

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13201 OF 2024

Sunil Gokarna Dubey & Ors

...Petitioners

Versus

State of Maharashtra & Ors.

...Respondents

Mr Bhushan Walimbe a/w Mr Mayank Tripathi, for the
Petitioner.

Mr. A.I.Patel, Addl. GP a/w Ms M S Bane, AGP for the State.

Mr G T Kanchanpurkar, for the Respondent No.5.

CORAM M.S. Sonak &
Jitendra Jain, JJ.

DATED: 17 April 2025

ORAL JUDGMENT (Per M.S.Sonak, J.):-

1. Heard learned counsel for the parties.
2. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.
3. The petitioner claims an interest in the property, which is subject to acquisition under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the said Act).
4. There was a dispute between the Petitioner and Respondents 5 to 7 regarding the compensation. The

Competent Authority, vide an award dated 24 February 2022, took cognisance of this dispute and directed the deposit of the determined compensation amount of Rs. 1,59,48,076/- with the Land Acquisition and Rehabilitation and Resettlement Authority (the Authority) as prescribed under Section 76 of the said Act.

5. Quite surprisingly, at a later stage, the competent authority made a kind of "consent award" dated 24 July 2024, only with Respondents 5 to 7 behind the petitioner's back, purporting to determine compensation of Rs . 14,62,606/—for the trees on the subject property. The competent authority even disbursed this amount to Respondents 5 to 7.

6. Petitioners aggrieved by the Competent Authority's action of making a "consent award" only with Respondents 5 to 7 and disbursing Rs . 14,62,606/—to the said Respondents have instituted this petition.

7. Mr. Walimbe, learned counsel for the petitioner, submits that once cognisance was taken out of apportionment dispute in respect of the acquired land and the amount of Rs.1,59,48,076/- was directed to be deposited with the Authority, no different stance could have been taken in respect of the compensation for the trees on the said property. He submitted that even the compensation for the trees should have been ordered to be deposited, and thereafter, it was for the Authority to decide on the issue of entitlement and apportionment.

8. Mr. Patel, the learned AGP, submitted that the petitioners had claimed interest only in property bearing survey

No.124/1c and had also written to the Authority that his land was grassland; there was no reference to the trees. He submitted that no compensation has been paid for the trees under Survey No.124/1C, and therefore, there is no infirmity in the action of the Competent Authority.

9. Mr. Kanchanpurkar, learned counsel for the Respondent 5 submitted that the real confusion in this case is caused by one learned Tahsildar by order dated 29 April 2024. He submitted that by this order, the properties which do not even belong to the petitioners are shown to belong to the petitioners. He submitted that there are no trees on the property in which the petitioners claim interest, and therefore, there was nothing wrong with the compensation amount being paid to Respondent 5 to 7.

10. Without prejudice, Mr Kanchanpurkar submitted that Respondent Nos . 5 to 7 could be directed to give an undertaking that they would return this amount if the Authority decides that this compensation amount is liable to be paid to the Respondents.

11. Though not bound, we permitted Respondent 5 and his son to address us at their request. They submitted that the Tehsildar had wrongly shown some of their properties in the petitioner's name. They submitted that they were the owners of the acquired property, and no reference was necessary. They submitted that the compensation for the trees was correctly paid to them.

12. The rival contentions now fall to our determination.

13. At the outset, we note that if there was confusion about

survey numbers, then it was not for the Competent Authority to adjudicate upon this kind of issue and decide that the compensation in respect of the trees was payable to Respondent 5 to 7 to the exclusion of the petitioners and then proceed to disburse this compensation amount hurriedly. All this was done behind the back of the petitioners by making a “consent award” with Respondents 5 to 7.

14. If the petitioners and the Respondents 5 to 7 had claimed the compensation amount for the acquired property, including the trees therein, the competent authority was not justified in obtaining the consent of only respondents 5 to 7 and disbursing the compensation for the trees to them. Regarding the compensation for the land, the competent authority accepted that there was a dispute and directed the deposit of the compensation amount with the Authority. The same yardstick should have been applied regarding the compensation for the trees.

15. If there was confusion, it was even more necessary for the Competent Authority to have deposited the entire compensation amount, including the compensation in respect of the trees with the Authority so that the Authority, could have adjudicated and determined such disputes. The legislature has thought it appropriate to constitute an Authority precisely for resolving such confusion and determining the dispute of apportionment. Such jurisdiction has not been vested in the Competent Authority and the Competent Authority was not justified in usurping such jurisdiction.

16. The Competent Authority in this case, followed the law when it came to the compensation in respect of the land and quite correctly deposited the amount of Rs.1,59,48,076/- with the Authority and referred the parties to the Authority for resolution of their apportionment disputes. The same course of action should have been followed regarding the trees on the acquired property. There cannot be one law regarding the apportionment dispute for the land and another for the apportionment dispute regarding the trees on the very same land.

17. Mr. Mali, the Competent Authority, has tried to explain in paragraph 22 of the affidavit that the acquisition was for the prestigious National High Speed Rail Project. He has stated that Respondents 5 to 7, who were in physical possession of the property, were not allowing the Authority to fell the trees. Therefore, he thought it appropriate to pay the compensation amount to these Respondents and take their possession.

18. The above explanation cannot be accepted. No parties have the right to physically resist the government officials, and government officials have no business yielding to such physical resistance and parting with the amount of Rs . 14,62,606/- only so that possession could be easily taken over and trees could be felled. Ultimately, the government officials are bound by the rule of law. If the law requires them to deposit the disputed amounts before the Authority, then this law could not have been deviated from merely because Respondents 5 to 7 resisted handing over the possession.

19. Accordingly, we set aside the Competent Authority's order apportioning the compensation of Rs. 14,62,606/—in favour of Respondents 5 to 7. We also declare that the Competent Authority's action of hurriedly disbursing this amount to Respondents 5 to 7 behind the petitioner's back was ultra vires the provisions of the 2013 Act and even otherwise illegal and void.

20. The Respondents 5 to 7 have already given an undertaking to the Competent Authority that they would bring back this amount. It is now established that this amount was wrongly paid to the Respondents 5 to 7 by Competent Authority. Therefore, the Respondents 5 to 7 are directed to bring back this amount and deposit it in this Court by 30 May 2025.

21. If the amount is deposited by 30 May 2025, it shall carry no interest. However, if the amount is deposited beyond this date, then interest will have to be paid at the rate of 8% Per Annum. This shall be without prejudice to any action that Respondents 5 to 7 may have to face for not obeying the Court's direction.

22. The Competent Authority is directed to formally make reference in respect of the apportionment dispute between the parties regarding not only the land but also the trees. The Authority is directed to dispose of such dispute in accordance with law as expeditiously as possible and preferably within one year from the receipt of the reference.

23. The Registry of this Court is directed to forward the amount deposited by Respondents 5 to 7 to the Authority

within a month of its receipt. The petitioner is directed to furnish details to the Registry so that the amount is transferred directly to the Authority's account.

24. The Authority must invest Rs . 1,59,48,076/—and Rs . 14,62,606/—in the nationalised bank so that the party entitled to the compensation receives it along with interest.

25. All parties' contentions on merits, entitlement and apportionment are kept open. Nothing in this order decides such a dispute one way or the other. None of the observations in this order should influence the Authority in determining the apportionment dispute.

26. The Rule is made absolute in the above terms without any cost order. All concerned are to act upon the authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)