

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

922 WRIT PETITION NO. 10113 OF 2017

DADASAHEB VITTHAL DHOLE AND OTHERS
VERSUS
THE UNION OF INDIA AND OTHERS

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Mr. A.B.Kale, Advocate for Petitioners
Mrs. A.V.Gondhalekar, AGP for Respondent-State
Mr. D.G.Nagode, Advocate for Respondent No.1
Mr. D.S.Manorkar, Advocate for Respondent No.3

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**CORAM : PRASANNA B. VARALE AND
MANGESH S. PATIL, JJ.**

DATE : 29.11.2018

PER COURT :-

1. Heard Mr. A.B.Kale, the learned counsel appearing for the petitioners, Mr. D.G.Nagode, the learned counsel appearing for Respondent Nos.1 and 2, the learned AGP appearing for Respondent Nos.4, 5 and 6. Though notice is duly served on Respondent Nos.3 and 7, none appears for these respondents.

2. Petition is taken up for hearing / disposal with consent of the parties. A very limited grievance is raised in the petition. The learned counsel Mr. Kale appearing for the petitioners submitted that the petitioners are the residents of village Badewadi, Taluka Pathardi, District Ahmednagar.

3. Then by inviting our attention to the National Highways Act, 1956, the learned counsel submitted that the Act makes provision for determination of the amount payable as compensation. Then by inviting our attention to Section 3, the learned counsel submitted that a detail procedure is carved out in the matters of acquisition and grant of compensation. The learned counsel then submitted that in view of the provisions of Sub Clause (5) of Section 3-G, a forum is made available to the parties being aggrieved by the amount of compensation and this provision takes care of a remedial measure such as submitting an application to the Arbitrator for determination of the claim. The learned counsel then submitted that the very provision then states that the Central Government enjoys the power of appointment of an Arbitrator. On the back drop of these provisions, the learned counsel then submitted that an award came to be passed on 29.07.2016 by competent authority in the matter of acquisition of lands of the petitioners. The learned counsel then submitted that the petitioners were not agree to the compensation awarded to them. As such, by availing the remedy under the Act, these petitioners submitted a petition before the competent

authority i.e. Collector and National Highway Arbitrator, Ahmednagar by preferring Arbitration Petition in accordance with the provisions of Act and particularly under Section 3-G (5) of National Highways Act, 1956.

4. The learned counsel then submitted that though this petition is filed on 28.07.2017, there is no further progress in the petition as the Arbitrator is not appointed. The learned counsel then invited our attention to a representation made to the Deputy Collector Land Acquisition, Ahmednagar dated 07.04.2017 submitting before him that the petitioners have filed their Arbitration Petition but as there is no appointment of Arbitrator, the Arbitration Petition is in a position of stand still. The learned counsel then submitted that the petitioners are approaching this Court with the limited grievance that the directions be issued to respondents-authorities to appoint a Arbitrator as per the provisions of Act. The learned counsel then submitted that though the petitioners have approached Respondent No.6 - the Collector Ahmednagar, Respondent No.6 expressed his inability to accept the petition on the ground that he is neither possessing the authority nor he is possessing the powers to deal with the petitions filed by the petitioners. In response

to the notice issued by this Court, an affidavit-in-reply is filed on behalf of Shri. V.V.Bandal, Sub-Divisional Officer, Pathardi, District Ahmednagar. The factual aspects are admitted in the affidavit-in-reply and further it is stated in the affidavit-in-reply that the persons affected due to acquisition of land for the National Highway No.222 are approaching before him time and again and it is necessary to take necessary steps for appointment of Arbitrator, in view of the provisions under Section 3-G(5) of the National Highways Act, 1956. A communication is also placed on record along with the affidavit-in-reply i.e. a letter forwarded to the Executive Engineer, National Highway, Nashik Division, Nashik dated 25.04.2017 requesting the authority to take appropriate steps for appointment of an Arbitrator.

5. A representation is also placed on record to submit that this very grievance is raised before the Secretary, Ministry of Road Transport and Highways. This representation is submitted to the authority on 27.09.2018. Thus what emerges to perusal of the material placed on record is inspite of a specific provision made in the Act to make available a forum in the nature of Arbitrator for redressal of dispute in the matter of compensation, this

provision is only on paper till date as no steps are taken by the Central Government for appointment of an Arbitrator. This remedial measure is left only a theoretical measure and has not seen the light of day in practical.

6. Mr. Kale, the learned counsel appearing for the petitioner was justified in making the submission that the petitioners at this stage are not asking for any quantification of the amount for enhanced compensation but the only want that their grievance be redressed by the competent forum namely the Arbitrator, hearing the petitioners, on the merits of their Arbitration Petition. On a query put to the learned counsel appearing for Respondent No.1 / Union of India that whether any instructions are received by him in respect of appointment of the Arbitrator in view of the provisions of Act, the learned counsel expressed his inability to make any statement to that effect for short of instructions.

7. Considering this fact situation and considering the grievance of the petitioners who are before this Court and considering the fact that there is possibility of the other persons identically situated with the petitioners, we are left with no choice but to issue directions to Respondent No.1 to take all the necessary steps in compliance of the provision of

Section 3-G(5) of National Highways Act, 1956 namely appointment of an Arbitrator, as expeditiously as possible and not later than 12 weeks from the date of order of this Court.

8. With these directions, the Writ Petition is disposed of.

(MANGESH S. PATIL, J.)

(PRASANNA B. VARALE, J.)

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