

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 6324 OF 2021

Ganesh Nivrutti Ghadge]	
]	
]	.. Petitioner.
v/s.		
1	State of Maharashtra]
	through Assistant Government]
	Pleader, High Court, Fort]
	Mumbai 400 001.]
2	Special Land Acquisition Officer]
	No.13, Pune, Collector Office]
	Compound, 2 nd Floor, 'B' Wing,]
	Pune.]
3	National Highways Authority]
	through Project Manager,]
	Ministry of Road Transport and]
	Highways, Government of India,]
	Projec Implementation Unit, Pune]
	S. No. 134/1. Baif Bhavan Campus,]
	Dr. Manibhai Desai Nagar, Warje,]
	Pune, 411 085]
		.. Respondents.

Dr. Uday Warunjikar, for the Petitioner.
Mr. S. B. Kalel, AGP for the Respondent-State.
Sand Ladda with Adnan Ansari, for Respondent No.3-NHAI.

**CORAM: S.V. GANGAPURWALA &
VINAY JOSHI, JJ.**

DATED : 11th APRIL, 2022.

P.C:-

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

2 By invoking writ jurisdiction of this court under Article

226 and 227 of the Constitution of India, petitioner is seeking for directions to pay proper compensation in terms of the provisions of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act of 2013).

3 The Petitioner's agricultural land bearing Gut No.122, 123 and 127 of Village Ale, Taluka Junnar, Dist. Pune was acquired under the provisions of the National Highways Act, 1956 (Act of 1956). The said acquisition was for the purpose of Road widening of the Pune -Nashik National Highway No.50. Preliminary notification under Section 3-A of the Act of 1956 was issued on 7th November, 2014 whilst declaration of acquisition under Section 3-D was dated 6th November, 2015. The amount of compensation was determined under Section 3-G of the Act on 3rd April,2016. The determined amount was deposited. The Petitioner's uncle had raised dispute about apportionment of the compensation amount, on which the competent authority has passed conditional order of reference to the Civil Court in terms of Section 3 H(4) of the Act of 1956.

4 The Petitioner raised grievance about determination of inadequate compensation on account of well, fruit bearing tress, pipeline, bore well etc. On that basis, authorities have passed supplementary award dated 31st May, 2018 by which amount of compensation has been enhanced to some extent.

5 It is the Petitioner's grievance that, the authorities have not considered all fruit bearing trees while computing compensation. Moreover, well and drip irrigation was not considered though award was revised. The learned Counsel appearing for Petitioner would

submit that, in view of the decision of this Court in case of *Yasminbegum and Others v/s. State of Maharashtra reported in 2019 SCC Online Bom. 4037* there is no provision to correct / revise the award. According to him, the subsequent measurement report demonstrates the existence of well, pipelines and additional trees, but it has not been considered in either of the award. He would submit that unless these items are incorporated in the award he cannot seek compensation on said ground before the competent forum provided under Section 3-G(5) of the Act of 1956.

6 In resistance to the Petition, Affidavit-in-Reply has been filed by the Deputy Collector, Special Land Acquisition Officer No.13, Dist.Pune. Procedural narration of facts has not been disputed. It is contended that adequate compensation has been awarded by applying the principles laid down under Sections 26 to 30 of the Act of 2013. The copy of original award dated 6th April, 2016 has been placed on record. The said award was preceded by joint measurement carried in terms of Section 3-B of the Act of 1956. It is contended that while passing initial award, valuation report of all the fruit bearing trees, other trees, pipeline and bore-well was not available, which was received on 27th July, 2019. In view of valuation report, supplementary Award dated 31st May, 2018 was passed of which copy is made available.

7 Respondents contended that despite grant of adequate compensation, Petitioner had filed various complaints. Re-verification was done at said instance. Taluka Agricultural Officer has endorsed the correctness of supplementary award. In short, it is Respondents'

stand that by way of supplementary award, adequate compensation has been granted calling no indulgence in writ jurisdiction.

8 The record indicates that, after initial award, on the basis of valuation report, supplementary award enhancing the amount of compensation has been passed. Though second or corrected award is not permissible, it is not at the detriment of the Petitioner. The Respondents contended that possession of acquired land has been taken on 9th August, 2016 which is not disputed by Petitioner. In the wake of such position, it needs to be noted that Taluka Agricultural Officer in his communication dated 3rd June, 2021 stated that improvements are made in the land after earlier survey dated 11th July, 2017. Likewise report of Deputy Superintendent Land Record, Junnar dated 10th June, 2021 indicates that, during last five years position has been changed. In fact, by virtue of Section 3-D(2) of the Act of 1956, after declaration under Section 3-D(1) of the Act of 1956, the land vests in to the Government. It is factual aspect whether there was subsequent improvement and plantation. Moreover, supplementary award indicates that additional compensation has been awarded on account of fruit bearing trees and pipeline. It is not possible in writ jurisdiction to examine said factual aspect about alleged additional grounds seeking enhancement.

9 The provisions to the extent of determination of compensation embodied under the Act, 2013 are made applicable to the awards passed under the Act of 1956 since 1st January, 2015. Section 28 of the Act, 2013 lays down the parameters to be considered while determining the award. It does not restrict the

considerations only to the extent of actual land acquired. Particularly clause seventhly to Section 28 of the Act of 2013, is a sort of residuary provision which encompasses all relevant factors which are beneficial to the affected families.

10 Basically, subject acquisition is under the provisions of the Act of 1956. Clause (5) to Section 3-G of the Act of 1956 provides a statutory remedy of Arbitrator to be appointed by Central Government in case of dissatisfaction. Clause seven to Section 3-G of the Act contemplates various factors to be considered by Arbitrator while adjudicating the claim. Particularly under Sub-clause (c) to Section 3-G (7) the damages affecting the earning can be considered. Moreover, the term '*land*' defined under Section 3(p) of the Act of 2013 includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth. Thus there is no gainsaying in contending that the factors which are not allegedly considered cannot be agitated before statutory authority. The law provides adequate remedy of statutory Arbitration for the redressal of grievance. We hope and trust that statutory Arbitrator will consider all factors in accordance with law. In view of the above, we are not inclined to entertain the Writ Petition. Hence, Writ Petition stands dismissed. No costs.

(VINAY JOSHI,J.)

(S.V.GANGAPURWALA,J.)