

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

WRIT PETITION NO.2137 OF 2021

KISAN BHIMRAO BAKAL (PATIL)
VERSUS
PROJECT DIRECTOR NATIONAL HIGHWAYS AUTHORITY OF
INDIA AND OTHERS

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Advocate for Petitioner : Mr. V. P. Bakal
AGP for Respondent-State: Mrs. V. N. Patil Jadhav
Advocate for Respondent Nos.3 : Mr. D. S. Manorkar

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**CORAM : C. V. BHADANG AND
SANDIPKUMAR C. MORE, JJ.
DATED : 6 JULY 2022.**

P. C. :

By this petition, the petitioner is seeking a declaration that the communication dated 9 November 2020 by respondent No.1 is arbitrary and discriminatory.

2. The petitioner claims that although his land has been acquired by the National Highways Authority of India (NHAI) while determining the compensation appropriate compensation for the standing fruit bearing trees has not been awarded to the petitioner. The learned counsel for the petitioner in this regard has brought to our notice the record of the remeasurement in order to submit that the authority had indeed found that there were trees standing in the land, however, had refused to pay compensation for such trees on the ground that initial compensation (for the land) is already paid.

3. The learned counsel for the respondent has submitted that the petitioner has taken recourse to the statutory remedy of reference to an arbitrator under Section 3G(5) of National Highways Authorities Act 1956 and the learned arbitrator by an award dated 27 June 2019 has dismissed the reference. It is pointed out that the petitioner has challenged the said award before the learned District Judge on 13 December 2019, which is pending before the learned District Judge, Aurangabad.

4. We find that the petition is silent about the reference to the arbitrator as well as the award passed by the arbitrator, its rejection as well as about the fact that the petitioner has carried the matter before the learned District Judge. We find that there is a clear suppression of the material facts in the petition, which cannot be appreciated. In any event as the petitioner has already taken recourse to the statutory remedy and the matter is pending before the learned District Judge, we decline to entertain the petition, which is accordingly rejected, with no order as to costs.

5. We, however, make it clear that the rival contentions of the parties are left open to be considered by the learned District Judge on their own merits.

SANDIPKUMAR C. MORE, J.

C. V. BHADANG, J.

VS Maind/-