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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO.19534 OF 2019

National Highways Authority of India .. Petitioner
Versus
Maltibai Bhagwan Pawar and Ors. .. Respondents

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- Mr. Rakesh Singh i/b. M.V. Kini & Co. for the Petitioner.
 - Mr. P.N. Joshi, Advocate for Respondent Nos.1 & 2.
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CORAM : MILIND N. JADHAV, J.

DATE : NOVEMBER 17, 2020.
(Vacation Court)

P.C.:

- 1.** Heard.
- 2.** Rule. Rule made returnable forthwith by consent of parties.
- 3.** This writ petition is filed under Article 226 and 227 of the Constitution of India by the National Highways Authority of India (for short "**NHAI**") for the following reliefs:

"a) *that this Hon'ble Court may be pleased to issue a writ of certiorari or any such writ in nature of certiorari, calling for the records and proceedings pertaining to the Award in Case No. LAQ/REF/NHAI/Rahud/136/2011 dated 5.1.2017 passed by Respondent No. 4 as well as papers and proceedings in Order dated 8.10.2018 in Arbitration Application St. No. 2216 of 2018 of District Court, Nashik being Exhibits "B" and "G" hereto and after going through the legality, validity and propriety thereof, be pleased to quash and set aside the said Award dated 5.1.2017 as well as Order dated 8.10.2018;*

- b) that pending the hearing and final disposal of the present petition, the operation, implementation and effect of the Award in Case No. LAQ/REF/NHAI/Rahud/136/2011 dated 5.1.2017 passed by Respondent No. 4 as well as papers and proceedings in Order dated 8.10.2018 in Arbitration Application St. No. 2216 of 2018 of District Court, Nashik being Exhibits "B" and "G" hereto be stayed;*
- c) ad-interim reliefs in terms of prayer clause (b) above;*
- d) such other and further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case;*
- e) costs of this Writ Petition be provided to the petitioner."*

4. NHAI have challenged the legality, validity and propriety of Reference award in case No. LAQ/REF/NHAI/Rahud/136/2011 dated 5 January 2017 passed by Deputy Collector (Land Acquisition), Nashik i.e. the Competent Authority i.e. the Arbitrator in respect of acquisition of land admeasuring 3000 square meters and 1900 square meters respectively belonging to Respondent Nos.1 and 2 herein.

5. At the outset, when the petition was called out, Mr. Singh, learned counsel appearing for NHAI submitted that Petitioner NHAI was ready and willing to deposit the entire amount of award declared by the arbitrator along with all statutory interest and amount as applicable in this Hon'ble Court within a period of eight weeks subject to this Court passing ad-interim / interim order in the present petition.

When this offer was made, Mr. Joshi learned counsel appearing for contesting Respondents namely Respondent Nos.1 and 2 (owners of the acquired land) pointed out that the facts in the present case were so gross such that they would shock the conscience of this Court in so far as the conduct of NHAI is concerned. Counsel immediately placed on record order dated 7 November 2020 passed by Civil Judge, Senior Division, Nashik below Exhibit-15 in L.R.D. No.96 of 2018 i.e. application filed by Respondent Nos.1 and 2 for seeking seizure of the account of NHAI for non-payment of the compensation awarded to them in Execution proceedings. Perusal of this order reveals that NHAI were directed to deposit the compensation at a reduced rate within one month from the date of the order failing which it was directed that the bank account of NHAI will be seized. Counsel submitted that it is in view of this order, NHAI has moved the present petition today which was in fact filed in June 2019, for urgent orders. Counsel submitted that the conduct of NHAI does not entitle them to seek any relief whatsoever and has opposed the plea of passing any urgent order in the present petition today and has sought dismissal of the petition.

6. Mr. Singh fairly submitted that it was indeed because

of passing of the order dated 7 November 2020, the present petition was moved today for seeking urgent reliefs. It was submitted that though petition was filed in June 2019, it remained under office objections for a fairly long period of time and there was no justification for the same. It was submitted that though the order dated 7 November 2020 called upon NHAI to deposit the compensation / award at a lower rate @ Rs. 2200/- per square meter instead of the awarded rate of Rs. 2700/- per square meter, today NHAI wanted to deposit the entire compensation amount at the awarded rate subject to this Court passing interim / ad-interim relief in this petition and hearing the challenge to the Reference award.

7. It will be apposite to briefly state the relevant facts necessary for adjudication of the present petition:

- (i) Land admeasuring 3000 sq. meters and 1900 sq. meters out of Gat No. 140/5 of Village Rahud, Taluka Chandwad, District Nashik, owned by Maltibai Bhagwan Pawar and Ujwala Sopandas Thorat (Respondent Nos.1 and 2) was notified for acquisition for the purpose of 4 laning of National Highway No. 3 under preliminary Notification u/s. 3-A of National Highways Act, 1956 issued by the

Ministry of Roads Transport & Highways,
Government of India, extraordinary Govt. Gazette
Part-2, Chapter - III sub section (ii) under
notification no. 2165(E) dated 18.12.2007;

- (ii) Competent Authority & Special Land Acquisition Officer No. 2, Nashik has issued final notification u/ S. 3(D) of National Highways Act, 1956 in respect of said land;
- (iii) Competent Authority declared final Award under S.R. No. 23/2005 on 7 November 2009 and has awarded compensation @ Rs. 165/- per sq meter for area admeasuring 3000 sq. meters and Rs. 176/- per sq. meter for area admeasuring 1900 sq. meters out of said Gat No. 140/5 of Village Rahud, considering the land as non-agricultural;
- (iv) Aggrieved by the Award of the Competent Authority, the Applicants filed a reference under Section 3-G(5) of the National Highways Act, 1956;
- (v) On 5 January 2017, Respondent No.4 being Additional Commissioner, Nashik and Arbitrator,

NHAI, Nashik project, Nashik passed the Reference award, *inter alia*, fixing compensation of Rs.2700/- per square meter for the land under reference i.e. the acquired land belonging to Respondent Nos.1 and 2 along with all statutory payments as applicable under the National Highways Act, 1956;

- (vi) NHAI filed application under Section 34 of the Arbitration and Conciliation Act, 1996 read with Section 3-G (5) of the National Highways Act, 1956 before the District Judge, Nashik to set aside the award dated 5 January 2017. This arbitration case was filed on 22 May 2018 along with application for seeking stay of the operation and execution of the impugned award under Section 9 and application for seeking condonation of delay under Section 34(3) of the Arbitration and Conciliation Act, 1996;

- (vii) Principal District and Sessions Judge, Nashik on 8 October 2018 passed the following order :

"The Judgment in LAQ/REF/NHAI/Rahud/136/2011 was passed on 5.1.2017 and the copy of Award was received on 10.1.2017.

The applicant has filed application on 6.6.2018 which shows that the delay is for the period of 1 Year and 26 Days.

According to Arbitration and Conciliation Act 1996 Sec

34(3) 120 days delay can be exempted, but thereafter no delay shall be considered, hence the following order:

ORDER

Application stands rejected"

Thus, there was a delay of one year and 26 days in challenging the reference award under Section 34 of the Arbitration and Conciliation Act, 1996 at the outset itself;

- (viii) NHAI filed the present petition on 1 June 2019, *inter alia*, to set aside the award dated 5 January 2017 and the above order dated 8 October 2018;
- (ix) From 1 June 2019 until today i.e. a period of more than 17 months, NHAI did not move the present writ petition for any relief;
- (x) Owners of the acquired land namely Respondent Nos.1 and 2 in the interregnum pursued their quest for attempting to get compensation. Respondent Nos.1 and 2 filed execution proceedings wherein an application was filed for seizing the account of NHAI in the event of non-payment of the awarded compensation. Order dated 7 November 2020 came to be passed which

stated that if NHAI failed to deposit the compensation (at the reduced rate) within one month from the date of order, the bank of account of NHAI will be seized.

8. In the above circumstances, both parties are before the Court today. A bare reading of the dates and events narrated in paragraph 7 herein above shows the utterly callous approach of the Petitioner NHAI in conduct of Court proceedings as well as its legal obligation to pay compensation for land acquired.

9. Mr. Singh, learned counsel appearing for NHAI did not dispute the aforesaid facts and urged the Court to consider the issue on merits namely the reference award being awarded on the basis of another reference award in respect of acquisition of land bearing Gut No.726 of village Chandvad situated at a proximity of 400 meters from the acquired land in the present case. Learned counsel fairly submitted that though delay was writ large on the face of record, Petitioner NHAI had reasonably strong case in terms of the objection raised to the award.

10. *PER CONTRA*, Mr. Joshi learned counsel appearing for Respondent Nos.1 and 2 i.e. contesting Respondents (owners) submitted that the owners have not received a single farthing of compensation awarded in respect of acquisition of their land. It was vehemently submitted that land belonging to owners was notified for acquisition for the designated public purpose by notification dated 18 December 2007 which effectively meant that the rights of the owners in the land were effectively frozen. Though the land was notified in 2007 and Competent Authority, Nashik declared final award under S.R. No.23 of 2005 on 7 November 2009, reference proceedings before Respondent No.4 took eight long years to culminate. Reference award was thereafter declared on 5 January 2017 and almost four years thereafter the owners have still not received a single penny. It was submitted that there was gross delay and laches on the part of petitioner NHAI as can be seen by the Court. Therefore, in such circumstances, NHAI was not entitled to any relief whatsoever and all that the owners desired was payment of legitimate compensation in lieu of their acquired land along with all statutory benefits.

11. I have considered the submissions made across the bar by both learned counsel and perused the pleadings and

record. At the outset though the Petitioner had offered to deposit the entire amount of compensation in this Hon'ble Court subject to passing interim / ad-interim relief, in the gross facts and circumstances of the present case attributable to the Petitioner, I am not inclined to accept the offer made by the Petitioner for several reasons. Petitioner being a Government body ought to have been diligent in its approach in the Court of law. Had it not been for the order dated 7 November 2020 passed by the Executing Court, the Petitioner would not have moved the Petition at all thereby keeping the owners of the acquired land in the lurch. If the Petitioner was vigilant, it would have moved the Court in June 2019 itself and not waited till today or may be prosecuted the challenge to the award appropriately at the right time.

12. Be that as it may, acquisition of land for public purpose is undertaken under the power of eminent domain of the government against the wishes of the owners of the land which gets acquired. When such a power is exercised, it is coupled with a bounden reciprocal duty and obligation on the part of the government body to ensure that the owners whose land gets acquired are paid compensation / awarded amount as declared by the statutory award. In the present case, Competent Authority declared a final award in the year

2009 and the Reference award was declared in the year 2017. Since 2007 i.e. the date of notification of the instant land for acquisition, it has been 13 long years that the owners have been deprived of their land holding. Entire acquired land has been put to use by the NHAI for the designated public purpose. Owners of the acquired land i.e. Respondent Nos.1 and 2 are therefore entitled to the legitimate compensation. Pursuant to the order dated 8 October 2018, it was open to the Petitioner to seek restoration of the petition which came to be dismissed or approach the Principal District and Sessions Judge, Nashik by filing an appeal under Section 37 of the Arbitration and Conciliation Act, 1996. However Petitioner chose to file the present writ petition after a period of 8 months in June 2019 in this Hon'ble Court and thereafter moved the petition for urgent relief today i.e. after 17 months.

13. NHAI has sought to rely upon NHAI/ Policy Guidelines / Revised Delegation of Powers/2017 No. 18.27/2017 dated 27 September 2017 which is annexed at Exh "C" to the petition. NHAI has pleaded in paragraphs 15 and 16 of the petition as follows:-

"15. Petitioner state that as per petitioner's policy guidelines No. 18.27/2017 dated 27.09.2017, the Awards were referred to State Government of Maharashtra vide letter dated 08.12.2017 for

interpretation and suitable advice as to release of the Award amounts etc. to the land losers. Annexed hereto and marked as Exhibits C and D are the copies of Policy Guidelines dated 27.09.2017 and Petitioner's letter dated 8.12.2017 respectively.

16. Petitioner state that the Government of Maharashtra vide their letter dated 5.2.2018 has stated that "once the Award is declared by Arbitrator, the State Government has no right to interfere with the decision taken by the Arbitrator, as per provisions of N.H. Act, 1956. Therefore, NHAI should take the decision at their level in the subject matter". Annexed hereto and marked as Exhibit E is the copy of State Government letter dated 5.2.2018".

From the above, it is discernible that the State Government of Maharashtra has on 5 February 2018 informed NHAI that the State Government has no right to interfere with the decision taken by the arbitrator as per the provisions of National Highways Act 1956. Further, the guidelines referred to above categorically state that arbitral award may also be generally accepted so as to avoid accumulation of interest liability on NHAI. Guidelines further state that in case if the arbitral award deviates from established norms, Regional Officer may submit the award to the State Government for advice and dispose the matter in accordance with advice rendered by the State Government. If the guidelines are read with the action taken by NHAI of referring the award declared by arbitrator, then in that event, NHAI should have followed the advice rendered by the State Government. It can be seen that delay has resulted in accumulation of interest liability unnecessarily on NHAI under the provisions of the Act.

14. In the above circumstances, the conduct of the Petitioner is evident and there has been gross delay on the part of Petitioner at all stages. This ground itself is good enough to decline the Petitioner any relief in the petition. Hence the petition fails. However if the petition is dismissed, the owners of the acquired land namely Respondent Nos.1 and 2 who are farmers and have fought this long winded battle may have a further struggle ahead in receiving the awarded compensation and will be made to run from pillar to post once again. Even otherwise on merits the owners cannot be deprived of the compensation as similarly placed other owners whose lands have been acquired have also been awarded compensation at the same rate. This is infact the finding of the arbitrator in the Reference award which is against the Petitioner. It is settled position in law that an award of neighboring land is the best sale instance which can be used as a comparable sale instance for determining the market value of the acquired land on the relevant date.

15. We may need to remind ourselves about the width and plenitude of Article 226 of the Constitution of India. Under Clause (1) of Article 226 of the Constitution of India, every High Court within its territorial jurisdiction has a power to issue directions, orders or writs to any person or authority

including any government for the enforcement of fundamental rights and for any other purpose.

16. The order dated 7 November 2020 passed by the learned Civil Judge Senior Division, Nashik in proceedings against the Petitioner on the application of Respondent Nos.1 and 2 deserves to be quoted because the Petitioner has not disputed that the opponent i.e. Respondent Nos.1 and 2 would be entitled to compensation at the rate of Rs.2200/- square meter (lower rate) which has already been awarded to the other land holders for the same project and in the same village. The order dated 7 November 2020 is not on record. Copy of the order is taken on record and marked 'X-1' for identification. Paragraph Nos.4 and 5 of the order reads thus:

"4. I have gone through the application and say. After perusal of the record it shows that there is no stay granted by the Hon'ble High Court to the execution of the said award passed by the arbitrator. The opponent has also not mentioned in their adjournment application Exh. 23 that they have obtained stay from the Hon'ble High Court. However, it is their contention that the arbitrator has given highly excessive compensation of Rs. 2700/- per sq. mtr. to the acquired land of applicants.

5. In this case it is to be noted here that it is not disputed that the opponent has awarded Rs. 2200/- per sq. mtr. compensation to the other land holders for the same project and village. In the circumstances, at least the opponents have to deposit the above said admitted amount before this court. It is necessary to mention here that the opponents have acquired the land of applicants in the year 2007 and till today they have not paid single pais to applicants specifically when the land acquisition proceeding is beneficial proceeding for the land holders. In the circumstances, when the applicants are deprived from his land in the year 2007 itself, at least,

they have entitled to get admitted rate of compensation of Rs. 2200/- per sq. mtr. However, despite of this the opponent has not paid the said amount to the applicant nor deposited the same in this Court even after sufficient opportunities given to them. As states supra, there is no stay to execution of the award. As a result, following order -

ORDER

1. The opponents are hereby directed to deposit admitted rate of amount of Rs. 2200/- per square meter to the land of applicants within one month from the date of order.

2. If the opponents have failed to deposit the same within time then the bank account of the opponents will be seized."

It is pertinent to note that the above order records that sufficient opportunities were given to the Petitioner i.e. NHAI during the said proceedings and despite the same, Petitioner has not deposited in Court nor paid the compensation to the land owners.

17. In view of the above discussion, the following order is passed:

- (i) Petitioner NHAI shall deposit the entire amount of compensation awarded as reflected in the Reference award dated 5 January 2017 along with all statutory payments, statutory interest, additional compensation, solatium if applicable and payable, to be computed and calculated by the Petitioner from the date on which the same is payable up to the date of deposit within eight weeks from today in the Execution Court;

- (ii) Petition is dismissed and disposed of in the above terms. Rule discharged.
- (iii) Execution proceedings and order dated 7 November 2020 shall be stayed upto 12 January 2021.
- (iv) No order as to costs.

18. This order will be digitally signed by the Private Secretary of this Court. All concerned to act on production by fax or email of a digitally signed copy of this order.

[MILIND N. JADHAV, J.]