subject to outcome of the said proceedings. The petitioner shall file undertaking on affidavit that in the event the matter is decided against him and/or it is found that he is not entitled to receive the amount of compensation, either in its entirety or in part, he will refund the same within a period of three weeks from such order. The amount be disbursed to the petitioner only after obtaining such undertaking.

12. As regards prayer clause(d) which pertains to directions of measurement of land bearing Gut No.15 for determination of extra land allegedly acquired out of Gut No.15 for which compensation has not been paid. We find that the order dated 10.03.2023 passed by this Court is restricted to decide claim of the petitioner for compensation with respect to 0.03 HR land. Since there is no direction for determination of compensation for land allegedly acquired in addition to 0.03 HR. prayer clause (d) stands rejected.

The Contempt Petition stands disposed of accordingly.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

A.G.Narwade