

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 4139 of 2021****With****CIVIL APPLICATION (FOR FIXING DATE OF HEARING) NO. 1 of 2021****In****R/SPECIAL CIVIL APPLICATION NO. 4139 of 2021**

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SAVITABEN MANGALBHAI PARMAR

Versus

STATE OF GUJARAT

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Appearance:

MR GIRISH M DAS(2323) for the Petitioner(s) No. 1,2

MR KM ANTANI, AGP for the Respondent(s) No. 1

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CORAM: **HONOURABLE THE CHIEF JUSTICE MR. JUSTICE
ARAVIND KUMAR**

and

HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI

Date : 20/07/2022

ORAL ORDER**(PER : HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI)**

Present matter was heard at length, in which both the sides represented and by virtue of order dated 18.7.2022, was kept for dictating of judgment. When we were about to start dictating the judgment, Shri Girish M. Das, learned counsel appearing for the petitioner though did not seek leave of the Court and straightaway started arguing the matter, yet in the interest of justice, we heard Mr. Girish Das and we have passed over this matter to **2:30** to dictate the judgment.

1. By way of this petition, petitioners have prayed for following reliefs:-

- (A) Your Lordships be pleased to direct Respondent No 2 Collector and 3 Syndicate Bank to follow strictly the procedure as provided under Sec.31(2)(b) of RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND

RESETTLEMENT ACT, 2013 and be pleased to direct that the award amount proportionate, be deposited in personal Bank Accounts of respective Petitioners as provided in Para 9 n) in this Petition in the interest of justice.

- (B) Pending hearing and final disposal of this Petition Your Lordships be pleased to direct the Respondent No. 2 and 3 to clarify as to what is status about remaining 20% compensation Amount WHETHER it has been deposited in Bank Account No.71122250010439 of Syndicate Bank which has been opened for this purpose only where earlier 80% amount was deposited
- C) Your Lordships be pleased to grant any other and further relief/s as may be deemed fit and proper in the fact and circumstances of the case in the interest of justice.

2. The case of the petitioners, in brief, is that pursuant to National Project of Mumbai- Ahmedabad High Speed Rail Corridor, popularly known as 'Bullet Train Project', certain parcel of lands have been acquired for the said purpose and on account of that, present petitioners were also affected and their portion of land came to be acquired (no detail with regard to same is averred in the petition).

3. It is stated in the petition that with respect to said acquisition, sizable amount of compensation was to be distributed amongst real affected persons who lost their lands. But, it is stated in the petition that these petitioners with respondent No.4 have opened up a joint bank account in Syndicate Bank at Bhumel for three beneficiaries, namely petitioner Nos.1 and 2 and respondent No.4. Amount of

compensation as per the say of petitioners has been deposited in the said joint account. But then, grievance is that at relevant point of time, officers had collected Aadhar Cards, photographs, consent letter, power of attorney and passbook with respect to petitioners' account and from the averments, it appears that power of attorney by these two petitioners had been given to their close-relative respondent No.4.

4. Petitioners have then submitted that respondent No.4 was permitted to operate joint account and power of attorney has also been executed in his favour and as such, grievance then is that on account of such, respondent No.4 has withdrawn huge amount which has been deposited by acquiring body, i.e. respondent, in the said joint account. Grievance is that petitioners are illiterate and taking advantage of such, respondent No.4 has mis-utilized said joint account and though petitioners were having a joint account, with single signature of respondent No.4, huge amount has been withdrawn by respondent No.4. It is the case of petitioners that several representations were made to bank for cautioning against such illegal transaction under the guise of power of attorney by respondent No.4, but no steps were taken and as such,

petitioners have come out with an assertion that had respondent authorities cautioned them, such illegality might not have taken place. On 5.3.2020, respondent No.4 was permitted to withdraw two crores of rupees and how Syndicate Bank has permitted the same and though protest has been made, it has been alleged that bank personnel in collusion with respondent No.4 has committed such a fraud with petitioners. In assertion contained in paragraph (f), it has been mentioned that two times, petitioner was permitted to withdraw amount of Rs.10 lakhs, but then has not responded when 20% remaining amount was deposited through RTGS. Sum and substance is that respondent No.4 has defrauded the petitioners under the guise of power of attorney and consent letter and though amount of Rs.2,66,93,281/- was to be distributed equally amongst three beneficiaries, namely two petitioners and respondent No.4, an attempt was made to single handedly withdraw and in paragraph (h), it has been mentioned that when petitioners objected to withdrawal on single signature and on that count, it was redeposited and by placing such facts in the petition, it has been asserted that respondent No.4, as per information of petitioners, has illegally then transferred certain amount in his private account, which deserves to be re-

transferred to joint account No.71122250010439. It has been asserted that as per the policy, equal amount of compensation to be disbursed and hence respondent authorities have violated Section 31 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('the Act' for short). The mandate of Section 31 has not been observed by authority and by allowing such an act of respondent No.4, authorities have frustrated the very object of Section 31 of the Act and therefore, learned advocate Mr. Das on the basis of this averment has submitted that petitioners are constrained to approach this Court by way of present petition.

5. Learned advocate Mr. Girish M. Das has submitted that aforesaid averments on oath are sufficient enough to indicate that there is a systematic ill-design executed against petitioners and they being illiterate, it was obligatory on the part of respondent authority to take care of the situation and ought to have maintained the object of Section 31 of the Act. Mr. Das has then submitted that respondent No.4 has mis-utilized the consent letter as well as the power of attorney and though it was informed that power of attorney to be treated as cancelled if amount may not be deposited in the account through RTGS, for

which consent was earlier given and if such instruction has not been adhered to, responsible officer will be proceeded with by taking appropriate action and though according to Mr. Das, it was pointed out, authorities have not adhered to such request. As a result of this, relief prayed for in the petition be granted in the interest of justice.

6. Learned advocate Mr. Das has submitted that compensation amount as per the policy is to be distributed to each affected family whose land has been acquired in the project and also rehabilitation is to be undertaken as per the policy, but the authority has miserably failed to undertake such exercise, which has led the petitioners to approach this Court for immediate protection. Sum and substance of submission of Mr. Das is that in collusion of officers, respondent No.4 has committed a serious act against petitioners, detrimental to the interest of them and as such, relief prayed for be granted in the interest of justice by issuing appropriate direction. No other submissions have been made.

7. As against this, learned Assistant Government Pleader Mr. K.M. Antani has submitted that from overall assertion made in the petition, it appears that there is a serious dispute between

petitioners and respondent No.4, who happen to be a close relative, and dispute is relating to apportionment of amount and therefore, such a disputed version projected in the petition can well be examined before an appropriate forum, where fact finding exercise can be undertaken and therefore, writ petition may not be an answer to the grievance of petitioners. Learned Assistant Government Pleader has further submitted that Section 31 of the Act is tried to be projected for alleging against respondent authorities. But, in fact, same would not be applied in the manner in which petitioners are canvassing through learned advocate. In fact, mandate of Section 31 has been observed by the authority by making deposit and if there is any grievance *inter-se* between the beneficiaries, same cannot be allowed to be agitated here in an extraordinary equitable jurisdiction. It has been contended that such seriously disputed question of fact may not be gone into in present petition and further, it appears that petitioners have raised grievance at a much belated stage. The grievance first time as per the assertion erupted in February 2020, whereas despite full knowledge, petitioners waited for more than a period of one year and petition is brought only in the month of February 2021. This itself indicates that though

appropriate opportunity well in time was available, petitioners have chosen not to avail and as such, the grievance and the allegations which are leveled against respondent authorities would not come to rescue of petitioners since petitioners are not remediless and such grievance can be agitated if so advised before appropriate forum either by way of filing civil suit or by way of criminal prosecution if mischief is committed by respondent No.4 or dispute can be examined under the Act itself where specific mechanism is provided and as such, present petition may not be entertained. Apart from that, learned Assistant Government Pleader has further submitted that petitioners have not projected full facts before the Court and hence, on the basis of inadequate and inaccurate pleadings, reliefs in such a form may not be granted in the interest of justice and as such, petition deserves to be dismissed.

8. Having heard learned advocates appearing for the parties and having gone through the aforesaid situation prevailing on record, few circumstances are not possible to be unnoticed by Court:-

(1) Firstly, it appears from the averments that petitioners

themselves have opened up a joint account for three different beneficiaries, namely two petitioners and respondent No.4, with their own volition and consent, as emerged from the averments made in paragraph (2) of the petition. It further appears that petitioners have given in addition to other particulars their consent letter as well as passbook and power of attorney and said power of attorney alleged to have been misused by attempting to withdraw the huge amount.

(2) In the averments contained in ground No.(h), it has been stated that amount was to be disbursed equally amongst three eligible beneficiaries, but then in last line of that paragraph, it has been stated that the petitioners objected to such withdrawal on single signature and on that count, it was re-deposited in the bank. So, on one hand, it is alleged that respondent No.4 in collusion with officers of the bank is trying to siphon off the amount, and on other hand, has stated that once having objected, it was redeposited. So, there are serious disputed question of facts even in respect of allegations which are mentioned by petitioners.

(3) From conjoint reading of the averments contained in the

petition, the Court finds self-contradictory assertion and as such, it is difficult for the Court to examine such disputed version and this is more so, that petitioners themselves have stated in paragraph (f) that two times, petitioner was permitted to withdraw the amount of Rs.10 lakhs. So this averment about allegations made appears to be a bald assertion and bereft of any material on the basis of which, it is not possible for this Court to examine such factual details and to grant the relief, as prayed for in the petition.

(4) Further, learned counsel appearing for the petitioners has stated that by utilizing the power of attorney, respondent No.4 is permitted to make an attempt to siphon the amount which may come to the share of petitioners. But, then undisputedly, there appears to be on record before the authority a consent letter as well as power of attorney. Now, neither consent letter nor power of attorney is made part of the record and as such, on the basis of such lack of material, it is not possible for this Court rather safe for the Court to jump to any conclusion about the allegations which are tried to be made and hence, in view of the fact that petition contains seriously disputed facts or facts are required to be examined at length before appropriate forum and

extraordinary jurisdiction may not be exercised.

(5) Now in respect of two decisions which are referred to by learned advocate Mr. Girish Das, the first decision of Hon'ble Apex Court is in the case of **M/s. Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad now Zila Prishad, Muzaffarnagar** reported in **AIR 1969 SC 556**, wherein, a reference is made by learned advocate Mr. Das to the observations contained in paragraph 4, but here the said proposition in our considered opinion would not assist the petitioners in view of the fact that there are disputed questions of fact involved on the basis of which, we refrain ourselves from exercising the discretion extraordinary in nature and as such, the principle laid down in the aforesaid decision is of no assistance to the petitioner.

(6) So far as yet another decision which is tried to be relied upon is in the case of **Roshan Deen v. Preeti Lal** reported in **AIR 2002 SC 33** in which a reference is made to paragraph 12 of the said decision, but having gone through the said decision, we are of the opinion that the facts on hand are quite distinct and as such, we are unable to stretch the said proposition to

apply to the present case on hand and, therefore, both the decisions are not of any assistance to the petitioners. It is settled proposition of law that if the facts are quite distinct and even one additional fact would make a world of difference in applying the ratio by way of precedent. Keeping the said authoritative principle in mind, we are of the opinion that the decisions cited by learned advocate Mr. Das are of no assistance.

(7) But, at this stage, law on the issue is quite clear, propounded by series of decisions, one of such decisions is in the case of **Satya Pal Anand Vs. State of Madhya Pradesh and others** reported in **(2016) 10 SCC 767**. Since we have considered the same, we deem it proper to refer to the relevant observations here-under:-

25. It is a well established position that the remedy of Writ under Article 226 of the Constitution of India is extra-ordinary and discretionary. In exercise of writ jurisdiction, the High Court cannot be oblivious to the conduct of the party invoking that remedy. The fact that the party may have several remedies for the same cause of action, he must elect his remedy and cannot be permitted to indulge in multiplicity of actions. The exercise of discretion to issue a writ is a matter of granting equitable relief. It is a remedy in equity. In the present case, the High Court declined to interfere at the instance of the appellant having noticed the above clinching facts. No fault can be found with the approach of the High Court in refusing to exercise its writ jurisdiction because of the conduct of the appellant in pursuing multiple proceedings for the same relief and also because the appellant had an alternative and efficacious statutory remedy to which he has already resorted to. This view of the High Court has found favour with Justice Dipak Misra. We respectfully agree with that view.

27. As the Writ Petition is liable to be dismissed with liberty to the appellant to pursue other statutory remedy already invoked by him, examining any other contention at his instance would be awarding premium to a litigant who does not deserve such indulgence. The fact whether the compromise deed entered into by the appellant was voluntary and at his own volition or under duress, is essentially a question of fact. That cannot be adjudicated in writ jurisdiction. Depending on the answer thereto, the other issues may become relevant and would arise for consideration. The only relief that can be granted and which has already been clarified by the High Court in the impugned judgment, is to keep all questions open to enable the appellant to pursue the statutory remedy already invoked by him. It is open to the appellant to contend in those proceedings that the Extinguishment Deed could not have been unilaterally executed by the Society. That plea can be examined by the statutory Forum provided for that purpose.
32. Reference made to the other decisions of this Court with regard to the scope of Article 136 of the Constitution of India in the case of Arunachalam vs. P.S.R. Sadhanantham and Anr. and Ganga K. Shrivastav vs. State of Bihar (supra) will be of no avail in the fact situation of the present case. Similarly, The other decisions adverted to in the dissenting opinion under consideration in the case of CAG vs. K.S. Jagannathan and Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust vs. V.R. Rudani (supra), Hari Vishnu Mamath (supra) will be of no avail in the fact situation of the present case. Suffice it to observe that the High Court had, in our opinion, justly, summarily dismissed the writ petition with liberty to the appellant to pursue statutory remedy under the provisions of the Act of 1960 or by way of a civil suit. Thus understood, it may not be necessary or appropriate to dwell upon the other issues regarding the merits of the controversy which may have to be adjudicated by the competent Forum.

(8) Further, from the assertion, it has been observed that petitioners have made wild allegations against the respondent authorities and are trying to brand them as fraudulent act in collusion with each other and if that be so, according to the petitioners, writ remedy in our considered opinion is not appropriate. Petitioners can maintain or agitate such issues

before appropriate authorities either under the Act or by initiating appropriate proceedings which may be advised. In extraordinary equitable jurisdiction on the basis of inadequate particulars as well as on the basis of inadequate material also, this Court is not able to exercise the discretion. Hence, no case is made out by petitioners to call for any interference.

(9) One another circumstance which has been noticed is that on page 10 (Annexure-A), in a communication dated 14.2.2020, it has been asserted that petitioners being illiterate and sons of brother of petitioners are trying to take away benefits payable to the petitioners and as such, an objection was raised and then submitted that amount for which the power of attorney is executed, if RTGS may not be done, said power of attorney and consent letter petitioners may be treated to be cancelled, but then there is no material or iota of evidence produced on record before us that any such attempt is made either to cancel the consent letter or power of attorney. On the contrary, in a communication dated 11.12.2020 written by Canara Bank, it has been stated that an amount of Rs.2,66,93,281/- has been credited in account No.71122250010439 and cheque-book with serial number and request form of the cheque-book are provided

to petitioner No.1. Now, this communication is written by bank, then what is acted upon then is not stated in the petition and as such, allegations which are tried to be made in the petition, if true, deserve a detailed examination of facts, which cannot be done in exercise of extraordinary equitable jurisdiction and therefore, this is not a proper remedy which has been availed of by petitioners. Accordingly, we deem it proper not to entertain the petition.

(10) In addition to this, we notice that these things which are stated by way of grievance have occurred prior to couple of years and petitioners were quite aware about the fact of such mischief which may be played by respondent No.4 and his family members and though petitioners were aware about this fact right from 14.2.2020, as evident from the record, what steps except filing of this petition, during passage of two years, are taken, not disclosed before the Court. Had that serious issues were in mind, petitioners might have initiated appropriate proceedings before appropriate forum and this petition has been presented in the month of February 2021, i.e. almost after a period of one year. Hence, in view of the aforesaid clear lack of appropriate pleadings, unsupported by appropriate cogent material, we are

not inclined to exercise our equitable jurisdiction and we are of the considered opinion that no case is made out by petitioners to invoke extraordinary jurisdiction under Article 226 of the Constitution of India.

(11) The Act of 2013 has provided a clear mechanism for redressal of the dispute if any issue about apportionment exists and so far as grievance and apprehension about malpractice which has been allegedly committed by respondent No.4 against present petitioners, ample opportunity and forum is available to agitate such grievance and as such, on the basis of overall considerations of the material on record, we are of the considered opinion that this is not a fit case in which exercise of jurisdiction under Article 226 of the Constitution of India deserves to be exercised.

9. Accordingly, petition stands **DISMISSED** with no order as to costs.

10. However, we make it clear that if petitioners are availing any such remedy known to law for redressal of their grievance, this non-entertainment of petition would not come in their way since we have not examined merits of the allegations made in

the petition.

11. In view of main matter having been disposed of, connected Civil Application stands consigned to records and disposed of accordingly.

**Sd/-
(ARAVIND KUMAR,CJ)**

**Sd/-
(ASHUTOSH J. SHASTRI, J)**

OMKAR

