

(2024) 09 BOM CK 0039

In the Bombay High Court

Case No : Writ Petition No. 14902 Of 2023

National Highways Authority of India, Project Implementation
Unit, Dhule, Through its Project Director

APPELLANT

Vs

Champalal Najlya Pawara

RESPONDENT

Date of Decision : 06-09-2024

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34
National Highways Act, 1956 — Section 3A, 3D, 3D(2), 3E, 3F, 3G, 3G(5), 3H(1),
3H(2), 3H(5)

Citation : (2024) 09 BOM CK 0039

Hon'ble Judges : Arun R. Pedneker, J

Bench : Single Bench

**Advocate : D.S.Manorkar, K.N.Lokhande, Prafulsingh H.Patil, R.M.Patil,
S.W.Mundhe**

Final Decision : Dismissed

Judgement

Arun R. Pedneker, J

1] The question of law involved in the present Writ Petitions is noted below :

Whether the interest payable on the enhanced compensation granted by the Arbitrator under the National Highways Act, 1956 would be from the date of taking physical possession under Section 3-D (i.e. after payment of compensation under Section 3-G) or would be from the date of Notification under Section 3-D of the National Highways Act, 1956 till the date of deposit thereof?

Brief facts leading to filing the present Writ Petitions are summarized as under :

2] The land of the claimants were acquired from Shirpur Taluka, District Dhule for the purpose of widening of National Highway No.3 by the Government of India through the National Highways Authority of India vide Notification under Section 3-A bearing S.O.No. 1894 (A), dated 17.08.2012 under Section 3 -A of the National Highways Act, 1956 [for short 'the N.H.Act'].

3] In pursuance of the above Notification, the joint measurement survey was carried out. Notification under Section 3-D of the N.H.Act came to be published vide Notification S.O. No.2136 (A) dated 10.07.2013. The award was determined by the Competent Authority for Land Acquisition, Dhule [for short 'CALA'], dated 03.05.2014 under Section 3-G of the N.H.Act and the petitioners deposited the compensation as per the award passed by the CALA, Dhule. The said compensation was also disbursed by the CALA, Dhule in the month of June, 2014 and the possession of the acquired land were taken over on payment of compensation.

4] Being aggrieved by the award passed by the CALA, Dhule, the respondents filed application under Section 3-G (5) of the said Act for enhancement of the compensation granted by the CALA, Dhule before the Arbitrator and Additional Commissioner at Nashik. The Arbitrator declared an arbitral award dated 23.04.2019 thereby enhancing the market rate from Rs.355/- to Rs.1364/- [per square meter]. The petitioner filed an application under Section 34 of the Arbitration and Conciliation Act, 1996, for setting aside the arbitral award before the District Court, Dhule bearing Civil M.A.No. 287/2019 and the same was rejected by the District Court. Thereafter, the petitioner deposited the enhanced compensation with the Competent Authority for land Acquisition, Dhule.

5] The respondent filed execution proceedings bearing Arbitration R.D.No. 08/2021, seeking deposit of the amount of interest from the date of declaration of the Notification under Section 3-D till the date of actual deposit thereof. By the order dated 18.04.2022, the District Court directed the CALA to calculate the interest on enhanced compensation as per the Arbitration Award from the date of taking possession of land under Section 3-D i.e. from 10.07.2013 i.e. from the date of declaration of the Notification under Section 3-D of the said N.H. Act, till the date of actual deposit thereof.

6] The CALA, Dhule filed an application below Exh.26 (D), dated 28.04.2022, praying for recall of the order dated 18.04.2022 passed by the District Court, Dhule. The CALA, Dhule contended in the said application that enhanced compensation has to be from the date of taking possession under Section 3-D means from the date of taking actual possession at the time of disbursement of the compensation i.e. on or after 19.06.2014 and not from 10.07.2013. The said application was dismissed by order dated 21.10.2022. Thus, the petitioner in the present petition has challenged the order dated 18.04.2022 and 21.10.2022 passed by the District Court in the execution proceedings filed by the respondent-claimants.

7] Perusal of Section 3-D and 3-H (1) and (5) of the N.H.Act indicate that on the enhanced amount by the Arbitrator the interest has to be paid "from the date of taking possession under section 3-D". It is contended by the learned counsel for the petitioners that the word 'taking possession' is important and has to be emphasized. In the instant case at the time of payment of compensation or thereafter under Section 3-G possession is taken of the acquired lands and from

that date the interest becomes payable. The possession is not taken in the instant case on the date of Notification under Section 3-D. It is submitted that from the date of taking possession under Section 3-D till the date of the actual deposit thereof, means the date of taking actual / physical possession and not the date of declaration of Notification under Section 3-D. As such, the impugned orders are liable to be set aside. The learned counsel for the petitioners relies upon the judgment in the case of Gayabai Digambar Puri (Died) Thr. LR Vs. The Executive Engineer & Ors. in Diary No. 17566 of 2020, decided on 03.01.2022, wherein the Hon'ble Supreme Court held as under :

It is well-settled that the normal rule is that if on account of acquisition of land a person is deprived of possession of his property, he should be paid compensation immediately and if the same is not paid to him forthwith, he would be entitled to interest on the compensation amount from the date of taking possession of the land till the date of payment thereof as expounded in R.L.Jain (D) by Lrs. Vs. D.D.A. & Ors. reported in (2004) 4 SCC 79 (in particular paragraph 17.1).

8] The learned counsel appearing for the respondent – Competent Authority has adopted the argument of the petitioners and submitted that the Court failed to appreciate that when the Notification under Section 3-D was published, the land shall vest absolutely in the Central Government free from all encumbrances and as per the provisions of the N.H.Act, the acquired land was continuously with the Central Government but the actual physical possession is not taken and thus had to be taken under Section 3-E of the N.H.Act. Section 3-E gives power to take possession of the acquired land, which is vested in the Central Government under Section 3-D (2) and on payment of the amount determined by the competent authority under Section 3-G of the N.H.Act. The competent authority under Section 3-E of the N.H.Act may by notice in writing direct the owner as well as any other person who may be in possession of such land to surrender or deliver possession to the competent authority or any person duly authorised it in this behalf, within sixty days of the service of the notice. The argument made by the learned counsel for the competent authority is similar to the argument of the learned counsel for the petitioners.

9] Per contra, the learned counsel for the respondent-claimants submits that de facto the District Court has held in the order dated 21.10.2022 that there is no document at all on record which goes to show that the acquiring body took the possession of acquired land from the land-owner on 27.06.2014. It is also observed that the said possession receipt is photocopy and therefore it cannot be read in evidence, also it does not bear the date on which the acquiring body took the actual possession of the acquired land from the decree holder, and therefore, there is no document at all on record which goes to show that the acquiring body took the possession of the acquired land from the land owner on 27.06.2014. Therefore, argument raised by the learned counsel for petitioners does not arise for consideration at all. Next submission of the learned counsel for the respondent-claimants is that the words used in Section 3-H (5) is that the

arbitrator may award interest at nine per cent per annum on such excess amount from the date of taking possession under Section 3-D till the date of the actual deposit thereof. Section 3H (5) does not mention about taking possession under Section 3-E whereas word used in said Section are specifically 'taking possession under Section 3-D'. As such, the notification under Section 3-D is the actual date, which is relevant date for determining the enhanced amount of compensation. The learned counsel further submits that on the notification under Section 3-D, the land shall vest absolutely in the Central Government free from all encumbrances and becomes the property of the Government without any conditions or limitations either as to title or possessions and as such on the date of notification the claimants have lost title to the land. Therefore, the interest on the enhanced amount has to be paid from the date of notification under Section 3-D. The learned counsel for the respondent – claimants relies upon the judgments in the case of Union of India and another Vs. Tarsem Singh and others reported in (2019) 9 SCC 304, Fruit and Vegetable Merchants Union Vs. Delhi Improvement Trust reported in (1957) AIR (SC) 344 and in the case of Land and Building Department through Secretary & anr Vs. Attro Devi & Ors. in Civil Appeal No.2749/2023 (arising out of the S.L.P. (Civil) No.7510, decided on 11.04.2023.

10] In the above facts and circumstances, the question as noted at para no.1, arises for consideration in the instant case. For determination of the question, as raised above, at the outset it would be relevant to note here the relevant provisions of Section 3-D, 3-E, 3-F, 3-G and 3-H (2) (5) of the National Highways Act, 1956, as under :

3-D. Declaration of acquisition.—(1) Where no objection under sub-section (1) of section 3- C has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objection under sub-section (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes mentioned in sub-section (1) of section 3A.

(2) On the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, a notification has been published under sub-section (1) of section 3-A for its acquisition but no declaration under sub-section (1) has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect:

Provided that in computing the said period of one year, the period or periods during which any action or proceedings to be taken in pursuance of the notification issued under sub -section (1) of section 3-A is stayed by an order of a Court shall be excluded.

(4) A declaration made by the Central Government under sub-section (1) shall not be called in question in any Court or by any other authority.

3E. Power to take possession.—(1) Where any land has vested in the Central Government under sub-section (2) of section 3D, and the amount determined by the competent authority under section 3-G with respect to such land has been deposited under sub-section (1) of section 3-H, with the competent authority by the Central Government, the competent authority may by notice in writing direct the owner as well as any other person who may be in possession of such land to surrender or deliver possession thereof to the competent authority or any person duly authorised by it in this behalf within sixty days of the service of the notice.

(2) If any person refuses or fails to comply with any direction made under sub-section (1), the competent authority shall apply—

(a) in the case of any land situated in any area falling within the metropolitan area, to the Commissioner of Police;

(b) in case of any land situated in any area other than the area referred to in clause (a), to the Collector of a District, and such Commissioner or Collector, as the case may be, shall enforce the surrender of the land, to the competent authority or to the person duly authorised by it.

3F. Right to enter into the land where land has vested in the Central Government. — Where the land has vested in the Central Government under section 3-D, it shall be lawful for any person authorised by the Central Government in this behalf, to enter and do other act necessary upon the land for carrying out the building, maintenance, management or operation of a national highway or a part thereof, or any other work connected therewith.

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.

3H. Deposit and payment of amount.—

(2) As soon as may be after the amount has been deposited under sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

(5) Where the amount determined under section 3-G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent, per annum on such excess amount from the date of taking possession under section 3-D till the date of the actual deposit thereof.

11] From the above noted provisions, it could be seen from the word used in Section 3-H (5) 'from the date of taking possession under Section 3-D' is the relevant date, and needs to be interpreted as to whether the date of interest on the enhanced amount, would be on the date of notification under Section 3-D or the date of actual taking of possession after payment of compensation under Section 3-G. At the out set it is necessary to note that the possession of lands is not taken on the date of notification under Section 3-D and is taken subsequently as would be reflected from the notification dated 19th June, 2014, which is issued under Section 3E (1) (2), 3 (G), 3 (H) (2) of the N.H.Act. It is stated in the said notice that the claimants should hand over possession of acquired land to the National Highway Authority within a period of 60 days from the receipt of the said notice. The learned counsel for the respondent – claimants submits that notification under Section 3E of the N.H.Act is for payment of award amount and not for taking possession. The possession was not taken immediately after issuance of notification under Section 3-D of the N.H.Act and as per the notice dated 19th June, 2014 the claimants are called to hand over the possession of the property within 60 days. As such, it could be safely inferred that the possession of the acquired land was taken after the date of notification under Section 3-G i.e. on 19th June, 2014. Next question is whether the interest should be paid from 19th June, 2014 or from 10.07.2013 on the enhanced amount. It is to be noticed that in the case *Fruit and Vegetable Merchants Union Vs. Delhi Improvement Trust* reported in (1957) AIR (SC) 344, the Hon'ble Supreme Court has observed that the word "vest" is a word of variable import. It is further observed in the said judgment that Sections 16 and 17 of the Land Acquisition Act (Act I of 1894), provide that the property so acquired, upon the happening of certain events, shall "vest absolutely in the Government free from all encumbrances". In the cases contemplated by Sections 16 and 17 the property acquired becomes the property of Government without any conditions or limitations either as to title or possessions. The Supreme Court in the case of *Land and Building Department through Secretary & another (supra)* has referred to the judgment in the case of *Indore Development Authority Vs. Manoharlal and others* [reported in [2020] 8 SC 129] wherein it is held that when the State has acquired the land and award has been passed, land vests in the State Government free from all encumbrances. The act of vesting of the land in the State is with possession, any person retaining the possession, thereafter, has to be treated as trespasser and has no right to possess the land which vests in the State free from all encumbrances and it is also held that not only the possession vests in the State but all other encumbrances are also removed forthwith. The title of the landholder ceases and the state becomes the absolute owner and in possession of the property. Thereafter there is no control of the landowner over the property. He cannot have any animus to take the property and to control it. Even if he has retained the possession or otherwise trespassed upon it after possession has been taken by the State, he is a trespasser and such possession of trespasser enures for his benefit and on behalf of the owner. *Indore Development Authority* [supra] at para nos.244, 245 and 256 has observed as

under:

244. Section 16 of the Act of 1894 provided that possession of land may be taken by the State Government after passing of an award and thereupon land vest free from all encumbrances in the State Government. Similar are the provisions made in the case of urgency in Section 17(1). The word "possession" has been used in the Act of 1894, whereas in Section 24(2) of Act of 2013, the expression "physical possession" is used. It is submitted that drawing of panchnama for taking over the possession is not enough when the actual physical possession remained with the landowner and Section 24(2) requires actual physical possession to be taken, not the possession in any other form. When the State has acquired the land and award has been passed, land vests in the State Government free from all encumbrances. The act of vesting of the land in the State is with possession, any person retaining the possession, thereafter, has to be treated as trespasser and has no right to possess the land which vests in the State free from all encumbrances.

245. The question which arises whether there is any difference between taking possession under the Act of 1894 and the expression "physical possession" used in Section 24(2). As a matter of fact, what was contemplated under the Act of 1894, by taking the possession meant only physical possession of the land. Taking over the possession under the Act of 2013 always amounted to taking over physical possession of the land. When the State Government acquires land and draws up a memorandum of taking possession, that amounts to taking the physical possession of the land. On the large chunk of property or otherwise which is acquired, the Government is not supposed to put some other person or the police force in possession to retain it and start cultivating it till the land is used by it for the purpose for which it has been acquired. The Government is not supposed to start residing or to physically occupy it once possession has been taken by drawing the inquest proceedings for obtaining possession thereof. Thereafter, if any further retaining of land or any re-entry is made on the land or someone starts cultivation on the open land or starts residing in the outhouse, etc., is deemed to be the trespasser on land which in possession of the State. The possession of trespasser always inures for the benefit of the real owner that is the State Government in the case. Xxxx

256. Thus, it is apparent that vesting is with possession and the statute has provided Under Sections 16 and 17 of the Act of 1894 that once possession is taken, absolute vesting occurred. It is an indefeasible right and vesting is with possession thereafter. The vesting specified Under Section 16, takes place after various steps, such as, notification Under Section 4, declaration Under Section 6, notice Under Section 9, award Under Section 11 and then possession. The statutory provision of vesting of property absolutely free from all encumbrances has to be accorded full effect. Not only the possession vests in the State but all other encumbrances are also removed forthwith. The title of the landholder ceases and the state becomes the absolute owner and in possession of the

property. Thereafter there is no control of the landowner over the property. He cannot have any animus to take the property and to control it. Even if he has retained the possession or otherwise trespassed upon it after possession has been taken by the State, he is a trespasser and such possession of trespasser enures for his benefit and on behalf of the owner.

(emphasis supplied)

12] The Constitution Bench in the case of Indore Development Authority [supra] has held that the word "possession" has been used in Sections 16 and 17 of the Act of 1894, whereas in Section 24 (2) of Act of 2013, the expression 'physical possession' is used. The Court further held that when the State has acquired the land and award has been passed, land vests in the State Government free from all encumbrances. The act of vesting of the land in the State is with possession, any person retaining the possession, thereafter, has to be treated as trespasser and has no right to possess the land which vests in the State free from all encumbrances.

13] Under the National Highways Act, 1956, under section 3-H (5) the words used are "taking possession under Section 3-D" and not taking "physical possession under Section 3-D".

14] In view of law discussed in the case of Indore Development Authority [supra] when the State has acquired the land and award has been passed, the land vests in the State Government free from all encumbrances and the act of vesting of the land in the State is with possession. There is no requirement of taking physical possession for the purpose of payment of additional interest component. The argument of the National Highway Authority that the interest component has to be paid from the date of actual physical possession, is erroneous. It is provided in Section 3-F that where the land has vested in the Central Government under Section 3-D, it shall be lawful for any person authorised by the Central Government in this behalf, to enter and do other act necessary upon the land for carrying out the building, maintenance, management or operation of a national highway or a part thereof, or any other work connected therewith, meaning thereby that, on the land having vested in the Central Government under Section 3-D, it shall be lawful for any person authorised by the Central Government, to enter and do other act necessary upon the land for carrying out the building, maintenance, management or operation of a national highway or a part thereof, or any other work connected therewith. On the date of Notification under Section 3-D, the land has absolutely vested with the Central Government in terms of Section 3-D (2) of the N.H.Act and the land shall vest absolutely in the Central Government free from all encumbrances and the Central Government having right to enter and to do construction thereupon. The claimants have lost their lands from the date of notification under Section 3-D along with its possession. It is not required that the physical possession has to be handed over in terms of the judgment in the case of Indore Development Authority [supra]. Thus, the District Court has thus rightly concluded that the interest on the

enhanced amount has to be paid from the date of notification under Section 3-D of the N.H.Act and not from the date of taking physical possession after deposit of compensation under Section 3-G of the N.H. Act.

15] The reliance placed by the learned counsel for the petitioners on the judgment in the case of Gayabai Digambar Puri [Died] Thr.LR. Vs. The Executive Engineer & Ors. [supra] is of no assistance as in that case the possession of the land was taken prior to the award under the Land Acquisition Act. The Hon'ble Supreme Court in the case of Gayabai Digambar Puri [supra] relying upon the judgment in the case of R.L.Jain (D) by Lrs. Vs. D.D.A. & Ors reported in (2004) 4 SCC 79 has held that a person, who is deprived of possession of his property, should be paid compensation immediately and if the same is not paid to him forthwith, he would be entitled to interest on the compensation amount from the date of taking possession of the land till the date of payment thereof. In the above case, the possession is taken prior to the date of award, as such, the Court has concluded that the interest has to be paid from the date of possession and the same is not applicable to the instant case. Thus, the reliance placed on the judgment of Gayabai [supra] by the learned counsel for the petitioner is of no assistance.

16] The question of law raised above is answered accordingly. Hence, all the Writ Petitions are dismissed.