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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 958 OF 2021

WITH

INTERIM APPLICATION NO.2457 OF 2021

WITH

INTERIM APPLICATION NO. 838 OF 2021

Smt. Hanifa Ismail Husseini
through Constituted Attorney
Mr. Ali Mohammad Palekar

..Petitioner

vs.

Union of India, through
Government Pleader and ors.

..Respondents

Dr. Uday Warunjikar i/b Mr. Ditendra Kumar Mishra for the
Petitioner.

Mr. Rakesh L. Singh i/b M.V. Kini and Co. for Respondent No.2.

Mr. P.G. Sawant, AGP for the Respondent – State.

Mr. Rajput Mohansingh for Respondent No.5A.

**CORAM : PRASANNA B. VARALE &
N.R.BORKAR, JJ.**

**RESERVED ON : 23.09.2021.
PRONOUNCED ON : 07.01.2022.**

ORDER (PER: N.R. BORKAR, J.)

1] We have heard the learned counsel for the parties and
perused the record.

2] According to the petitioner, she is the owner of the land bearing Gat No. 171/7, village -Boraj, Taluka-Khed, District - Ratnagiri. The grievance of the petitioner is that the respondents be directed to acquire the said land bearing Gat No. 171/7 for construction of National Highway No. 66 or they be restrained from interfering with her possession over the said land.

3] It is not in dispute that land bearing Gat No. 171 ad-measuring 1H 16 R was owned by the petitioner. An application was made to the Collector, Ratnagiri seeking permission to use the said land bearing Gat No. 171 for non-agricultural purpose, i.e., for residential purpose. The Collector, Ratnagiri granted the said permission by it's order dated 14.1.1998. It appears from the order of Collector that land ad-measuring 0.11.61 H was to be kept as open space and land ad-measuring 0.31.95 H was to be handed over to the Gram-panchayat for the purpose of construction of road, drainage etc. It appears that according to the map annexed to the application, the Gat No. 171 was divided into Gat Nos.171/1 to 171/7 and separate 7/12 extracts were prepared.

4] According to respondent No.3, for the purpose of widening of National Highway No. 66 the Central Government had acquired the land bearing Gat Nos. 171/1 to 171/6 and paid the compensation to the petitioner. However, according to the respondent No.3 as the land bearing Gat No. 171/7 was already in possession of local government, i.e. Gram

Panchayat as per the order of Collector dated 14.1.1998, the petitioner is not entitled to any compensation in respect of said land.

5] Gram-panchayat Boraj has filed affidavit-in-reply to the present petition. According to Gram-panchayat, Boraj land bearing Gat No. 171/7 was never handed over to them nor it was acquired for road.

6] It appears from the order of the Collector dated 14.1.1998 that permission to use land bearing Gat No. 171 for non-agricultural purpose was subject to certain conditions and one of the conditions was of executing affidavit by the petitioner before the Tahsildar that she is ready and willing to hand over the possession of 31.95 R land to Gram-panchayat, Boraj without seeking any compensation within two months from the date of order. It is not the case of the respondents that such affidavit was executed. It thus, appears that the ownership of land bearing Gat No.171/7 was never surrendered/relinquished in favour of Gram-panchayat nor it was put to non-agricultural use. Thus, even in the Notification dated 28.9.2018 published by the Central Government in exercise of powers conferred by sub-section (1) of Section 3A of the National Highways Act, 1956 (for short 'the Act'), the land bearing Gat No.171/7 is shown as agricultural land. Even in the Declaration dated 8.3.2019 under Section 3D of the Act, the said land bearing Gat No. 171/7 is shown as agricultural land and the name of land owner is mentioned as "Hanifa

Ismail Husseini (petitioner)". Considering the overall facts and circumstances, the stand of the respondents that the petitioner is not entitled to compensation in respect of land bearing Gat No. 171/7 is not justified.

7] The respondents are therefore, directed to determine the compensation, in accordance with law within six months from the date of receipt of copy of this order. Needless to mention that compensation so determined shall be paid to the petitioner.

8] The petition is disposed of in above terms.

9] In view of disposal of main petition, Interim Applications do not survive and the same are disposed of.

[N.R.BORKAR, J]

[PRASANNA B. VARALE, J.]