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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10197 OF 2022

Nitin Kisan Khilare & Ors

...Petitioners

Versus

State of Maharashtra thr its
Officers & Ors

...Respondents

Mr Ganesh S Patil, *for the Petitioners.*

Mr A R Deolekar, AGP, *for the Respondent-State.*

CORAM M.S. Sonak &
 Jitendra Jain, JJ.
DATED: 17 January 2025

PC:-

1. Heard learned Counsel for the parties.
2. The Petitioners seek the following reliefs in this Petition :-

“a) Rule be issued and the records and proceeding be may be called for from the respondents;

b) This Hon'ble Court be pleased to issue writ of certiorari and or appropriate writ and/or direction and/or order and thereby directing the Learned Competent Authority Land Acquisition and Sub Divisional Officer, Malshiras Division, Akluj, Solapur (Respondent No.02) to consider the representations made by the petitioners vide their letter dated 01.03.2021,

c) Be pleased to direct the Learned Competent Authority Land Acquisition and Sub Divisional Officer,

Malshiras Division, Akluj, Solapur (Respondent No.02) to set aside/recall the award for compensation dated 20.07.2020 having reference S.R.No.20/2018 for fresh consideration or be pleased to direct the Respondent No.02 to amend/modify the said award dated 20.07.2020 having reference S.R.No.2018 and give enhanced compensations as per market rate in order to enable the petitioners to purchase of residential flat with modern amenities; and/or

d) This Hon'ble Court be pleased to issue writ of certiorari and or writ of mandamus or any appropriate writ and/or direction and/or order and thereby direct the Learned Competent Authority Land Acquisition and Sub Divisional Officer, Malshiras Division, Akluj, Solapur(Respondent No.02), and Learned DGM (TECH) & PROJECT DIRECTOR National Highway Authority of India, PIU, Solapur DGM Project(Respondent No. 8)and other Respondents to resettle the petitioners by giving alternate accommodation with modern amenities in residential complex constructed under any government scheme in the vicinity of Malshiras, Solapur;

e) Pending hearing and final disposal of this writ petition the Respondents may be ordered and directed not to construct road on the property of the Petitioners as per the letter dated 08.06.2021 issued by the Respondent No.08;

f) Ad-interim and interim orders in terms of Prayer "e" above may be granted;

g) Cost of the Petition may be provided for;

h) Any other and further orders as this Hon'ble Court may deem fit, proper and necessary in the fact of circumstances be passed in favour of the Petitioners;"

3. Though the first relief is for a direction to the competent authority to dispose of Petitioners' representation dated 1 March 2021, this relief can by no means be said to be the principal relief in the Petition. The Petitioners in fact, seek setting aside/recall of the award for compensation dated 20

July 2020 and for a fresh consideration of the matter by the arbitrator and the payment of enhanced compensation. There is also relief of resettlement and alternate accommodation with modern amenities in a residential complex constructed under a government scheme near Malshiras, Solapur.

4. According to the learned counsel for the petitioners, the arbitrator made the award dated 20 July 2020 under the provisions of Section 3G(5) of the National Highways Act, 1956. The Petitioners were parties to this award. There is no explanation why Petitioners did not challenge this award by adopting the prescribed remedies under the National Highways Act, 1956.

5. Section 3G of the National Highways Act reads as follows:-

“[3G. Determination of amount payable as compensation.—

(1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent, of the amount determined under sub-section (1), for that land.

(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority,

at a time and place and to state the nature of their respective interest in such land.

(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.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration—

(a) the market value of the land on the date of publication of the notification under section 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.]”

6. Section 3G(5) provides that if the amount determined by the competent authority under sub-Sections (1) and (2) is not acceptable to the parties, the amount shall, on an application by the parties, be determined by the arbitrator to be appointed by the Central Government. In this case, since the amount was not acceptable, upon the parties' application, the Central Government appointed an arbitrator, and the

arbitrator made the award on 20 July 2020 and determined the amount of compensation.

7. Section 3G(6) provides that, subject to the provisions of the National Highways Act, 1956, the provisions of the Arbitration and Conciliation Act, 1996, shall apply to every arbitration under that Act.

8. This means that the Petitioner, if aggrieved by the arbitrator's award dated 20 July 2020, should have taken appropriate proceedings under the Arbitration and Conciliation Act, 1996, to challenge such an award. The learned AGP states that the Petitioners' correct remedy would have been to file an application under Section 34 of the Act.

9. Given the provisions of Sections 3G (5) and 3G(6), we fear we cannot grant the reliefs that the Petitioners seek in this Writ Petition. Similarly, any direction to the competent authority to consider the Petitioners' representation will also not be proper because even the competent authority cannot interfere with the arbitrator's award and grant the Petitioners any enhanced compensation. The Petitioners were required to challenge the arbitrator's award by taking recourse to the Arbitration and Conciliation Act of 1996 provisions. This the petitioners have not done.

10. Now that an award has already been made to determine the compensation, we fail to understand why the Petitioners seek additional relief from resettlement with modern amenities. Even the basis for such a claim was not elaborated upon. In any event, the Respondents have filed an affidavit

stating that the persons named in the award have already accepted the compensation amount.

11. For all the above reasons, we decline to entertain this Petition. However, if the Petitioners have any other legal remedy available, we leave it open to them to avail of the same.

12. With the above liberty, we dispose of this Petition. There shall be no order for costs. All concerned to act on an authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)