

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

**WRIT PETITION NO.8168 OF 2016**

Mr. Shekh Shakil Shekh Lukman  
Age: Major, occ. Agril.  
R/o Songir, Tq. And Dist.Dhule.

- PETITIONER

VERSUS

- 1) The National Highway Authority of India, Through its Project Director, ASB-83 Sector 4/B, Ashwin Nagar, CIDCO, Nashik.
- 2) The Competent Authority and Special Land Acquisition Officer No.2, National Highway Project, Dhule, Office of District Collector, Dhule. Tq. And District Dhule.

- RESPONDENTS

WITH

**WRIT PETITION NO. 8169 OF 2016**

Mr. Shekh Iqbal Shekh Usman  
Age: Major, occ. Agril.  
R/o Songir, Tq. And Dist.Dhule.

- PETITIONER

VERSUS

- 1) The National Highway Authority of India, Through its Project Director, ASB-83 Sector 4/B, Ashwin Nagar, CIDCO, Nashik.
- 2) The Competent Authority and Special Land Acquisition Officer No.2, National Highway Project, Dhule, Office of District Collector, Dhule. Tq. And District Dhule.

- RESPONDENTS

\*\*\*\*\*

Mr.VB Patil & SP Tiwari, Advocates for Petitioner/s  
Mr.MV Kini & DS Manorkar, Advocates for Resp.No.2.

-----

**CORAM : T.V.NALAWADE &  
SANGITRAO S.PATIL,JJ.**

**DATE : 7<sup>th</sup> MARCH,2017.**

**ORAL JUDGMENT (PER:- T.V.NALAWADE,J.)**

- 1) Rule. Rule made returnable forthwith. By consent, heard both sides for final disposal.
- 2) Since the issue raised in both these petitions is identical, they are being disposed of by this common judgment.
- 3) Both the petitions are filed for giving directions to the respondents to act in accordance with the provisions of The National Highway Act, 1956 (for short, the Act) and the Rules framed there under in 1998 and pay the compensation in respect of the lands acquired.
- 4) The lands belonging to the petitioners were acquired for Four-lane of National Highway No.3. It is the grievance of the petitioners that the

acquiring body has not deposited the amount of compensation in accordance with the Act before the Competent Authority and due to that, the Competent Authority has not made payment of compensation to the petitioners. The learned Counsel for acquiring body submitted that as proceeding under Section 34 of Arbitration Act, 1996 is filed, there is automatic stay to the Award.

5) Learned Counsel for the petitioners took this court to the provision of Section 3-G(6) of the National Highways Act, 1956, which reads as under, -

**"3-G. Determination of amount payable as compensation, -**

(6) Subject to provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act."

6) The learned counsel then placed reliance on the observations made by this Court, though for interim relief, in order dated 23.2.2015 passed in Writ Petition No.9862/2013 (Manoj Kautik Patil Vs. The National Highway Authority and Anr.), wherein

this Court has observed that the provisions of Arbitration and Conciliation Act, 1996 are subject to the National Highways Act, 1956 and the Rules framed there under and, therefore, the provisions of The National Highways Act need to be complied with by the acquiring body.

7) It appears that the aforesaid order was challenged in the Supreme Court by filing Special Leave to Appeal (Civil) Nos.25686-25697/2015, wherein the Apex court refused leave and the Special Leave Petitions were dismissed by order dated 14.9.2015.

8) On the other hand, learned Counsel for the respondent, placed reliance on the order dated 21.1.2016 made by the other Division Bench of this Court in Writ Petition No.10962/2015 (Mansingh Raghunath Deshmukh Vs. The Competent Authority and Special Land Acquisition Officer and Ors.) with connected matters, and submitted that, in the similar circumstances, the present respondents were directed to deposit the amount in the District Court, where the proceeding, under Section 34 of the Arbitration and Conciliation Act, was filed by respondent.

. The learned counsel further submitted that in the present matters also, Award of the Arbitration Tribunal is challenged by the respondents by filing the proceeding under section 34 of the Arbitration Act and, therefore, if at all direction is given, the amount can be directed to be deposited in the District Court and further orders can be made by the District Court in the proceeding filed under Section 34 of the Act.

9) This Court has already referred the relevant provision and has also made mention about the order made by other Division Bench of this Court in Writ Petition No.9862/2013, the order which is not disturbed by the Apex Court. In view of the aforesaid specific provision, i.e. Section 3-G(6) of the National Highways Act, this Court holds that the respondents need to comply with the provision of the special enactment.

. The Rules framed under the National Highways Act prescribe the specific period of seven days from the date of delivery of the Award and the amount of compensation needs to be deposited with the Competent Authority.

. Section 3-H(2) of the Act shows that the competent authority is expected to release the amount in favour of the claimant from whom the land is acquired. Due to this specific provision, there can be no doubt about the right of the claimant to get the amount though the acquiring body can approach the court by filing the proceeding under Section 34 of the Arbitration Act. In proceeding filed under Section 34 of the Act, if the acquiring body succeeds, then the acquiring body can take necessary steps for recovery of amount already paid on the basis of such decision. However, the acquiring body will have to follow the procedure laid down in the special enactment.

10) In view of the apprehension expressed by the learned counsel for the acquiring body, this Court is hereby directing the petitioners to give personal undertaking in respect of 50% amount and bank guarantee in respect of the remaining amount, so that the disbursement of the amount is made subject to the decision of the proceedings filed under Section 34 of the Act.

11) In view of the other submission, the competent authority is not expected to release the amount unless it confirms that the possession of the land is taken by the acquiring body. The amount to be deposited by the acquiring body before the competent authority within one month from today.

12) In the result, both the writ petitions are allowed and Rule made absolute in aforesaid terms.

**(SANGITRAO S.PATIL)**  
**JUDGE**

**(T.V.NALAWADE)**  
**JUDGE**

bdv/