IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1986 OF 2016

1. Youvraj S/o. Namdeo Khaladkar]
Age: 45 years, Occu: Agri.]

2. Limbraj s/o. Namdeo Khaladkar (died),]
Through his legal heirs,]

2-A Nirmala w/o. Limbraj Khaladkar,]
Age: 40 years, Occu: Household]

2-B Rakesh S/o. Limbraj Khaladkar,]
Age: 28 years, Occu: Agri.]

2-C Yogesh s/o. Limbraj Khaladkar,]
Age: 25 years, Occu: Education.]

All R/o. Shekhapur,]
Tal. And Dist. Osmanabad.]...PETITIONERS

VERSUS

1. The National Highway's Authority of India]
Ministry of Road Transport and Highway's]
Through its Secretary,Department of Road]
Transport and Highway's, G-5 & 6, Sector-10,]
Dwarka, New Delhi-110 075.]

2. The Project Director,]
Regional Office, Maharashtra,]
602, 6th Floor, Kohinoor City Mall,]
Kirol Road, Off. Lal Bahadur Shashtri Marg,]
Kurla (West), Mumbai-400 070.]

3. The Project Director,]
Central Government Office,]
National Highway's Authority of India,]
B-23, Near Kamgar Chowk,]
N-4, CIDCO, Aurangabad – 431 003.]

4. The Project Director,]
Central Government Office,]
Manor National Highway's Authority of India,]
Plot No.80, Old Santosh Nagar,]
In front of Devika Gas Agency,]
Jule Solapur-143 003.]

5. The Deputy Collector,]
Land Acquisition Medium Project No.2,]
Osmanabad, Tq. and Dist. Osmanabad.]

6. Town Planner, Osmanabad,]
Tq. & Dist. Osmanabad.]...RESPONDENTS

...

Mr. Manoj U. Shelke, Advocate for the Petitioners.
Mr. R. D. Sanap, Advocate for Respondent No. 2.
Mr. D. S. Manorkar, Advocate for Respondent Nos. 3 to 4.
Smt. Kalapalata Patil Bharaswadkar, Addl. G.P. for Respondent No.5 & 6-State.

CORAM : KISHORE C. SANT &
SUSHIL M. GHODESWAR, JJ.

RESERVED ON : 7th APRIL 2026.

PRONOUNCED ON : 12th JUNE 20256.

JUDGMENT :- [PER- KISHORE C. SANT, J.]

1. Heard Mr. Shelke, the learned Advocate for the petitioner, Mr. Sanap, the learned Advocate for Respondent No.2, Mr. Manorkar, the learned Advocate for Respondent Nos. 3 and 4 and Smt. Bharaswadkar, learned Additional Government Pleader, for Respondent Nos. 5 and 6.

2. By way of present writ petition, the petitioner has prayed for direction to the Respondent-acquiring body and the authorities to pay the petitioner an amount of compensation as determined by Respondent No.5 i.e. Deputy Collector, Land Acquisition Medium Project No.2, Osmanabad.

3. The respondent No.1 is the National Highway's Authority of India for whom the land is acquired for widening of road. Respondent No.2 is the Project Director, Regional Office, Maharashtra. Respondent No.3 is the Project Director, Central Government Office, National Highway's Authority of India. Respondent No.4 is the Project Director, National Highway Authority of India. Respondent No.5 is the Deputy Collector, Land Acquisition Medium Project No.2, Osmanabad. The respondent No.6 is Town Planner, Osmanabad, who is subsequently added.

4. The facts in short giving rise to the present writ petition are that the land of the petitioner to the extent of 26R came to be acquired by the respondents-authorities for widening of the National Highway No.211 i.e. Dhule-Solapur Road. For that purpose, notification was issued under Section 3(A) of the National Highways Act, 1956 (hereinafter referred to as “the said Act”). Thereafter, a notification came to be issued under Section 3(D) and 3(G) of the said Act. On 03.11.2014, the Respondent No.5 passed final award and determined the compensation of Rs.54,47,000/- towards the land and Rs.9,62,201/- towards residential house. Thus, the total amount is determined to be Rs.64,09,201/-. When the petitioner approached to the office of Respondent No.3 for amount of compensation, the Respondent No.3-authorities refused to pay the entire compensation. It is the stand of the Respondent No.5 that out of the land, 2168 sq. mter is acquired for service road. The remaining land is not acquired but is only required to be kept for service road, and therefore, no compensation is payable to the extent of 2168 sq.mtr. The compensation is to be paid only for the area of 432 sq. mtr. and not for the remaining land. It is on this, the

petitioner approached this Court.

5. This Court initially allowed the writ petition by order dated 04.09.2018 by considering the judgment in the case of ***Pt. Chet Ram Vashist (dead) by LRS. Vs. Municipal Corporation of Delhi***[1]**.** However, subsequently, the review application came to be filed by the Competent Authority stating that, prior to disposal of the writ petition by order dated 04.09.2018, a fresh award was passed on 14.06.2018 in view of Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013. However, the same could not be brought to the notice of this Court. It is on that, the earlier order came to be reviewed and petition stood restored to its original position by order dated 26.02.2021. In view of subsequent development, the petition came to be amended. It is now prayed that the petitioner be paid the compensation as per subsequent award dated 14.06.2018 with interest since 2014 and prayed for 100% compensation. However, the stand again is that, the petitioner would be entitled only to the extent of land which is actually used for widening of the national highway and

1 **(1995) 1 SCC 47**

not for the area which is to be used as service road under the garb that it is for public purpose. The respondents have filed affidavit in reply. The last affidavit in reply dated 20.03.2023 is filed by Respondent No.5 justifying the action of non-payment of compensation to the extent of land used for open spaces and service road etc.

6. During the pendency of the writ petition, various directions were issued to get the exact measurement of the land on record. However, it is now that there is no dispute about the said and the petitioner maintained that total land acquired is 26R. The Court, therefore, proceed on the same.

7. Mr. Shelke, the learned Advocate for the petitioner invites attention to the award passed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, stating that the factor to be considered for payment of compensation that is the double the amount of market value is to be paid as fair compensation, plus 100% solatium is granted in clause 20(A). It was the stand of the respondent Nos. 2 to 4 that the entire

amount of compensation is deposited on 29.12.2014 with Respondent No.5. It is for the respondent No.5 to disburse the amount to the land owner as early as possible under Section 3-A of the National Highways Act. There is no stand of Respondent Nos. 2 to 4 that the petitioners are not entitled to get compensation for the land used for public use. It is only Respondent No.5 who has taken the said stand. The petitioner thus submits that when the respondent Nos. 2 to 4 have deposited the amount to respondent No.5, it is for respondent No.5 to disburse the amount.

8. Smt. Bharaswadkar, the learned AGP vehemently argued that the land to the extent of 2168 sq. mtr. is towards service road as per the measurement by the Deputy Director, Land Record, Osmanabad. The Town Planner, Osmanabad has specifically informed that no compensation is payable towards the land to be used for public purpose, and therefore, the petitioner would not be entitled to get the amount of Rs.45,41,960/- by inviting attention to the communication by respondent No.5 to the petitioner.

9. There is one more affidavit filed by respondent No.6 i.e. Town Planner, Osmanabad, taking the stand that the internal roads, service roads and open spaces in the sanctioned lay out are for public purpose and used for public and in view of Government notification dated 02.04.1974 and standardized building bye-laws and Development Control Rules for A, B and C class Municipal Councils of Maharashtra, no compensation is payable. He relied upon Rule 19.2 and 19.3 of the said Rules which speak about area under Rule and open space. Learned AGP thus submits that in no case the petitioners would be entitled to get the compensation as stated above. She further invited attention to additional affidavit on behalf of respondent No.5 filed in September 2021 to submit that the petitioners are not entitled to get the compensation. In the said affidavit, it is also prayed that some amount needs to be recovered from the petitioner as decree under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act.

10. The learned Advocates Mr. Sanap and Mr. Manorkar, adopted the arguments of learned AGP. Mr. Manorkar invites attention to section 3-H

and 3-J of the National Highways Act stating that the amount is already deposited with the competent authority.

11. Considering all above submissions, this Court has to only consider as to whether the petitioners are entitled to get the compensation for the land which is acquired for service road for the public use. The question is no more res-integra. The Hon'ble Apex Court in the case of ***Pt. Chet Ram Vashist Vs. Municipal Corporation of Delhi*** (supra) has specifically considered this question. The Court considered the provisions of Section 313 of the Delhi Municipal Corporation Act, 1957 and Clause 5 in paragraph 3(iv) of the Delhi (Control of Building Operations) Ordinance, 1955. Paragraph No.6 of the said judgment read as under:

> *"6. Reserving any site for any street, open space, park, school etc. in a layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned layout plan. But the question is, does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of cost. That is not made out from any provision in*

the Act or on any principle of law. The Corporation by virtue of the land specified as open space may get a right as a custodian of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself. The effect of transfer of the property is that the transferor ceases to be owner of it and the ownership stands transferred to the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for park and school was an order for transfer without there being any sanction for the same in law."

12. This Court, in the case of ***Vrajlal Jinabhai Patel Vs. State of Maharashtra and Ors.***[2], by considering the said judgment also allowed the petition and directed to pay the compensation even for the land acquired for public utility services like internal road, open spaces etc. In the case of ***State of Maharashtra Vs. Bhimashankar Sidramappa Chippa***[3] also took similar view. The Hon'ble Apex Court in the judgment in the case of ***Shirdi Nagar Panchayat Vs. Kishor Sharad Borawake and Ors***.[4] by considering the case of ***Pt. Chet Ram Vashist*** (supra) again reiterated the principle that the land owner is entitled to get the compensation even for the amenity space, open space etc. This Court again by elaborate judgment considered the provisions of National Highways Act and Town

2 2003 (4) Bom C.R. 724
3 2009(4)Bom.CR.1
4 2023 SCC OnLine SC 1214

Planning Act and judgment in the case of ***Union of India Vs. Tarsem Singh*** in Civil Appeal No.7064/2019 decided on 19/09/2019 by the Hon'ble Apex Court. The judgment in the case of ***Pt. Chetram Vashist*** (supra) and allowed the petition directing the authorities to pay the compensation even for the land acquired which are required to be kept as open space for public utility etc. The question was also considered about the power of review with the competent authority etc. In the said case, by way of corrigendum/clarification, the amount was deducted of the compensation.

13. Considering above, this Court finds that the petitioners are entitled to get the compensation even for the area of service road etc. The action of respondent in not granting the compensation is arbitrary. Hence, the following order:

ORDER

(i) Writ Petition stands allowed.

(ii) The Respondent No.5 to pay the amount to the petitioners within two months from today.

(iii) If the amount is not paid within stipulated time, there shall be costs of Rs.50,000/- on respondent No.5 for delayed payment. The amount be paid with consequential benefits.

(iv) Rule made absolute in above terms.

[SUSHIL M. GHODESWAR, J.] [KISHORE C. SANT, J.]

D.A.ETHAPE