

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO. 38 OF 2015

Mr. Vishwasrao Dattatray Kachare And Ors. ...Petitioners

Versus

Union Of India And Ors. ...Respondents

WITH

Writ Petition NO. 866 OF 2014

Sanjay Shankar Sable ...Petitioner

Versus

The Union Of India, Through Ministry of Road
Transport And Highways India And Ors ...Respondents

WITH

Writ Petition NO. 963 OF 2014

Mrs. Vidya Shankar Mahashabde And Anr ...Petitioners

Versus

The Union Of India, Through Ministry Of Road
Transport And Highways India And Ors ...Respondents

WITH

Writ Petition NO. 967 OF 2014

Indira Mukund Dhariya And Ors ...Petitioners

Versus

The Union Of India, Through Ministry Of Road
Transport And Highways India And Ors ...Respondents

WITH

Writ Petition NO. 8117 OF 2014

Rahul Dilip Sable ...Petitioner

Versus

The Union Of India, Through Ministry Of Road
Transport And Highways (India) And Ors ...Respondents

WITH

Writ Petition NO. 8118 OF 2014

Avinash Vasantrao Naik And Anr ...Petitioners
Versus
The Union Of India, Through Ministry Of Road
Transport And Highways India And Ors. ...Respondents

WITH
Writ Petition NO. 8119 OF 2014

Indira Mukund Dhariya And Ors ...Petitioners
Versus
The Union Of India, Through Ministry Of Road
Transport And Highways (India) And Ors ...Respondents

WITH
Writ Petition NO. 8120 OF 2014

Mukund Jaishankar Dhariya ...Petitioner
Versus
The Union Of India, Through Ministry Of Road
Transport And Highways India And Ors ...Respondents

WITH
Writ Petition NO. 8121 OF 2014

Sudhir Shankar Sable ...Petitioner
Versus
The Union Of India, Through Ministry Of Road
Transport And Highways India And Ors ...Respondents

WITH
Writ Petition NO. 8122 OF 2014

Arun Shankar Sable ...Petitioner
Versus
The Union Of India, Through Ministry Of Road
Transport And Highways India And Ors ...Respondents

WITH

Writ Petition NO. 8123 OF 2014

Dilip Shankar Sable

...Petitioner

*Versus*The Union Of India, Through Ministry Of Road
Transport And Highways India And Ors

...Respondents

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Mr.PK.Dhakephalkar, Sr.Advocate with Reddy (Aradwad) Jagdish G., for the Petitioners in PIL no.38/15.

Mr.Himanshu Kode with Mr.Tejas Deshmukh, Ritesh Kulkarni, for the Petitioners in Writ Petition Nos.866/14, 963/14, 967/14, 8117/14, 8118/14, 8119/14, 8120/14, 8121/14, 8122/14 and 8123/14.

Mr.Y.R.Mishra with Mr.A.R.Varma, for Union of India in PIL 38/15.

Mr.Rakesh Singh i/b. M/s.M.V.Kini & Co. for Respondent Nos.2 and 3 in PIL 38/15.

Mr.N.P.Deshpande, Addl.Govt. Pleader for Respondent Nos.4 to 6 for the State.

Mrs.S.V.Bharucha with Mr.P.Gujjar, for Respondent No.1 in W.P.No.866/14, 963/14, 967/14, 8117/14, 8118/14, 8119/14, 8120/14, 8121/14, 8122/14 and 8123/14.

CORAM : DR. MANJULA CHELLUR, C. J., & G.S.KULKARNI, J.

RESERVED On: 11th April, 2017

PRONOUNCED On: 13th April,2017

JUDGMENT: (PER G.S.KULKARNI,J.)

1. This batch of petitions concern acquisition of land by the National Highway Authority for the purpose of widening and

laying of a national highway, under the National Highways Act, 1956 (for short “the N.H. Act”). We, therefore, propose to dispose of these petitions by this judgment, as common issues of law and facts are involved.

2. We set out in brief the issues as raised by the petitioners and the reliefs they seek.

Public Interest Litigation No.38 of 2015 concerns about 1497 agriculturists whose lands are affected by acquisition for widening and laying of the Pune-Solapur National Highway No.9. The petitioners state that for this land acquisition, awards are passed by the Deputy Collector/ Land Acquisition Officer, under Section 3-G (1) of the N.H. Act, in or about September and October 2011. Being not satisfied with the award of compensation, the lands being irrigated agricultural lands, having horticulture crop having pomegranate orchards, applications are filed before the Arbitrator as provided under Section 3-G (5) of the Act. It is stated that by virtue of an order dated 8 December 2008 passed by the Government of India, Ministry of Shipping, Road Transport & Highways (Department of Road Transport & Highways), Additional Commissioner, Pune Division, was appointed as an Arbitrator to exercise powers of an Arbitrator under Section 3-G (5) of the Act. These applications, according to the petitioners, are pending for quite some time. The case of the Petitioners is that the Additional Commissioner and Arbitrator being a Revenue Officer, is assigned several revenue assignments,

as also he is required to decide other revenue disputes, and as such, is heavily burdened with proceedings under various other Acts (Zilla Parishad Act, Village Panchayats Act and Mumbai Provincial Municipal Corporation Act). The petitioners contend that there are about 1376 appeals under the 1894 Act which are pending since the year 2010. It is stated that in addition to these appeals, there are about 11157 other appeals which are pending. The contention is that no appeal under the N.H.Act is being decided, and it will, thus, take several years for the Arbitrator to decide these appeals. It is thus contended that justice is being delayed. The possession of the land is already taken over by the authorities and consequently interest of about 10183 villagers is adversely affected. The petitioners have accordingly prayed for the following reliefs :-

- (a) Direct the Government of India to take necessary steps to appoint one or more full time Arbitrators for Solapur district or to delegate the powers of the Arbitrator to the Deputy Commissioner for deciding the appeals under Section 3-G (5) of the National Highways Act, 1956;
- (b) Direct the Additional Commissioner, Pune Division, and the Arbitrator to decide the appeals under Section 3-G (5) of the National Highways Act, 1956 before him within a time bound schedule of 6 months.

Mr.Dhakephalkar, learned Senior Counsel for the Petitioners has placed reliance on the order of the Supreme Court

dated 11 August 2016 in Civil Appeal No.10553 of 2011 (*Sunita Mehra & Anr. Vs. Union of India & Ors.*), to contend that the arbitrator ought to award solatium and interest on solatium.

3. In Writ Petition No.866 of 2014 the contentions are similar to the contentions in PIL No.38 of 2015. An additional contention as urged by the Petitioners is that the Deputy Collector / Special Land Acquisition Officer, who has declared the award is an officer junior to the Arbitrator, namely, Additional Commissioner, Pune Division, and therefore, there is likelihood of a bias. The contention is also that the arbitration proceedings would not be held at the hands of independent and impartial arbitrators as they are being appointed by the Central Government under Section 3-G (5) of the N.H. Act. As both the appointments of the Land Acquisition Officer/Competent Authority as also the Arbitrator are made by the Central Government, the Arbitrator has a role to play in the acquisition proceedings. The Arbitrator thus becomes the judge in his own cause. It is contended that under the Arbitration and Conciliation Act, 1996 or even under the Arbitration Act, 1940, no fetters are put on the parties for agreeing to a procedure for appointing an Arbitrator of their choice. Further, the parties can even approach the Hon'ble Chief Justice under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator. However, as under the N.H. Act the Central Government appoints an Arbitrator under Section

3-G (5), the said rights are rendered in consequential. This is an unilateral act violative of the principles of natural justice and Article 14 of the Constitution of India. The petitioners therefore have made the following prayers :

- (a) Direct the Central Government to replace respondent no.2 as Arbitrator by an Arbitrator from the panel of the Arbitrators of this Court;
- (b) To issue appropriate guidelines in respect of prescribing time-frame within which arbitration proceedings under the National Highways Act, 1956 should be decided;
- (c) Strike down sub-Section (5) Section 3-G of the National Highways Act, 1956 to the extent it empowers the Central Government to appoint an Arbitrator for violations of Article 14 of the Constitution of India and also for violating principles of natural justice.

4. The grievance and reliefs sought in the other petitions are similar to the reliefs as prayed in Writ Petition No.866 of 2014.

5. On behalf of Respondent No.2 – National Highways Authority of India, a reply affidavit has been filed in Public Interest Litigation No.38 of 2015, to contend that the National Highway No.9, Pune to Solapur, from Km.144.400 to 249 km. was taken up for four-laning under National Highway Development Plan III, in the year 2010 and following the procedure under the N.H.Act, the Competent Authority for Land Acquisition (for short

“the Competent authority”) had acquired the land admeasuring 304 hectares. The amount of compensation so deposited with the Competent authority, was paid by the Competent authority, to the respective owners of the land in its entirety. These payments were made from November 2011 upto June 2015. In determining the rate of compensation by the competent authority due consideration was given to the type of land, existing market rate etc. Considering the nature of the land acquisition, the Competent authority as appointed by the Central Government were officers of the State Government namely Deputy Collectors from the respective Taluka well acquainted with all the special requirements of such acquisition. It is stated that out of 3250 land owners, about 725 land owners, after receiving the compensation have filed arbitration applications seeking enhancement of compensation. It is stated that these applications are being contested by the National Highways Authority, who are assisting the Arbitrators appointed by the Central Government, to decide the applications of the land owners. It is further stated that the Central Government by a notification dated 8 December 2008 has appointed Additional Commissioner for four regions namely Nashik, Konkan, Pune and Nagpur regions, as arbitrators for deciding the appeals/applications under Section 3G(5) of the N.H.Act. It is stated that it is a practice followed by the Central Government throughout the country of making appointment of arbitrators regionwise, from the Revenue Department of the State, with the consent of the Chief Secretary of respective States. It is stated that these officers are well equipped with the special

characters of the different types of land and its value, and therefore, are competent to deal with the acquisition issues expeditiously. It is stated that the applications filed by the petitioners are pending before the Deputy Commissioner, Solapur Region and lastly, were listed for hearing on 18 June 2016 on which date the petitioners have filed an application for adjournment on the ground of pendency of the present petitions contending that as the issue is sub judice, the arbitrator/Commissioner should not proceed with the hearing of the arbitration application. It is stated that the National Highways Authority is fully co-operating with the arbitrator to dispose of the applications expeditiously.

6. A reply affidavit is filed by the Deputy Commissioner, Pune Division to state that the Additional Commissioner, Pune Division is working as an arbitrator as appointed by the Government of India by a notification dated 8 December 2008, to decide the appeals filed under Section 3G(5) of the N.H.Act. The allegations made by the petitioners that the Additional Commissioner being overburdened, is delaying the hearing of the appeal, is denied. It is stated that despite the workload, the Additional Commissioner is conducting the appeals by giving an opportunity of hearing to both the parties. It is stated that the applications where the record is complete, are being heard.

7. Considering the nature of the grievance and desirous

that the arbitration applications are expeditiously disposed of by the arbitrators, from time to time, interim orders were passed in these petitions, directing the respondents to consider appointing more number of arbitrators for each district, instead of burdening the Additional Commissioner (Revenue) Pune Division. Resultantly the Government of India, by an order dated 24 November 2016 made under Section 3G(5) of the N.H.Act, as placed on record of this proceedings, has made appointments of Arbitrators, in addition to the Commissioner/Additional Commissioner, who are officers of the designation of Collector/Additional Collector for the various revenue Districts/Talukas. These officers in the capacity of arbitrators would now decide the applications under Section 3G(5) also from various regions in the revenue districts. By this notification, the appointment of these additional officers is for about ten revenue districts and for large number of sub-regions which are falling within these revenue districts. A similar order No.NHAI/LA/2016 has been made appointing Additional Collector, Collector office, Solapur to be a designated officer for the revenue district of Solapur as appointed by the Central Government under sub-section (5) of Section 3G of the National Highways Act, to act as an Arbitrator. The respondents, therefore, contend that this would enable expeditious disposal of the arbitration applications, which seek enhancement of compensation and thus the grievance of the petitioners is adequately taken care of.

8. Having referred to the contentions of the petitioners' and those of the respondents, we examine the issues as raised by the petitioners.

9. We may note that by Act 16 of 1997, the N.H.Act was amended to incorporate the provisions of Section 3, 3A to 3J of the N.H.Act. By virtue of this amendment, a complete scheme akin to the Land Acquisition Act,1894 is provided for acquisition of land for the purpose of national highways. Section 3(a)-'the definition clause', provides for a 'Competent Authority' to be appointed by the Central Government for such area as may be specified in the notification to be issued by the Central Government. Section 3A provides for power to acquire land for a public purpose for the building, maintenance, management or operation of a national highway or part thereof, by issuance of a notification, in the official gazette by declaring its intention to acquire such land. Section 3B provides for power to enter on the land for survey etc. Section 3C provides for hearing of the objections of the persons interested in the land. Section 3D provides for declaration of acquisition. Section 3E provides for power to take possession of the land which would stand vested in the Central Government under sub-section (2) of Section 3D of the N.H.Act. Section 3F provides for right to enter into the land which stands vested in the Central Government. Section 3G provides for determination of amount payable as compensation which shall be determined by the order passed by the competent authority. This is a comprehensive provision. Sub-Section (5) of

Section 3G provides that if the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the “*arbitrator*” to be appointed by the Central Government. For the arbitration to be undertaken as per sub-section (5), sub-section (6) provides that the Arbitration and Conciliation Act, 1996 shall apply albeit subject to the N.H. Act. Sub-section (7) of Section 3G provides factors which are required to be taken into consideration by the competent authority while determining the amount under sub-section (1) or sub-section (5). Section 3H provides for deposit and payment of amount. Section 3I provides that the competent authority in determining the compensation shall have powers of a Civil Court as available for trying a suit under the Code of Civil Procedure as set out in sub-sections (a) to (e). Section 3J provides that nothing in the Land Acquisition Act, 1894 shall apply to an acquisition under the N.H. Act.

10. An overview of the above provisions of the N.H. Act sets out the clear intention of the legislature that for the purpose of acquisition of land for national highways, the N.H. Act by itself is a complete Code. The intention is further amplified by Section 3J which provides that the Land Acquisition Act, 1894 shall not apply to the acquisition under the N.H. Act. Thus, as regards the determination and award of compensation for land acquisition and for a situation where the amount of compensation which is determined by the competent authority under sub-section (1) or

sub-section (2) of Section 3G is not acceptable, then, necessarily the parties are required to make an application to the Arbitrator to be appointed by the Central Government. The Arbitrator would then, applying the principles as set out in sub-sections (a) to (d) of sub-section 7 of Section 3G, undertake the exercise of determining the amount of compensation.

11. To appreciate the grievance of the petitioners, we feel it appropriate to extract the relevant provisions of the N.H.Act and the provisions of *the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013* (for short “the 2013 Act”), inasmuch as the petitioners are aggrieved by the delay in the deciding the claim/applications of the petitioners for enhancement of compensation by the arbitrators.

“National Highways Act, 1956

Section 3 - Definitions - In this Act, unless the context otherwise requires-

- (a) “Competent authority” means any person or authority authorised by the Central Government by notification in the Official Gazette, to perform the functions of the competent authority for such area as may be specified in the notification.”

... ..

Section 3-G - Determination of amount payable as compensation :

- (1)
- (2)
- (3)
- (4)
- (5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to

either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

(6)

(7)

Section 3-J - Land Acquisition Act 1 of 1894 not to apply. ---

Nothing in the Land Acquisition Act, 1894 shall apply to an acquisition under this Act.

The Right to Fair Compensation And Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

Section 105 - Provisions of this Act not to apply in certain cases or to apply with certain modifications :

(1) Subject to sub-section (3), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule.

(2) Subject to sub-section (2) of section 106, the Central Government may, by notification, omit or add to any of the enactments specified in the Fourth Schedule.

(3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.

- (4) A copy of every notification proposed to be issued under sub-section (3), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses of Parliament.

THE FOURTH SCHEDULE

(See section 105)

1.
2.
3.
4.
5.
6.
7. The National Highways Act, 1956 (48 of 1956).
8.

12. The 2013 Act was brought into force with effect from 1 January 2014 repealing the Land Acquisition Act, 1894. In the present context, Section 105 of the 2013 Act would become relevant, as it provides that the provisions of 2013 Act shall not apply to the enactments relating to the land acquisition as specified in the Fourth Schedule in which N.H.Act finds a place in the Fourth Schedule at item 7. However, sub-section 3 of Section 105 of the 2013 Act provides that the Central Government is

empowered to issue a notification within one year from the date of commencement of the 2013 Act relating to the “***determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules***”, as beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of the 2013 Act relating to compensation or rehabilitation and resettlement as may be specified in the notification.

13. On behalf of the National Highways Authority, it is brought to our notice that the Central Government by a notification dated 20 August 2015 issued under sub-section (3) of Section 105 of the 2013 Act has issued an order called as the “*Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015*”, brought into force with effect from 1 September 2015. By clause (2) of the said order, the 2013 Act relating to 'the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule', is made applicable to all cases of land acquisition under the enactments specified in the Fourth Schedule in the said Act. By virtue of this order, the provisions of the 2013 Act pertaining to determination of compensation and other

benefits as provided in the First Schedule, Second Schedule and the Third Schedule are made applicable to the N.H.Act.

14. On the above background, the legal consequence is that in regard to those applications where enhancement of compensation is sought for and the same are pending consideration of the arbitrators and to which the provisions of the above notification become applicable, then the provisions of the 2013 Act in regard to determination of compensation in accordance with the First Schedule as also in regard to rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule would become applicable in regard to acquisition under the N.H.Act. In such case the Arbitrator as appointed under Section 3G(5) of the N.H.Act, apart from the factors as provided under sub-section (7) of Section 3G, would also be required to take into consideration the provisions of the 2013 Act as made applicable by virtue of the said 2015 Order as issued under sub-section (1) of Section 113 of the 2013 Act. However, it would be for the arbitrator to determine whether a particular application would be governed by the said notification dated 20 August 2015 issued by the Central Government.

15. The grievance of the petitioners is however that the Arbitrators who were initially appointed by a notification dated 8 December 2008 (namely the Additional Commissioner for the four regions who are overburdened) would not be in a position to expeditiously dispose of the applications as filed under Section

3G(5) of the N. H. Act, and therefore, parties should be permitted to make an application under Section 11 of the Arbitration and Conciliation Act,1996 for appointment of Arbitrators. The contention of the petitioners is that sub-section (6) of Section 3G provides for the applicability of the provisions of the Arbitration and Conciliation Act,1996 to every arbitration under the N.H. Act, and therefore the petitioners are entitled to make an application under Section 11 of the Arbitration and Conciliation Act,1996 for appointment of Arbitrator. This submission on behalf of the petitioners cannot be accepted in view of the clear mandate of sub-section (5) of Section 3G of the N.H. Act and which categorically provides for appointment of arbitrator by the Central Government. Further sub-section (6) of Section 3G of the N.H.Act cannot be construed so as to make Section 11 of the Arbitration and Conciliation Act,1996 applicable for appointment of an Arbitrator to decide applications under sub-section (5) of Section 34 of the N.H.Act. This for the reason that sub-section (6) of Section 3G of the N.H.Act makes applicable the provisions of Arbitration and Conciliation Act,1996 *subject* to the provisions of N.H.Act. The Legislature therefore has clearly intended not to displace the provisions of sub-section (5) of Section 3G of the N.H.Act which provides for appointment of the Arbitrator by the Central Government. The contention of the petitioners therefore, is in the teeth of cumulative reading of sub-section (5) and sub-section (6) of Section 3G of the N.H. Act. In any event the amendment to the N.H.Act incorporating the provisions by Section 3G(5) and (6) shows the clear intention of the legislature

as the said amendment is subsequent to the Arbitration and Conciliation Act, 1996 which was brought into force on 22 August 1996.

16. As noted above, the Central Government has now issued a notification appointing more arbitrators, considering the situation that the Additional Commissioners working under the notification dated 8 December 2008 requiring to decide the arbitration applications under Section 3G of the N.H. Act are likely to be overburdened. The Collectors and the Additional Collectors of the respective Districts, by virtue of the notification dated 24 November 2016 and by a separate order issued in regard to Solapur district, have been empowered to work as arbitrators under Section 3G(5) of the N.H. Act. In our opinion, this action on the part of the Central Government is a positive step in the expeditious disposal of the pending arbitration applications, and it can be thus observed that the grievance of the petitioners that there should be expeditious disposal of the arbitration applications for enhancement of compensation, has been sufficiently redressed by the Central Government.

17. In regard to the challenge as raised by the Petitioners in Writ Petition No. 866 of 2014 and other connected petitions that sub-section (5) of Section 3G of the N.H. Act is required to be struck down as violative of Section 14 of the Constitution as it empowers the Central Government to appoint the arbitrator, inter alia on the ground that the arbitrator is an officer of the

Government and, therefore, he would have an official bias in favour of the Government to decide the arbitration, also cannot be accepted. The law in this regard is well settled.

18. In *Hindustan Petroleum Corporation Ltd. Vs. Yashwant Gajanan Joshi and others*¹, the appellant-Corporation had taken steps under the Petroleum and Minerals Pipeline (Acquisition of Right of User in Land) Act, 1962, for laying down pipeline for a project namely Bombay - Pune Pipeline Project. One Mrs. A. R. Gadre, Special Land Officer, in the office of competent authority, was appointed as the competent authority by the Government of India vide notification dated 6 June 1988. Respondent No.1 - Yashwant Gajanan Joshi filed the petition under Article 226 of the Constitution of India, before the High Court for removal of Mrs. Gadre as competent authority on the ground that she was an employee of the Corporation and was biased against him. The High Court held that the property rights of respondent no.1 Yashwant Gajanan Joshi were being acquired for laying of the pipeline by the Corporation. He was claiming compensation and such compensation was required to be determined judicially, in which principles of natural justice ought to be followed. Principles of natural justice requires a feeling in both the parties that justice will be done as between them. The High Court was of the view that it was not proper to appoint Mrs. Gadre as a competent authority as she was an employee of one of the contesting parties. The writ petition was accordingly allowed

1 AIR 1991 SUPREME COURT 933

by the High Court directing the Union of India to appoint another competent authority. It was further directed that any suitable person may be appointed as the competent authority but he shall not be an employee of the Corporation. The High Court directed that certain retired District Judges were quite suitable for the purpose. On this count, Their Lordships of the Supreme Court though dismissed the Special Leave Petition, in paragraphs 12 and 13, made following observations:-

“12. We have given our careful consideration to the arguments advanced by learned Counsel for the parties and have thoroughly perused the record. There is no provision in the Act prohibiting the Central Government to make an appointment of an employee of the Corporation as competent authority. Apart from determining the compensation, many other functions are assigned to the competent authority and there may be one competent authority for all the above purposes of different persons or authorities may be authorised to perform all or any of the functions of the competent authority under the Act. The scheme of the Act shows that a competent authority has to discharge various and diverse duties under the Act. He has to attend survey of land required for pipeline, verification of land revenue records of the surveyed area, drawing up of panchnama for land, crop, plantation, trees or any other agricultural or non agricultural activity carried on in the surveyed land or the pipeline, issue of notification Under Section 3(1) of the Act, receipt of claims/objections for assessment of damages, disputes etc., issue of clearance to concerned oil company and deciding all the disputes arising

out of the authorised persons, power to enter notified lands and various other duties. Thus such person becomes a better qualified and experienced person equipped with a proper background to decide the amount of compensation also. We cannot accept the contention of Mr. Dholakia that merely because a person is an employee of the corporation, he would have a bias in deciding the compensation Under Section 10(1) of the Act.

13. It may also be pertinent to note that the Legislature has used the words "the amount of which shall be determined by the competent authority in the first instance" (emphasis supplied) in Sub-section (1) of Section 10 of the Act. This clearly shows that in the first instance it has to be decided by the competent authority and such determination shall not attain any finality. Then under Sub-section (2) of Section 10 itself it has been provided that if the compensation is not acceptable to either of the parties then an application can be filed before the District Judge. No doubt there is a marked difference in this regard between the provisions of this Act and the provisions contained in the Land Acquisition Act 1894 but in our view Under Section 10(1) the compensation is to be determined by the Competent authority only in the first instance. A party is entitled to raise the ground of bias against an appointment of an individual officer as competent authority on sufficient material placed on record in this regard, but not merely because such competent authority is an employee of the corporation. It cannot be a ground for any disability or disqualification in appointing such person as competent authority. If we take the matter to its logical conclusion the result would be that no employee of the State Government or

the Central Government as the case may be will be appointed as competent authority where petroleum and minerals pipelines are to be laid for a project initiated by the State Government or the Central Government respectively. It would be too broad a proposition to extend the theory of bias to exclude persons only because such person draws the salary from the bodies like public corporation, State Government or Central Government. It would altogether be a different case if it was a case of a private employer and his employee. We cannot equate the case of person in private employment with that of a person in public employment. The authorities mentioned above and relied upon by Mr. Dholakia are clearly distinguishable.”

(emphasis supplied)

In para 14, as a statement of law, their Lordships held as under :-

“..... We however wish to make it clear that we do not agree with the general proposition of the High Court that an officer of the corporation cannot be appointed as a 'competent authority' because he may be biased in favour of the corporation by reason of his employment.....”

19. The submission of the petitioners that the Arbitrator as appointed by the Central Government would have a bias, also cannot be accepted considering the applicability of the “*test of reasonable apprehension*” being well settled in catena of decisions of the Supreme Court. In “***The Secretary to the Government, Transport Deptt., Madras Vs. Munuswamy Mudaliar and***

*others*²,” applying the test of reasonable apprehension of bias, the Supreme Court, in paras 12 and 13, has observed thus :-

“12. Reasonable apprehension of bias in the mind of a reasonable man can be a ground for removal of the arbitrator. A predisposition to decide for or against one party, without proper regard to the true merits of the dispute is bias. There must be reasonable apprehension of that predisposition. the reasonable apprehension must be based on cogent materials. See the observations on Mustill and Boyd. Commercial Arbitration, 1982 Edition, page 214. Halsbury's Laws of England, fourth Edition, Volume 2, para 551, page 282 describe that the test for bias is whether a reasonable intelligent man, fully appraised of all the circumstances, would feel a serious apprehension of bias.”

13. This court in *International Airport Authority of India v. K. D. Bali* (1988) 2 JT 1 : (AIR 1988 SC 1099) held that there must be reasonable evidence to satisfy that there was a real likelihood of bias. Vague suspicions of whimsical, capricious and unreasonable people should not be made the standard to regulate normal human conduct. In this country in numerous contracts with the Government, clauses requiring the Superintending Engineer or some official of the Govt. to be the arbitrator are there. It cannot be said that the Superintending Engineer, as such, cannot be entrusted with the work of arbitration and that an apprehension, simpliciter in the mind of the contractor without any tangible ground, would be a justification for removal. No other ground for the alleged apprehension was indicated in the pleadings before the learned Judge or

the decision of the learned Judge. There was, in our opinion, no ground for removal of the arbitrator. More imagination of a ground cannot be an excuse for apprehending bias in the mind of the chosen arbitrator.”

20. In **Ranjit Thakur v. Union of India and others**³, Mr. Justice M. N. Venkatachaliah, speaking for the Bench, observed thus :-

“6. The second limb of the contention is as to the effect of the alleged bias on the part of Respondent 4. The test of real likelihood of bias is whether a reasonable person, in possession of relevant information, would have thought that bias was likely and is whether Respondent 4 was likely to be disposed to decide the matter only in a particular way.

It is the essence of a judgment that it is made after due observance of the judicial process; that the court or tribunal passing it observes, at least the minimal requirements of natural justice; is composed of impartial persons acting fairly and without bias and in good faith. A judgment which is the result of bias or want of impartiality is a nullity and the trial “coram non-judice”. (See Vassiliades v. Vassiliades, AIR 1945 PC 38).

7. As to the tests of the likelihood of bias what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. The proper approach for the Judge is not to look at his own mind and ask himself, however, honestly, “Am I biased?”; but to look at the mind of the party before him.

Lord Esher in Allinson v. General Council of Medical Education and Registration (1894) 1 QB 750 at p 758 said :

“The question is not, whether in fact he was or was not biased. The court cannot inquire into that. In the administration of justice, whether by a recognised legal court or by persons who, although not a legal public court, are acting in a similar capacity, public policy requires that, in order that there should be no doubt about the purity of the administration, any person who is to take part in it should not be in such a position that he might be suspected of being biased.”

21. In ***International Airport Authority of India v. K. D. Bali and another***⁴, on the issue of bias and in the context of revocation of authority of the Arbitrator, in paras 5 and 6, their Lordships observed as under :-

“5. Several points were taken in support of the application for revocation. It was sought to be urged that the petitioner had lost confidence in the sole arbitrator and was apprehensive that the arbitrator was biased against the petitioner. It is necessary to reiterate before proceeding further what are the parameters by which an appointed arbitrator on the application of a party can be removed. It is well settled that there must be purity in the administration of justice as well as in administration of quasi-justice as are involved in the adjudicatory process

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before the arbitrators. It is well said that once the arbitrator enters in an arbitration, the arbitrator must not be guilty of any act which can possibly be construed as indicative of partiality or unfairness. It is not a question of the effect which misconduct on his part had in fact upon the result of the proceeding, but of what effect it might possibly have produced. It is not enough to show that, even if there was misconduct on his part, the award was unaffected by it, and was in reality just; arbitrator must not do anything which is not in itself fair and impartial. See Russel on Arbitration, 18th Edn., p. 378, and observations of Justice Boyd in Re Brien and Brien [(1910) 2 Ir R 83, 89] . Lord O'Brien in King (De Vosci) v. Justice of Queen's Country [(1908) 2 Ir R 285] observed as follows:

“By bias I understand a real likelihood of an operative prejudice, whether conscious or unconscious. There must in my opinion be reasonable evidence to satisfy us that there was a real likelihood of bias. I do not think that their vague suspicions of whimsical, capricious and unreasonable people should be made a standard to regulate our action here. It might be a different matter if suspicion rested on reasonable grounds — was reasonably generated — but certainly mere flimsy, elusive, morbid suspicions should not be permitted to form a ground of decision.”

(emphasis supplied)

See Queen v. Rand [(1866) 1 QB 230 : 35 LJM 157] ; Ramnath v. Collector, Darbhanga [AIR 1955 Pat 345 : ILR 34 Pat 254] , Queen v. Meyer [(1875) 1 QBD 173] and Eckersley v. Mersey Docks and Harbour Board [(1894) 2 QB 667] .

6. *In the words of Lord O' Brien, L.C.J. there must be a real likelihood of bias. It is well settled that there must be a real likelihood of bias and not mere suspicion of bias before the proceedings can be quashed on the ground that the person conducting the proceedings is disqualified by interest. See in this connection Gullapalli Nageswara Rao v. State of Andhra Pradesh (1960) 1 SCR 580 : (AIR 1959 SC 1376) and Mineral Development Ltd. v. State of Bihar (1960) 2 SCR 609 : (AIR 1960 SC 468). Recently this Court in a slightly different context in Ranjit Thakur v. Union of India AIR 1987 SC 2386 had occasion to consider the test of bias of the Judge. But there must be reasonableness of the apprehension of bias in the mind of the party. The purity of administration requires that the party to the proceedings should not have apprehension that the authority is biased and is likely to decide against the party. But we agree with the learned Judge of the High Court that it is equally true that it is not every suspicion felt by a party which must lead to the conclusion that the authority hearing the proceedings is biased. The apprehension must be judged from a healthy, reasonable and average point of view and not on mere apprehension of any whimsical person. While on this point we reiterate that learned counsel appearing for the petitioner in his submissions made a strong plea that his client was hurt and had apprehension because the arbitrator being the*

appointee of his client was not acceding to the request of his client which the petitioner considered to be reasonable. We have heard this submission with certain amount of discomfiture because it cannot be and we hope it should never be (that) in a judicial or a quasi-judicial proceeding a party who is a party to the appointment could seek the removal of an appointed authority or arbitrator on the ground that appointee being his nominee had not acceded to his prayer about the conduct of the proceeding. It will be a sad day in the administration of justice if such be the state of law. Fortunately, it is not so. Vague suspicions of whimsical, capricious and unreasonable people are not our standard to regulate our vision. It is the reasonableness and the apprehension of an average honest man that must be taken note of. In the aforesaid light, if the alleged grounds of apprehension of bias are examined, we find no substance in them. It may be mentioned that the arbitrator was appointed by the Chief Engineer of the petitioner, who is in the service of the petitioner.”

22. From the above decisions, the position in law is manifest to conclude that the Arbitrator appointed by the Central Government under sub-section (5) of Section 3G of the N. H. Act cannot be a biased person being a higher officer to the Competent authority or for that matter the Petitioner's contention that there would be some kind of official bias in such arbitrators in deciding the arbitration applications, cannot be accepted. In our opinion, a person appointed by the Central Government under sub-section (5) of Section 3G of the N.H.Act, is a person not connected in the

various stages of the land acquisition and in determination of the compensation which is fixed by the competent authority appointed under Section 3(a) of the N.H.Act. Thus, at the first instance, it is the competent authority which determines the compensation. Such determination does not attain finality in view of the fact that a party being aggrieved by determination of the compensation by the competent authorities, entitled to challenge the same by approaching the Arbitrator. Thus, applying the principle as enunciated in the “*Hindustan Petroleum Corporation Ltd. Vs. Yashwant Gajanan Joshi and others*” (*supra*) , it would be too a broad challenge of the petitioners to urge that only because the arbitrator being appointed by the Central Government, is an officer of the Government, the theory of bias becomes applicable. The Supreme Court in “*The Secretary to the Government, Transport Deptt., Madras Vs. Munuswamy Mudaliar and others*” (*supra*) applying the test of reasonable apprehension upheld the appointment of officer of the government as Arbitrator to hold that unless there is some tangible ground which would depict reasonable apprehension of bias in the mind, the appointment of the arbitrator cannot be questioned. Thus, the vague suspicion of the petitioners that merely because the arbitrator is appointed by the Central Government there is likelihood of bias, if tested on the principles of law as enunciated in the above decisions, cannot be accepted. The challenge of the petitioners that Section 3G(5) of the N.H.Act which empowers Central Government to appoint the Arbitrator is violative of Article 14 of the Constitution would thus fail and

stands rejected.

23. As regards the reliance of Mr.Dhakephalkar, learned Senior Counsel for the Petitioners on the orders by the Supreme Court dated 11 August 2016 in the case of “***Sunita Mehra & Anr. Vs. Union of India & Ors.***” and more particularly on the observation on page 5 of the order, considering the facts of the present case, we do not express any opinion on this submission. It is needless to observe that it would be open for the petitioners to urge these issues before the learned Arbitrator and if so raised, the learned Arbitrator would consider the same in accordance with law. The contentions of the National Highway Authority in this regard are kept open.

24. In view of the above deliberation, we find no merit in the petitions. They are accordingly rejected. No costs.

25. We however direct that the learned Arbitrators shall make an endeavour to dispose of the pending applications as early as possible and preferably within a period of twelve months.

(G.S.KULKARNI, J.)

(CHIEF JUSTICE)