

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5077 OF 2022

1. Govind Poslya Gavit,
Age 40 years, Occu. Agriculture,
R/o. Nandgipada,
Taluka Navapur, District Nandurbar
2. Vilas Vijaysing Valvi,
Age 48 years, Occu. Labour Contractor,
R/o. Gangapur, Taluka Navapur,
District Nandurbar .. Petitioners

Versus

1. Competent Authority and or
Special Land Acquisition Officer,
(National Highway No. 6) /
Assistant Collector, Nandurbar,
Taluka and District Nandurbar.
2. National Highway Authority of India,
Through Project Director,
NHAI-PUI, Dhule,
Mansaram nagar, Near Circuit House,
Sakri Road, Dhule – 424 022.
3. Deputy Superintendent of Land Record,
Nandurbar, Taluka and District Nandurbar.
4. The learned Collector,
Nandurbar. .. Respondents

...

Mr. D. S. Bagul, Advocate for Petitioners
 Mr. R. B. Bhosale, Advocate for Respondent No.1
 Mr. V. D. Sapkal, Senior Advocate instructed by Mr. Deepak S.
 Manorkar, Advocate for Respondent No.2
 Mr. S. P. Tiwari, A.G.P. for Respondents no. 3 and 4

...

CORAM : R. D. DHANUKA &
S. G. MEHARE, JJ.

DATE : 05-05-2022

ORAL JUDGMENT (PER R. D. DHANUKA, J.) :-

Rule. Mr. Bhosale, learned counsel waives service of notice for respondent no.1. Mr. V. D. Sapkal, senior counsel waives service for respondent no. 2. The learned AGP waives service of notice for respondents no. 3 and 4. Rule made returnable forthwith. With consent of learned counsel for the parties, heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the petitioners seek writ of *mandamus* directing the respondent no.2 to stop the construction of national highway no. 6 at the sites of petitioners immediately. The petitioners also seek writ of *mandamus* directing the respondent no. 2 forthwith to initiate and complete land acquisition proceedings in respect of properties of petitioners bearing Gat Nos. 45/4/A, 45/A/B, 45/4/C, 45/3/8 situated at Mauje Gangapur, Taluka Navapur, District Nandurbar and further pay compensation to the petitioners.

3. It is the case of the petitioners that they are the owners and possessors of the land bearing Gat No. 45/4/B admeasuring 8600

Sq.Meter, Gat No. 45/4/A admeasuring 8600 Sq.Meter, and Gat No. 45/4/C admeasuring 8600 Sq.Meter situated at Gangapur, Taluka Navapur, District Nandurbar, respectively. The Government of India, the Ministry of Road, Transport and Highway issued a notification on 11.11.2011, published the same in the Gazette of India under Section 3(A) of the National Highway Act, 1956 and thereby declared its intention to acquire the land in Nandurbar district. (For Short 'the said Act of 1956').

4. The Project Director, by its impugned order dated 19.10.2020 refused to issue any notification under section 3(A) of the Act of 1956. In the month of January 2022, the Deputy Superintendent of Land Records after giving notices to all the parties carried out joint measurement in the month of January, 2022. The Deputy Superintendent of Land Records Navapur submitted a report to the office of competent authority pointing out that the earlier measurement which was done in the year 2018 was correct and the lands of the petitioners are being affected for construction of National Highway No.6. The petitioners also filed the measurement sheet which was drawn and confirmed that their lands have been affected under the road widening.

5. On 26.04.2022 the National Highway Authority of India directed the Collector to call a meeting on 30.04.2022 in the presence of District Collector Nandurbar, Competent Authority, National Highway Authority, Superintendent of Police, Nandurbar, Assistant Police Inspector, Advocates of National Highway Authority and further directed the Collector to instruct the authorities to permit them to carry out the construction of National Highway No.6 in the antacids of petitioners.

6. It is the case of the petitioners that meeting was conducted and convened without calling the petitioners whose land is being affected, which shows high handed action of the learned Collector. On 24th October 2018 the petitioners herein filed writ petition No. 7490 of 2020 and praying for a writ of certiorari for quashing and setting aside the impugned order dated 19th October 2020 passed by the office of respondent no. 2 National Highway Authority of India thereby refusing to issue notification under section 3(A) of the said Act of 1956. The said writ petition was heard along with batch of petitions by a Division Bench of this Court. By a Judgment delivered on 29th July 2021 by the Division Bench of this Court the said batch of petitions were disposed of.

7. In so far as petitioner no.1 in this petition who was one of

the petitioners in Writ Petition 7490 of 2020 is concerned, this Court recorded that the National Highway Authority of India had indicated from X-1 that 11366 Sq. Meters of land had been acquired and further 19156 Sq.Meters of land was required. A notification has been issued and Competent Authority of Land Acquisition (for short 'CALA') will consider the objections of any person whose land is affected, by following the procedure laid down under Section 3 of the said Act of 1956 and all objections would be dealt with by CALA. This Court recorded that the petitioners were agreeable and disposed of the petitions.

8. This Court further made it clear that in the event of any measurement of lands being required to be done, the District Collector, Nandurbar shall monitor such measurement. If any of the petitioners are aggrieved by any portion of their land, over and above the lands mentioned in X-1, being affected, they would be at liberty to raise a dispute before a CALA. The measurement of lands, if required, shall be undertaken by the District Collector and in presence of all the litigating parties / title holders / persons having interests in the property, preferably within a period of 30 days. In paragraph no. 10 of the said order, it was stated that any land over and above the details set out in X-1 is to be acquired, the procedure laid down in Law shall be followed.

9. Learned counsel for the petitioners invited out attention to various annexures to the petition and also judgment of this Court delivered on 29th July 2021 and would submit that in so far as the lands of the petitioners described in prayer clause 'D' of the petition are concerned, no mandatory procedure prescribed in the said Act of 1956 have been followed. No notification under Section 3(A) of the said Act was issued at any point of time showing the intention of the Central Government to acquire the said lands.

10. Learned counsel tendered a compilation during the course of arguments and would submit that the measurement which has been carried out after passing of the said judgment, the authority would indicate that the land of the petitioner has been affected by the project undertaken by the respondent no.2. It is submitted that no notification under Section 3(A) of the said Act of 1956 has been issued by the Central Government till date.

11. It is submitted by the learned counsel that without acquiring the land of the petitioners, the National Highway authority commenced the construction of the road on the lands of the petitioners. This action on the part of the respondent no.2 amounts to encroachment on the land of petitioners and

dispossession following due procedure of law and in violation of Article 300A of the Constitution of India. In support of this submission, the learned counsel for the petitioners relied on the Judgment of Supreme Court in case of *Sukh Dutt Ratra and another Versus State of Himachal Pradesh and others, 2022 LiveLaw (SC) 347* and more particularly paragraphs no. 14, 15, 22, 23 and 25.

12. Mr. Sapkal, learned senior counsel for respondent no.2 on the other hand submits that the order passed by the Division Bench of this Court dated 29th July 2021 is very clear that Petitioners can lodge their objections, if any under Section 3(D) of the said Act before the Competent Authority Land Acquisition in respect of their land and the same can be considered by the CALA under the said provision of the said Act of 1956.

13. Learned senior counsel for the respondent no.2 submits that in the notification issued earlier under Section 3(A) of the said Act, though the land of the petitioners is not included, this issue also can be raised before the CALA. He invited our attention to Section 3(A) to Section 3(H) of the said Act of 1956 and submits that the said scheme is self contained and thus petitioners cannot be allowed to stall the project undertaken by respondent no.2.

Learned senior counsel on instructions states that his client is not carrying out any construction over the land of the petitioner.

14. It is submitted that the land of the petitioners was not included in the Award made so far. He however can raise this issue also before CALA. In support of the submission that public project cannot be stalled, learned senior counsel placed reliance on the Judgment in a case of ***Mahadeo Savlaram Shelke and others Versus Puna Municipal Corporation***, delivered on 24th January, 1995. In support of his submission that no perpetual injunction can be granted stalling public project, learned senior counsel for respondent no.2 relied upon section 20(A) and section 21(ha) of the Specific Relief Act, 1963.

15. Learned senior counsel for respondent no.2 also placed reliance on the Judgment delivered by a learned Single Judge of this Court on 29.06.2017 in Writ Petition No. 1949 of 2017 (***Arun s/o. Trimbakrao Lokare Versus The State of Maharashtra and others***).

16. When this Court raised a query as to whether respondent no. 2 is carrying out any construction on the land of the petitioners, learned senior counsel for respondent no.2 states that

respondent no.2 is not carrying out any construction on the land of petitioners. He further states that respondent no.2 is carrying on construction of road only on the lands which are already acquired under the 2013 Award.

17. We have repeatedly called upon the respondent no.2 to demonstrate whether the lands of the petitioners are included in any of the earlier Awards made by competent authority on which according to the petitioner construction of road is going on, the learned senior counsel for the respondent no.2 is unable to produce any record before this Court. On the contrary, it is reiterated that in view of the earlier order passed by this Court, petitioners can raise all these objections raised in this petition before CALA.

18. Learned senior counsel for the respondent no.2 invited our attention to the Writ Petition No. 7490 of 2020 filed by the petitioners earlier and the prayers made therein. He also invited our attention to the prayers in this writ petition and would submit that the earlier petition filed by petitioner bearing Writ Petition No. 7490 of 2020 is already disposed of by the Division Bench of this Court, petitioners thus cannot be allowed to file this petition for the same reliefs.

19. A perusal of the prayers in Writ Petition no. 7490 of 2020 filed by the petitioner indicates that the petitioners had filed the said writ petition for a writ of certiorari for quashing and setting aside the order dated 19th October, 2020 passed by the respondent no. 2 National Highway authority thereby refusing to issue notification under Section 3(A) of the said Act of 1956.

20. A perusal of the order passed by the Division Bench of this Court in the said writ petition along with batch of petitions indicates that the National Highway Authority of India submitted a chart which was taken on record and was marked as "X-1" collectively. Insofar as Writ Petition No. 7490 of 2020 is concerned, 11366 Sq.Meters of land had been acquired and further 19156 Sq.Meters of land was required. This Court held that notification had been issued and CALA would consider the objections of any person where land is affected, by following the procedure laid down under Section 3 of the National Highway Act.

21. A perusal of the said statement itself would clearly indicate that the lands of the petitioners are not acquired and further lands were required by the National Highway authority. The petitioners could have raised any objection only if lands of the petitioners

were included in the notification, if any issued under Section 3(A) of the said Act of 1956. There is no dispute that the lands of the petitioners were subsequently measured by the authority on 21st July 2021 and noticed that the land of the petitioners would be affected by the public project undertaken by the respondent no.2. It is not in dispute that after such measurement has been carried out, no notification under Section 3(A) has been issued by the Central Government.

22. We have perused Section 3(A) to Section 3(H) of the said Act of 1956. A perusal of 3(A) clearly indicates that power to acquire land vests with the Central Government and if Central Government requires any land for the public purpose, has to issue a notification in the Official Gazette declaring its intention to acquire such land. Under Section 3-B, there is power to enter upon such land which is subject to issuance of the notification under Section 3-A for the purpose of survey etc. Under Section 3-C, any person interested in the land may, within twenty-one days from the date of publication of the notification under sub-section (1) of section 3-A, object to use of the land for the purpose or purposes mentioned in that sub-section. Under sub-section (2) of section 3-C, every objection under sub-section (1) shall be made to the competent authority in writing and shall set

out the grounds thereof. The competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections. Sub-section (3) of Section 3-C provides that any order made by the competent authority under sub-section (2) shall be final.

23. Section 3-D of the Act clearly provides for declaration of acquisition. Where no objection under sub-section (1) of section 3-C has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objection under sub-section (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes mentioned in sub-section (1) of section 3-A. Sub-section (2) further provides that, on the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances. A declaration made by the Central Government under sub-section (1) shall not be called

in question in any Court or by any other authority.

24. Section 3-E of the said Act provides for power to take possession. (1) Where any land has vested in the Central Government under sub-section (2) of Section 3-D, and the amount determined by the competent authority under section 3-G with respect to such land has been deposited under sub-section (1) of Section 3-H, with the competent authority by the Central Government, the competent authority may by notice in writing direct the owner as well as any other person who may be in possession of such land to surrender or deliver possession thereof to the competent authority or any person duly authorised by it in this behalf within sixty days of the service of the notice. The said provision further empowers to take further steps if the owner or any person refuses or fails to comply with any direction made under sub-section (1), the competent authority shall apply.

25. Section 3-F confers the right to enter into the land where land has vested in the Central Government. Section 3-F provides for determination of amount payable as compensation. It is provided that where any land is acquired under the said Act, there shall be paid an amount which shall be determined by an order of the competent authority. The said provision further provides for a

remedy to an affected person to apply for arbitration under the provisions of the Arbitration and Conciliation Act, 1996. Section 3-H of the said Act is for deposit and payment of amount. Section 3-G provides for determination of the amount payable as compensation.

26. The Hon'ble Supreme Court in case of ***Project Contractor National Highway Limited*** (supra) relied upon by learned senior counsel for the respondent no.2 has dealt with the scheme for acquisition under the provision of National Highway Act, 1956. After perusing the provision of Section 3-A to 3-H of the said Act, the Hon'ble Supreme Court held that, after objections are heard under Section 3-C of the said Act, the requisite declaration under Section 3-D of the said Act has to be issued followed by the determination of amount. The said judgment would assist the case of the petitioners and not the respondent no.2.

27. The Division Bench of this Court in case of ***Arun Trimbakrao Lokare*** (supra) construed the scheme of acquisition under the said Act. The relevant paragraphs of the said judgment read thus :-

"7. The National Highways Act, 1956 is an Act to provide for the declaration of certain highways to be national highways and for matters connected therewith. By section 2, certain highways can be declared as national highways. By section 3, the terms "competent authority" and "land" have been defined. Section 3-A confers the power to

acquire the land etc. By section 3-B, there is power to enter for survey, etc.

8. Then comes an important provision, namely, section 3-C which provides for hearing of objections. Thus, any person interested in the land may object to the use of the land for the purpose or purposes mentioned in that sub-section, namely, sub-section (1) of section 3-A. How objections have to be considered and the order to be made thereon is provided by sub-section (2) of section 3-C. Then follows the declaration of acquisition by section 3-D and by section 3-E the power is conferred to take possession. By section 3-F there is a right to enter into the land where the land has vested in the Central Government.

9. A bare reading of these provisions together and harmoniously would reveal as to how a comprehensive legislation is made enabling the acquisition of land for National Highways. The object is to build, maintain, manage or operate a National Highway. When such comprehensive legislation and which is a Code by itself, is enacted, naturally it must contain provisions for determination of the amount payable as compensation. That determination takes place in terms of section 3-G. A reading of all sub-sections of section 3-G would reveal as to how the compensation has to be determined for the right of user or any right in the nature of an easement on any land acquired under the Act and for that an amount is paid to the owner or any other person whose right of enjoyment in such land has been affected in any manner whatsoever by reason of such acquisition. The claims from all persons interested in the land to be acquired have to be invited in terms of the public notice and thereafter, an opportunity to substantiate that claim by stating the nature of interests in such lands, has to be given. Then, there is determination of the amount by the competent authority in terms of sub-section (1) or sub-section (2) of section 3-G. If the amount determined by the competent authority under these sub-sections is not acceptable to either of the parties, then, the amount shall, on application by either of the parties, be determined by the Arbitrator to be appointed by the Central Government in terms of sub-section (5) of section 3-G. The factors which have to be taken into consideration for determining the amount payable are set

out in sub-section (7).

10. Thereafter, follows section 3-H which we have reproduced above. By sub-section (1) of section 3-H, the amount determined under section 3-G shall be deposited by the Central Government in such manner as may be laid down by Rules made in this behalf by that Government, with the competent authority before taking possession of the land. As soon as may be after the amount has been deposited under sub-section (1) of section 3-H, the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto. Where such persons claim to be interested in the amount deposited under sub-section (1) of section 3-H, the competent authority shall determine the persons who in it's opinion are entitled to receive the amount payable to each of them. However, the enactment and which contains provisions for building and maintaining of national highways has to be so comprehensive and complete that nothing is left out of it's purview. The reason is obvious. The project of national importance and which a national highway is, should not be unnecessarily delayed. Therefore, the object being to pay the amount determined by the competent authority or by the arbitrator before taking possession of the land, that has to be disbursed to the person or persons entitled thereto. This follows deposit of the amount with the Central Government. Hence, sub-section (3) of section 3-H takes care of the situation where several persons claim to be interested in the amounts deposited. In that event it is the competent authority who shall determine the persons, who in it's opinion, are entitled to receive the amount payable to each of them. However, if any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, then, the competent authority shall refer the dispute to the decision of the Principal Civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated. The competent authority possesses certain powers of the Civil Court, but in the event of a dispute of the above nature, the summary power, vesting in the competent authority of rendering an opinion in terms of sub-section (3) of section 3-H, will not serve the purpose. The dispute being of the nature triable by the Civil Court that the law steps in to provide for that to be

referred to the decision of the Principal Civil Court of original jurisdiction. The dispute regarding apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, would then have to be decided by that Court."

28. In our view since the land has not vested in the respondent no.2 under Section 3-D (2) till date, which vests only after following mandatory procedure under Section 3-A 3-C and thereafter issuance of notification under Section 3-D and not prior thereto, the attempt made by respondent no.2 for carrying out construction of road on the lands of the petitioners is without following mandatory procedure under Sections 3-A to 3-E of the said Act. The question of the petitioners raising an objection to acquire or not to acquire the land of the petitioners before CALA directly without Central Government first complying with the mandatory Sections 3-A to 3-E does not arise. In our view, the submission of the learned senior counsel for respondent no.2 that though the land of the petitioners are not included in the notification under Section 3(A), petitioners can raise objection before CALA is totally untenable and contrary to Section 3A to Section 3E of the said Act.

29. The Judgment of the Supreme Court in case of ***Sukh Dutt Ratra*** (supra) relied upon by the learned counsel for the petitioners clearly applies to the facts of this case. The CALA has

no jurisdiction to decide the objection regarding validity or invalidity of the acquisition of the land.

30. Petitioner cannot be dispossessed without due process of law and without acquiring the land of the petitioners by following procedure under Section 3A to 3E of the said Act of 1956. An attempt made by the respondent no.2 to take possession of the lands of the petitioner to carry out construction is clearly in breach of section 3A to 3D of the said Act of 1956 and Article 300A of the Constitution of India.

31. Insofar as the provisions of Section 20(A) and 41(ha) of the Specific Relief Act pressed in service by the learned senior counsel for the respondent no.2 are concerned, those provisions apply to the suit. Be that as it may, this submission of the learned senior counsel is inconsistent with the submission that respondent no.2 is not carrying out any construction work on the lands of the petitioners.

32. We have perused the joint measurement produced by the learned counsel for the petitioner carried out on 12.11.2021 forming part of the compilation tendered by him. We are of the clear opinion that the lands of the petitioners are affected by the

project undertaken by the respondent no.2 and not included in the award of 2013 or any other award.

33. If the respondent no.2 seeks to acquire the land of the petitioner and to seek possession thereof, the respondent no.2 is at liberty to follow the procedure prescribed under the provisions as prescribed under the said Act of 1956.

34. Insofar as Judgment of Supreme Court in case of Mahadeo (supra) relied upon by the learned senior counsel for the respondent no.2 is concerned, the said judgment has considered the prayer for perpetual injunction in a suit. The said judgment would not advance the case of the respondent no.2 on facts. No person can dispossess the occupier of the land without following the due process of law under the pretext of carrying out public project. Even at this stage, the respondent no.2 has not intended to acquire the lands of the petitioners and pay compensation in accordance with law.

35. Writ petition is allowed in terms of prayer clause 'D'. The respondents shall not carry out any construction on the plots of the petitioners for the purpose of National Highway till all the stage of issuance of declaration under Section 3-D of the National

Highways Act, 1956 are completed and after complying with the mandatory provisions prescribed under Section 3-A to 3-C of the Act.

36. Writ petition is allowed in aforesaid terms. Rule is made absolute accordingly. No order as to costs.

(S. G. MEHARE)
JUDGE

(R. D. DHANUKA)
JUDGE

rrd