



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

WRIT PETITION NO. 7336 OF 2018

Anant Shankarrao Korke

Died Through L.Rs.

1. Mohini Anant Korke, Age 50 years,
2. Rahul Anant Korke, Age 26 years,
3. Ashwini Anant Korke, Age 28 years,
All Occu. Agricultur, R/o. Salwade,
Taluka and District Dhule .. Petitioners

Versus

1. The State of Maharashtra
Through Collector, Dhule
2. The National Highway Authority of India
B-23,Near Kamgar Chowk, N-4, CIDCO,
Aurangabad
3. The Competent Authority
(Land Acquisition) N.H.211 &
Deputy Collector, Land Acquisition No.1,
Dhule
4. The District Superintending Agriculture
Officer, Dhule .. Respondents

...

WITH

WRIT PETITION NO. 7338 OF 2018

1. Babulal Paulad Vanjari
2. Bansi Paulad Vanjari,
Died, through L.Rs.
- 2A Bebabai Bansi Chavhan (Vanjari)
Age 45 years,
- 2B. Ramrao Bansi Chavan (Vanjari)
Age 26 years,
- 2C. Bhimrao Bansi Chavhan (Vanjari)
Age 20 yars,
- 2D. Arunabai Machindra Jadhav
Age 30 years,
All Occu. Agriculture, R/o. Tarwade,
Taluka and District Dhule

Versus

1. The State of Maharashtra
Through Collector, Dhule
2. The National Highway Authority of India
B-23,Near Kamgar Chowk, N-4, CIDCO,
Aurangabad
3. The Competent Authority
(Land Acquisition) N.H.211 &
Deputy Collector, Land Acquisition No.1,
Dhule
4. The District Superintending Agriculture
Officer, Dhule .. Respondents

...

**WITH
WRIT PETITION NO. 8883 OF 2018**

Gorakh Digambar Pagare
Age Major, Occu. Agri.,
R/o. Vinchur, Taluka and District Dhule .. Petitioner

Versus

1. The State of Maharashtra
Through Collector, Dhule
2. The National Highway Authority of India
B-23,Near Kamgar Chowk, N-4, CIDCO,
Aurangabad
3. The Competent Authority
(Land Acquisition) N.H.211 &
Deputy Collector, Land Acquisition No.1,
Dhule
4. The District Superintending Agriculture
Officer, Dhule .. Respondents

...

**WITH
WRIT PETITION NO. 7339 OF 2018**

Pravin Sudam Patil
Age Major, Occu. Agri.,
R/o. Junawane, Taluka and District Dhule .. Petitioner
Versus

1. The State of Maharashtra
Through Collector, Dhule
2. The National Highway Authority of India
B-23,Near Kamgar Chowk, N-4, CIDCO,
Aurangabad
3. The Competent Authority
(Land Acquisition) N.H.211 &
Deputy Collector, Land Acquisition No.1,
Dhule
4. The District Superintending Agriculture
Officer, Dhule .. Respondents

...
**WITH
WRIT PETITION NO. 8931 OF 2018**

1. Sunita Digambar Desale,
2. Revaji Tarachand Patil
Both Age Major, Occu. Agri.,
R/o. Vinchur, Taluka and District Dhule .. Petitioners
Versus

1. The State of Maharashtra
Through Collector, Dhule
2. The National Highway Authority of India
B-23,Near Kamgar Chowk, N-4, CIDCO,
Aurangabad
3. The Competent Authority
(Land Acquisition) N.H.211 &
Deputy Collector, Land Acquisition No.1,
Dhule

4. The District Superintending Agriculture Officer, Dhule .. Respondents

...

WITH

WRIT PETITION NO. 10945 OF 2021

National Highways Authority of India
Project Implementation Unit,
Nashik, Through its Project Director
Ravindra Suhasrao Ingole, Age 40 years,
"Mansaram Nagar", Circuit House,
Sakri Road, Dhule - 424 002 .. Petitioners

Versus

1. The Competent Authority Land Acquisition
NH-211 And Deputy Collector Land Acquisition
No.1, Dhule
2. Anant s/o. Shankarrao Korke, Age Major,
Occu. Agriculturist, R/o. Salwade,
Taluka and District Dhule .. Respondents

...

WITH

WRIT PETITION NO. 11181 OF 2021

National Highways Authority of India
Project Implementation Unit,
Nashik, Through its Project Director
Ravindra Suhasrao Ingole, Age 40 years,
"Mansaram Nagar", Circuit House,
Sakri Road, Dhule - 424 002 .. Petitioners

Versus

1. The Competent Authority Land Acquisition
NH-211 And Deputy Collector Land Acquisition
No.1, Dhule
2. Babulal Poulad Vanjari,
3. Bansi Paulad Vanjari,
4. Anil Paulad Vanjari,
R.No.2 to 4 Age Major, Occu.Agr.,
R/o. Tarvade, Taluka and District Dhule .. Respondents

Mr. Ajeet B. Kale, Advocate along with Ms. Sakshi Kali, Advocate for Petitioners in Writ Petitions No.7336, 7338, 7339, 8883 and 8931 of 2018;

Mr. Deepak S. Manorkar, Advocate for Petitioner in Writ Petitions No.10945 and 11181 of 2021;

Mr. D. R. Korade, A.G.P. for Respondents/State;

Mr. A. G. Talhar, Advocate, Mr. Suresh W. Mundhe, Advocate and Mr. D. S. Manorkar, Advocate for Respondent/National Highways Authority

**CORAM : S. G. MEHARE &
SHAILESH P. BRAHME, JJ.**

RESERVED ON : 11.02.2025

PRONOUNCED ON : 06.03.2025

JUDGMENT (PER: S. G. MEHARE, J.)

1. Rule. Rule made returnable forthwith. Heard finally with consent of respective learned counsel for the parties.

2. The writ petitions are based upon identical facts and evidence, hence, taken up together for common decision.

3. Writ Petition No.10945 and 11181 of 2020 filed by petitioner – National Highways Authority of India (NHAI) has impugned corrigendum dated 21.03.2017 which is claimed to be supplementary award / corrigendum dated 22.05.2017.

4. By these writ petitions under Article 226 of the Constitution of India, the petitioners are seeking directions against respondents to include the plants in the Award No.3 of 2013 passed by respondent No.2.

5. The case of petitioners, in brief, is that their lands were acquired for National Highway No.211. Accordingly, Award was declared in 2017. Respondent No.2 noticed that there was a difference in number of plants standing in the fields of the farmers in the joint measurement prepared by respondent No.3. Therefore, respondent No.2 directed respondent No.3 by letter dated 11.01.2016 not to value the plants on the basis of joint measurement prepared by respondent No.3. The office of respondent No.3 drew a fresh panchnama in the presence of representatives of Revenue Office, Land Acquisition Office and farmers of the fields. Respondent No.3 forwarded a fresh panchnama in respect of plants of respondent No.2 on 10.08.2016. Respondent No.3 did not determine the value of plants as per the panchnama dated 10.08.2016. Despite the valuation report submitted by respondent No.3, those plants were not considered and included in the award. The petitioners are entitled to compensation for those plants.

6. Respondent No.2, by way of affidavit-in-reply, opposed the contentions of the petitioners. The Central Government has issued notification under Section 3A of the National Highways Act, 1956 (for short, "NH Act") and appointed respondent No.3 as Competent Authority, Land Acquisition. The Central Government has expressed its intention to acquire the lands in the villages mentioned in the notification. The joint measurement was carried

out pursuant to the gazette notification under Section 3(A). In the joint measurement report, no plants were mentioned in the disputed fields owned by the petitioners. Then the compensation proceeding was initiated under Section 3(G) of the N.H.Act. The petitioners have raised objection before the competent authority on 30.07-2014. However, it does not refer to non-inclusion of Pomegranate plants in the fields under acquisition or in the award. During the initial joint measurement and spot panchnama, there were no plants as such in the land of the petitioners. Therefore, the award was declared. Once the award is declared, respondent No.3 competent authority becomes *functus officio*. The notice of joint measurement on the basis of which the plants were included in for valuation, nor it received any corrected award including or adding it for determination of amount for the entire properties under acquisition. In a nut-shell, the contesting respondent has a case that when the initial joint measurement was carried out no plants as claimed by the petitioners were planted. Valuation done by respondent No.3 was subsequent to the award passed. Therefore, the petitioners do not deserve for compensation as prayed for.

7. The petitioners have also filed rejoinder to the affidavit-in-reply of respondent No.2. By way of re-joinder, the petitioners have explained that Pomegranate plants were reflected in measurement report dated 28.08.2013 (R-1). Again the spot visit

was made on 11.12.2015 and plants were found at that time. Another inquiry was made on 11.07.2017, that time also plants were found standing in the field.

8. Mr. A. B. Kale, the learned counsel for the petitioners has vehemently argued that Pomegranate plants were standing in the field when the joint measurement was done in the presence of concerned authorities. Respondent No.3 had addressed a letter to respondent No.4 for submitting valuation report of the fruit plants. Accordingly, a report was submitted on 12.05.2017. It is evident from this report that fruit bearing plants were standing. He has reiterated his arguments as per his pleadings. The first joint measurement was done on 28.03.2013, second was done on 11.12.2015 and third was done on 11.12.2017. All these measurements were carried out at the instance of respondent No.3. The facts are within the knowledge of respondent concerned that the fruit bearing plants were planted in the field and were noticed at the time of joint measurement. Hence, the competent authority cannot deny the compensation and in such a situation, they should have pass the supplementary or additional award. He relied on the certain case laws, those would be considered in due course.

9. The learned counsel for contesting respondent would submit that no plants were found at the time of first joint measurement.

The reply of the Competent Authority, Land Acquisition disclosed that since there were no fruit bearing plants, the award was correctly passed. The entry of plants was added in the joint measurement report subsequently. The competent authority had called the authenticated joint measurement report vide letter dated 10.06.2009 and in that report the fruit bearing plants were not mentioned as claimed by the petitioners, since there were no fruit bearing plants in the field when the last joint measurement was done. There is a great possibility of creating the evidence by planting the fruit bearing plants only with an ill-motive to get more compensation. If the petitioners were not satisfied with the award, they should have approached the Arbitrator under Section 3-G(7) of the N.H.Act. Same parameters for the determination of the price apply to the competent authority and arbitrator.

10. Mr. Talhar, learned counsel for the competent authority adopted the arguments of the contesting respondent No.2. He referred to paragraph No.16 and 19 of the case of ***Sau. Sangeeta Natwarlal Karwa and another vs. State of Maharashtra and others, Writ Petition No.5327 of 2022, dated 28.02.2023 (Bombay High Court)***, in which it has been held that Section 3(A) of the NH Act does not permit the Competent Authority to make any correction or for that matter to pass any order in the nature of correction of an award or an amended award. Once the award is passed by the Competent

Authority, the Competent Authority loses any authority to tinker with it in any manner whatsoever. Referring to the case of ***Bhupendarsingh vs. Competent Authority and Others, AIR Bombay R 645***, it has been argued that the supplementary award is thus without jurisdiction of the Competent Authority. Section 33 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, “Act of 2013”) does not apply to the acquisition proceeding under the N.H.Act.

11. In reply, the learned counsel for the petitioners would submit that if the issue raised before the Court can be decided by the Arbitrator, liberty may be granted to the petitioners to approach the Arbitrator. However, the experience is that the Arbitrator does not decide the dispute like in this case. Therefore, this Court is the only Competent Authority to resolve the matter.

12. Where the Central Government is satisfied that the land is required for the public purpose, it is to be acquired with such intention. To acquire the land, it may by notification in the Official Gazette, declare its intention to acquire such land, as per Section 3-A(1) of the NH Act. Section 3B of the NH Act empowers the Central Government or any persons authorized by the Central Government to make inspection, survey, measurement, valuation or enquiry, etc. Section 3-C of the NH Act provides for hearing the

objections. The party interested in the land has a right to object to the use of his land for the purpose or purposes mentioned in Sub-section (1) of Section 3-A. Such objection is made to the competent authority in writing and setting out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and the competent authority should pass an order either allowing or disallowing the objections and after making such further inquiry, if any. Thereafter, the Central Government, on receiving report from the competent authority, shall declare by notification in the official gazette that the land should be acquired for the purpose or for the purposes mentioned in Section 3-A. On the publication of declaration of acquisition under sub-section (1) of Section 3-D, the land shall vest absolutely in the Central Government free from all encumbrances.

13. In the case at hand, case revolves around the dispute about the existence 950 pomegranate plants seen planted in the fields of the petitioners. First award was passed on 08.08.2016. The said award includes the nature of objection raised by the respective land owners. It shows that the petitioners were represented by Adv. Sanjay Shimpi. It does not reflect that the objection was raised that fruit bearing plants as mentioned above were found during the measurement. The objection was raised that the non-agricultural potentiality of the land should be considered and rate

as per non-agricultural land be granted and owners should be given the employment in the Government department and as per the new Act, 2013, four times compensation be granted to them. This objection was taken on 30.07.2014.

14. It seems that the petitioners did not dispute the first measurement of year 2013. However, petitions are silent about the dates of the measurement. It is just an application-cum-representation presuming that everybody knows the facts of the case and there is no dispute at all. The record also reveals that a supplementary award was passed in 2017. The record further reveals that first award was passed on 08.08.2016 and supplementary award was passed in 2017. The joint measurement of 2013 shows no fruit bearing plants existing in the field of the petitioners. The objection of existence of fruit bearing plants seems to have been raised after the first award was passed. However, it seems from the record that 950 pomegranate plants were seen added in the joint measurement (R-3). To rebut this entry, contesting respondent No.2 filed on record the certified copy showing that at the initial measurement there were no such plants found existing in the field of the petitioners. We find substance in the submission of the contesting respondent that the evidence of plants in the field of the petitioners was possibly created subsequently and in any case it came across that such plants are planted subsequent to the measurement. We could

understand if the petitioners raised objection first time when they raised objection before competent authority through their counsel, their silence corroborates contention of the respondents that there were no pomegranate plants in the field when the first joint measurement was done. Therefore, the activities of the competent authority calling report from respondent No.4 are apparently after the award was passed and raises suspicion. Normally, once the measurement is done, unless there are serious deficiencies another joint measurement is avoided. The purpose of the joint measurement before the notification is to identify the exact position of the land proposed to be acquired. The measurement after measurement should not be a routine practice. The law has taken care if any mistake has happened and something is not mentioned in the first joint measurement, the persons interested have right to register the objection immediately and those objections are heard and to be decided by the competent authority. This precaution, the law has taken, only with a view to avoid mischief to be played with the Government and extracting unnecessarily heavy amount for the acquisition of the land. At the cost of repetition, we again observe that the petitioners through counsel had raised objection but did not whisper a single word about the plants. It is said that the silence speaks a lot. Therefore, the case laws relied upon by the petitioners would not assist them.

15. The next legal question that has been raised is, can a supplementary award be passed. A serious objection has been raised that once an award is passed, competent authority has no authority to pass additional or supplementary award. To bolster his argument, the learned counsel for the contesting respondent has rightly relied upon the case of **Bhupendrasingh** (supra).

16. The Bombay High Court at Principal Seat has referred to above judgment in the case of **Sau. Sangeeta** (supra). It has been observed in paragraph No.16 that Section 3(G)(5) of the National Highways Act clearly indicates that the complete mechanism is provided under Section 3(G) of the NH Act including the remedy for redressal of the grievance arising out of an award and the amount determined by the Competent Authority under Section 3(G)(1) and (2) by filing an application before the learned Arbitrator to be appointed by the Central Government. It has been further observed in paragraph No.17 that this Court, in case of **Bhupendrasingh** (supra) held that the provisions of Section 33 of the Act of 2013 are not available to the Competent Authority constituted under Section 3(A) of the N.H.Act in the process of acquisition of the land under the N.H.Act and thus it is impermissible for the Competent Authority to make any correction or to pass any order in the nature of correction of an award or an amended award. Once the award has been passed by the Competent Authority, the Competent Authority loses any authority

to tinker with it in any manner whatsoever. Further, it has been observed in paragraph No.18 that in the absence of any provisions, it cannot be held that the Competent Authority under N.H.Act would have any power or authority either to correct the award for any reason whatsoever or for that matter, to pass an additional award or to review the same. The supplementary award is thus totally without jurisdiction and deserves to be quashed and set aside.

17. To counter above arguments, the learned counsel for the petitioners relied on the case of ***Hemant Brijraj Lalwani vs. The Government of India, Writ Petition No.15562 of 2019***, in which the Co-ordinate Bench held/observed that when admittedly, as mentioned in the award, the compensation for a particular Gat Number was not determined, the Competent Authority can be directed to pass a suitable supplementary award to that extent which will not run afoul to the decision in the matter of ***Bhupendersingh*** (supra). The facts of that case and the facts of the case at hand are altogether different.

18. The petitioners, in the first award at no point of time, raised objection that the pomegranate plants were not recorded in the joint measurement. Hence, we find substance in the submission of contesting respondent that the supplementary award including fruit bearing plants by the Competent Authority is without jurisdiction.

19. The learned counsel for the petitioners has raised another question that since the petitioners have no other remedy, such matters can only be determined under the writ jurisdiction. He would submit that jurisdiction of the Arbitrator under Section 3-G(5) of the N.H.Act is very limited. The Arbitrator cannot travel beyond calculation, mistake or incorrect determination of the amount.

20. To bolster his arguments, he relied on the case of ***Rajiv Memorial Academy Welfare Society vs. Union of India and others, WRIT - C No.8247 of 2018, dated 05.03.2018***, in which the petitioner had sought to quash the award of the Arbitrator passed under Section 3-G(5) of the N.H.Act, for the reason that the Arbitrator had remanded the matter to the Competent Authority for a fresh determination. Picking observations from the case that the Arbitrator has to determine the amount and would not be justified in remitting the matter to the Competent Authority, the learned counsel for the petitioners interpreted the said section that the Arbitrator has no power other than determination of the valuation. He also relied on the case of ***Bhartiya Rashtriya Rajmarg Pradhikaran vs. Rajesh Kaushik and others, Appeal under Section 37 of the Arbitration and Conciliation Act 1996 No. 36 of 2020, dated 12.01.2021***, wherein again the matter was remitted to the Competent Authority. Hence, it was held that remitting the matter

is without jurisdiction. In that context, the view of **Rajiv Memorial Academy Welfare Society** (supra) was reiterated. The issue in both the matters was the power of Arbitrator to remit the matter. In case of **Bhartiya Rashtriya Rajmarg Pradhikaran** (supra) paragraph Nos.11 and 12 were referred to, which read thus;

“11. Irrespective of the fate of the arbitration proceedings, the order of the competent authority would not merge in the award rather it would continue to exist, though its enforceability (as to quantum of compensation payable), may, in given facts be eclipsed by the arbitral award. It is so because, the terms of reference arise from the plain language of section 3-G (5) of the Highways Act. That provision of law and command the arbitrator to himself determine the just amount of compensation.

*12. Thus, in no event, the arbitrator may set aside the order passed by the competent authority and he may never remit the matter to the original / competent authority to pass a fresh order. Typically, that power is a power of Court or Tribunal sitting in appeal or revision that too, if specifically granted by statute, and not implied. ...
... ..”*

21. Both cases were revolving around the issue to remit the matter to the Competent Authority. Hence, we are of the opinion that the case law would also not help the petitioners.

22. Section 3G-(5) and (6) of the N.H. Act reads thus;

“3-G (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.”

23. If the dispute arise on the determination of the amount by competent authority, either of the parties have the rights to file an application before the Arbitrator. On the basis of material placed before the Arbitrator, he has to determine the just compensation. Reading Sub-sections (5) and (6) of Section 3-G of the N.H.Act, we do not find any limit to the Arbitrator only to determine the compensation based on the documents / material placed by the competent authority. Hence, we do not agreeable to Mr. A. B. Kale, learned counsel for the petitioners that since the jurisdiction of the Arbitrator is restricted / limited to determination of the amount, the writ jurisdiction is the only remedy.

24. After hearing the arguments of the respective counsel and on going through the record we find that many disputed questions on facts have been raised. For that purpose, both parties have to lead evidence to establish the facts. The provisions of Arbitration Act 1996 are applicable to such application filed under sub-section (5) of Section 3-G of the N.H.Act is a complete code to determine the dispute. Hence, we do not find substance in the arguments of Mr. A. B. Kale, learned counsel for the petitioners.

25. For the above reasons, we dismiss the Writ Petitions No.7336, 7338, 7339, 8931 and 8883 of 2018 without affecting the right of the petitioners as is available under the law. Rule stands discharged.

26. Writ Petition No.10945 and 11181 of 2021 stand allowed by declaring that the competent authority has no power to pass impugned corrigendum dated 21.03.2017 and supplementary award 22.05.2017; hence, the same stand quashed and set aside.

27. Rule made absolute in Writ Petition No.10945 and 11181 of 2021.

28. No order as to the costs.

[SHAILESH P. BRAHME]
JUDGE

[S. G. MEHARE]
JUDGE

rrd