

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Writ Petition No. 469 of 2013

District : Jalgaon

1. Chhabildas s/o. Tukaram Khadke,
Age : 72 years,
Occupation : Agriculture,
R/o. Yogeshwar Nagar, Jalgaon.
2. Pandit s/o. Vitthal Talele,
Age : 44 years,
Occupation : Agriculture,
R/o. Ram Peth, Jalgaon.
3. Nilkanth s/o. Dattatraya Khadke,
Age : 69 years,
Occupation : Agriculture,
R/o. Vitthal Peth, Jalgaon.
4. Jagannath s/o. Dagadu Kale,
Age : 75 years,
Occupation : Agriculture,
R/o. Vitthal Peth, Jalgaon.
5. Bhaskar s/o. Awasu Kolhe,
Age : 25 years,
Occupation : Agriculture,
R/o. Ram Peth, Jalgaon.
6. Sau. Chhayabai s/o. Chhabildas Khadke,
Age : 69 years,
Occupation : Agriculture,
R/o. Yogeshwar Nagar, Jalgaon.

.. Petitioners.

versus

1. The Union of India,
Through its Secretary,
Ministry of Road Transport & Highways,

Government of India,
New Delhi -11.

2. Project Director,
Project Implementation Unit (PIU),
Aurangabad,
B-23, Near Kamgar Chowk, N-4,
CIDCO, Aurangabad - 431 003.
3. District Collector, Jalgaon,
District : Jalgaon.
4. Sub-Divisional Officer,
Jalgaon Sub-Division, Jalgaon.
5. The Tahsildar, Jalgaon,
District : Jalgaon.

.. Respondents.

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Mr. Ankush N. Nagargoje, Advocate, for the petitioners.

*Mr. Sanjeev B. Deshpande, Asst. Solicitor General of
India, for respondent no.1.*

*Mr. D.S. Manorkar, Advocate, instructed by
M/s. M.V. Kini & Company, for respondent no.2.*

*Mrs. Manjusha A. Deshpande, Asst. Government Pleader,
for respondent nos.3, 4 and 5.*

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**CORAM : S.V. GANGAPURWALA &
A.M. BADAR, JJ.**

DATE : 24TH FEBRUARY 2016

COURT'S ORDER *(Per S.V. Gangapurwala, J.)* :

1. Mr. Nagargoje, the learned Counsel for the petitioners, states that the notification under Section 3D of the National Highways Act 1956 **[For short, hereinafter referred to as “NH Act”]** is not within the period of one year from the date of notification under Section 3A of the said Act. On that count itself, the notification under Section 3D deserves to be set aside, *inter alia*, all further proceedings deserve to be quashed. The learned Counsel further submits that the petitioners had raised an objection. In the said objection, three alternate ways were suggested wherein barren land could be used. However, objections of the petitioners have not been dealt with as required under the statute i.e. Section 3C of the NH Act and in a cursory manner, the same are rejected. Even the said objections are not decided by the authority who had heard the said objections. One authority heard the petitioner and the same was forwarded to the higher authority for decision. The same does not satisfy the ingredients of Section 3C of the NH Act. The learned Counsel submits that the person who had heard the objections was not a competent authority under the statute. The learned Counsel submits that as yet, award has not been passed and as such, provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013.

2. Mr. Manorkar, the learned Counsel for respondent no.2, submits that the notification under Section 3D of the NH Act is within a period of one year from the notification under Section 3A of the said Act. The notification under Section 3A is issued on 27th October 2011, whereas notification under Section 3D is issued on 19th October 2012 i.e. well

within the prescribed period of limitation. The learned Counsel further submits that objections have been decided by the authority who had heard the objections. The reliance of the petitioners is misplaced. Objections which were forwarded along with the opinion of the authority to the higher authority were prior to the hearing. Hearing was before the Sub-Divisional Officer, Jalgaon, who was designated as competent authority vide notification in the official gazette dated 8th August 2011. According to the learned Counsel, proper procedure has been followed. The draft award is sent for approval.

3. We have considered submissions of respective parties. As far as alternate ways are concerned, this Court is not an expert. The Highway Authorities have to take assistance of experts. Report of the experts is taken into consideration and thereafter the highway is laid down. The competent authority was appointed by notification in the official gazette dated 8th August 2011. It transpires that the objections raised by the petitioners were heard by the Sub-Divisional Officer, Jalgaon, i.e. the competent authority appointed by notification in the official gazette dated 8th August 2011. The objections were heard and decided by the same authority. The notification under Section 3D of the NH Act is well within the prescribed period of one year from the date of notification under Section 3A of the said Act.

4. Award is not yet passed. The petitioners cannot presume that the respondents would not follow provisions of the statute while passing the award. In the event, award does not conform with the provisions of the statute, the petitioners have remedy to assail the same.

5. Considering the aforesaid conspectus of the matter, no case for interference is made out. The Writ Petition, as such, is disposed of. No costs.

(A.M. BADAR)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

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