

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13722 OF 2021

1. Vikas S/o. Mahadev Somwanshi,
Age : 40 years, Occu. Agri.,
R/o. Arni, Kanegaon, Tq. Lohara,
Dist. Osmanabad

2. Chandrasekhar S/o Mahadev Somwanshi,
Age : 32 years, Occ. Agri.,
R/o. Arni, Kanegaon, Tq. Lohara,
Dist. Osmanabad

.. PETITIONERS

VERSUS

1. The Union of India

2. The Project Director,
National Highways Authority of India,
Ministry of Road Transport & Highways,
Government of India,
Project Implementation Unit, Nanded,
Bharadwaj, Venkatadri Nagar,
Near Ayodhya Nagari, Malegaon Road,
Taroda (Kh.), Nanded – 431 605.

3. The Competent Authority &
Dy. Collector (Land Acquisition)
Manjra Project, Osmanabad

.. RESPONDENTS

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Advocate for Petitioners : Mr. Koshti P.S.
Advocate for the respondents 1 and 3 : Mr. R.B. Bhosale
Advocate for the respondent no. 2 : Mr. D.S. Manorkar

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**CORAM : MANGESH S. PATIL &
Y. G. KHOBRADE, JJ.**

DATE : 24 NOVEMBER 2022

ORAL JUDGMENT (MANGESH S. PATIL, J.) :

Heard both the sides finally.

2. Rule. Rule is made returnable forthwith.

3. The petitioners are aggrieved by the fact that in spite of their land having been acquired for the widening of the national highway and some award has been passed, they have not been paid the compensation.

4. Learned advocate for the respondent – competent authority, referring to the affidavit-in-reply, would submit that it is a matter of record that subsequent to the passing of the award, re-measurement was undertaken and some portion of the property being claimed by the petitioners has been found to be affected. However, he submits that the competent authority does not have the power and jurisdiction to modify or review the order. He would further submit that unless the acquiring body i.e. National Highway Authority deposits the money, nothing can be paid to the petitioners.

5. Learned advocate Mr. Manorkar, referring to the affidavit-in-reply submits that it is a matter of law that the competent authority does not have any power to modify the award. If at all the petitioners' claim is to be considered, that can happen only if they approach and invoke the powers under section 3H(4) of the National Highways Act, 1956, whereupon the competent authority would be under statutory obligation to make a reference as contemplated therein

to a civil Court and the entitlement of the petitioners to claim compensation would thereafter depend upon the decision of the civil Court.

He also cites the order passed by this Court in writ petition no. 11076 of 2021 in the matter of **Amol Shivji Bhadre Vs. State of Maharashtra and another** dated 06-10-2022 and submits that in similar set of facts, this Court had permitted the petitioner therein to follow the afore-mentioned course, referring to the decision of this Court in the matter of **Arun Trimbakrao Lohkare Vs. State of Maharashtra** (writ petition no. 1949 of 2017 dated 29 June 2017).

6. Certainly, entitlement or otherwise of an individual to have compensation is a matter which would fall squarely under section 3H(4) of the National Highways Act, 1956 and the competent authority would be under an obligation to make a reference to the civil Court. It is only thereafter that civil Court can go into and decide the disputed question of fact, as to whether the petitioners are owners of the land which they claim have been acquired by the respondents.

7. We dispose of the writ petition by directing the petitioners to move an application with the competent authority under section 3H(4) of the National Highways Act, 1956 whereupon the respondent – competent authority shall make a reference to the civil Court within six weeks thereafter.

8. Rule is made absolute in above terms.

[Y. G. KHOBRADE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/