



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

(5)WRIT PETITION NO.6755 OF 2023

Rahul Ramchandra Rathi ...Petitioner

Versus

The Competent Authority & Ors. ...Respondents

Mr Aurup Dasgupta a/w Sonam Ghiya a/w Prapti Bhadra i/by
Auroma Law, for the Petitioner.

Mr Rakesh Singh a/w Ms Heena Shaikh i/by M U Kini and
Co., for the Respondent/ NHAI.

Mr R S Pawar, AGP for the state.

CORAM M.S. Sonak &
Jitendra Jain, JJ.
DATED: 8 APRIL 2025

PC:-

1. Heard learned counsel for the parties.
2. Rule. The rule is made returnable immediately at the request and with the consent of learned counsel for the parties.
3. The petitioner's main contention is that at the time of acquisition in 2018, the petitioner's land measuring 550 sq.mtr was physically acquired, but the petitioner was paid compensation only for 50 sq.mtr.
4. Normally, such matters involve disputed questions of fact, and therefore, we are reluctant to entertain such petitions. However, in this case, we find that there is

unimpeachable material to sustain the petitioner's contentions. Besides, we must note at the very outset that Ms. Swati Thavil the Deputy Collector (Acquisition) and Mr. Yashwant Patil, Competent authorised representative of NHAI have filed affidavits in which they have fairly presented the entire situation before us. We must record our appreciation at the affidavit filed by these two officers making complete disclosures and rendering full assistance of this Court to decide the matter following law.

5. These affidavits, in terms, accept the petitioner's case about additional land of 500 sq.mtr. being taken over without payment of any compensation. NHAI affidavit (paragraph 12) states that the NHAI will undertake a fresh acquisition process in terms of National Highway Act, 1956, and compensation for this additional area of 500 sq.mtr would be paid to the petitioner.

6. The petitioner's only grievance is that the petitioner's property was taken over in 2012. After that, the petitioner pursued the matter with the State Government and NHAI Authority. Both the authorities, while seeing the apparent merit in the petitioner's grievance, wrote letters to each other on the subject. But except for such inter se correspondence, nothing has been done to date towards the acquisition of this additional portion and payment of compensation to the petitioner for this additional portion. We see considerable merit in the contention of Mr. Dasgupta, learned counsel for the petitioner, to this effect.

7. Although, there is no dispute of facts, we refer to the

communication dated 27 August 2020 addressed by the Executive Engineer of the National Highway Division to the Chief Engineer, Ministry of Road Transport and Highway, Konkan Bhavan, about payment of compensation for acquiring lands. Paragraphs 4(d) and 5(b) of this communication are relevant and are transcribed below for the convenience of reference.

'4(d). There are some additional claims arised from land owners where lands have been said to be taken into use under the work and the same have not been awarded and paid yet for which CALA has directed to submit the proposal for private negotiation and direct purchase. These proposal referred to this office by CALA as under;

5(b).It is requested to issue guidelines regarding the further balance award payment of Rs.15.68 crore to be made to land owners as and when the demand arises and also to the above 2 no. of land owners whose lands have been taken for use but not awarded and paid the compensation.'

8. Despite the above communication dated 27 August 2022, no steps were taken to initiate acquisition of the additional area of 500 sq.mtr. and payment of compensation. The above communication admits having taken over possession of an additional area of 500 sq.mtr. and the need to acquire this additional portion by payment of compensation to the petitioner.

9. Ms. Swati Thavil, Deputy Commissioner (Acquisition) has filed the detailed affidavit in this matter. Paragraph 3(e), 3(k), 3(p) of this affidavit are important and are transcribed below for the convenience of reference.

'E) However, inadvertently the said area of 500 sq. meters (i.e. 0.05 R) was written in the Joint Measurement Sheet was 0.005 R i.e. 50 sq. mtrs. Therefore, there was a material discrepancy in the Joint Measurement Sheet thereby showing the concerned

area less by 450 sq. meters.

K) The said measurement revealed that the portion of Survey No. 27/11 of Village Chehedi occupied for National Highway No. 50 admeasured 0.05.50 R i.e. 550 sq. meters.

P) Initially, the office of Respondent No.3 by letter dated 12.03.2021 informed that they are agreeable for acquisition of an area of 450 sq. meters from the Survey No.27/11. Copy of the letter dated 12.03.2021 is annexed hereto and marked as Exhibit R-6. By the said letter, Respondent No.3 informed Respondent No.1 that they would acquire the concerned portion of land by issuing further Notification under Section 3-A and not by the method of direct purchase. Office of Respondent No. 3 also directed the Respondent No.1 to take necessary steps.'

10. Similarly, we refer to Mr. Yashwant Patil's affidavit filed on behalf of Highway Authorities. Again, paragraph 12 of this affidavit is important and, therefore, transcribed below for the convenience of reference.

'12. I say that according to the revised joint measurement report and land plan dated 17/02/2017 Dy. SLR has mentioned that total 0.055 hectares of land from Gat No.27/11 is being acquired for NH60(old 50) project. The CALA Nashik had declared award under section 3G on 21/03/2012 for area of land 0.005 hectare from gat No.27/11 and compensation was also paid to owner Mr. Pote and others 4 of Rs 1,83,150/-. Now for balance area 0.05 hectares of land to be acquired from Gat no.27/11 as per revised joint measurement report of Dy. SLR Nashik. Afresh land acquisition process will be undertaken as per N.H. Act 1956 and compensation as per the provisions of N. H. ACT 1956 will be paid to the petitioner. The land is being acquired for NH60(50) project of the MORTH through CALA Nashik and Land Records department is responsible for correct measurement and reports for land acquisition as it is paid for it. But due to erroneous reporting of both the offices compensation to the land owner could not be given even though the MORTH has deposited funds with the CALA. As the process of land acquisition is to be done afresh the petitioner will get compensation as per land rate prevailing on date of 3A notification hence there is no question of payment of interest on it.'

11. Given the above material and affidavits, a writ is liable

to be issued to the respondents to take immediate steps to acquire the additional land of 500 sq.mtr of the petitioner's land and to pay suitable compensation to the petitioner in terms of the law. The NHAI, in its affidavit, has in fact, undertaken to initiate such proceeding to pay compensation as per provisions of the National Highways Act, 1956 to the petitioner. However, neither authority proposes a timeline.

12. Mr. Rakesh Singh learned counsel for the NHAI states that a minimum period of one year would be required to initiate and complete the acquisition proceedings. We think that this period is a little excessive. The respondents must realize that the possession of the petitioner's property was taken over in 2012. We have not ascertained this position, but Mr Dasgupta may be right, given the statement in paragraph 15 of the NHAI affidavit. To date, no compensation has been paid towards such an acquisition. The petitioner also claims to have purchased this property in 2018. None of the affidavits state that any compensation amount was paid to the petitioner's predecessor or petitioner.

13. Considering the above circumstances cumulatively, we think that the respondents, i.e. the NHAI authorities, must pay the petitioner the amount of Rs.25 lakhs within two months of the uploading of this order. The Petitioners cannot be made to wait indefinitely or for this length of time. The reason for making this order or computing this amount is that in 2018 itself, the compensation for 50 sq.mtr of land was determined at Rs.1,83,150/-. This means that the compensation was paid at the rate of Rs.3663 per sq.mtr. If the compensation at the

same rate were to have been paid for the additional land of 500 sq.mtr., the same would come to Rs.18,31,500/-. Even if we calculate interest at the rate of 6% per annum on this amount, the same, by now, would be in the range of Rs.25 lakhs.

14. Mr. Das states that the compensation amount determined was as of 2012 and therefore, further amount should be directed to be paid to the petitioners. This amount would be appropriate because even the petitioner purchased this property in 2018 after its possession was taken over. The Counsel for the respondents hinted that the petitioner was only a speculator out to make a windfall. This is not the occasion to decide on such issues.

15. The Honorable Supreme Court of India, in the case of *Kolkatta Municipal Corporation Vs Bimal Kumar Shah and Ors*¹ stated 7 sub-rights of constitutional fabrication constituting the right to property although such sub-rights are not exhaustive. One of the rights is the right of restitution or fair compensation and the duty of the state to conduct the process of acquisition efficiently and within prescribed timelines of the proceedings i.e. the right to an efficient and expeditious process. According to the Hon'ble Supreme Court, these rights are integral part of the constitutional right under Article 300 and deprivation or extinguishment of that right is permissible only upon restitution, be it in the form of monetary compensation, rehabilitation or other similar means. Compensation has always been an integral part of the process of acquisition.

¹ (2024) 10 SCC 533

16. Accordingly, we dispose of this petition by making the following order:

(a) The respondents are jointly and severally directed to initiate the acquisition proceeding within a month from today for the acquisition of 500 sq.mtr. of the petitioner's property of which possession was already taken over by the respondents. Such acquisition proceedings must conclude within a year from today. Appropriate compensation in terms of the law should be determined and then paid to the petitioner.

(b) If the petitioner is dissatisfied with the determination of the compensation or denial of any statutory/other benefits, it will be open to the petitioner to question such determination by following the procedure prescribed under the National Highways Act, 1956.

(c) The NHAI, i.e. respondent Nos. 2, 3, 4, and 5 are jointly and severally directed to pay the petitioner Rs.25 Lakhs within two months from the date of uploading this order. This amount should be transferred to the petitioner's bank accounts, the details of which will be furnished to respondent No.3 within a week from the date of uploading this order.

(d) The above Rs.25 Lakhs shall be on account and liable to be adjusted from the compensation amount that the authorities may determine for the aforementioned acquisition.

(e) If Rs.25 Lakhs is not paid within two months from the date of uploading of this order, without prejudice to

the respondent's liability to face contempt proceedings, it will carry interest at the rate of 7% per annum, which may have to be recovered from the officials personally in case it is found that they have any role in delaying the payment.

17. All parties' contentions regarding the entitlement and determination of compensation are explicitly kept open. The observations made by this court on the issue of compensation are only prima facie, and the same need not influence the competent authorities from determining the compensation in accordance with the law.

18. The rule is made absolute in the above terms without any cost order.

19. We record the fair approach of the learned counsel for the parties and the officials who have filed affidavits in this matter.

20. All concerned must act on an authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)