

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

WRIT PETITION NO. 7285 OF 2021

Narayan Chandramal Galani
Age : 57 years, Occu : Agri & Business,
R/o : Mohadi, Dhule
Dist. Dhule

... **PETITIONER**

VERSUS

1. The State of Maharashtra
through its Secretary,
Public Works Department,
Mantralaya Mumbai.
2. The Project Director,
National Highway Authority,
Nashik.
3. The Competent Authority and
Special Land Acquisition Officer,
National Highway No.3, Dhule.

... **RESPONDENTS**

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Mr. Ajit B. Kale, advocate for the petitioner
Mr. S.B. Yawalkar, AGP for respondents No. 1/State
Mr. D.S. Manorkar, advocate for Respondent No.2
Mr. R.R. Bangar, counsel for respondent No.3 UOI.

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**CORAM : MANGESH S. PATIL AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 06.01.2023

FINAL ORDER :

Heard. Rule. Rule is made returnable forthwith. Learned AGP waives service for respondent No.1. Learned advocate Mr. Manorkar waives service for respondent No.2. Learned advocate Mr. Bangar waives service for respondent No.3. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. The sum and substance of the averments in the petition are to the effect that the petitioner purchased 90 Are portion from land Gut No.53/2/B of village Mohadi, Tq. and District Dhule. Some portion of it was affected by the construction of National Highway No.211. However, neither any notice was ever issued to him nor was he compensated therefor. It is submitted that only by vaguely referring to Gut No.53/1 and 53/2/1 the awards have been passed. The petitioner has been deprived of his property without any compensation. With the averments on these lines he has made following prayers :

C. By appropriate writ order or directions the respondents may kindly be directed to initiate acquisition proceedings of the petitioners land out of Gut No.53/2/B situated at Mohadi, Tq. & Dist. Dhule and for that purpose issue necessary orders.

D. The respondents may kindly be directed to determine the amount of compensation of the petitioner's land out of Gut No.53/2/B situated at Mohadi, Tq. & Dist. Dhule alongwith interest by passing the award and thereafter release and pay the same within some stipulated period and for that purpose issue necessary orders.

3. Learned advocate Mr. Kale would take us through a copy of the sale deed dated 14.11.1985, the revenue record wherein petitioner's name is recorded as the owner and possessor of land Gut No.53/2/B, to demonstrate that he is the owner of the writ property. He would also take us through the scheme of the provisions of the National Highways Act contained in Section 3. He would submit that it is only after a final notification is issued and the possession is to be taken the petitioner had become aware that his land was affected by the road. He would submit that the stand being taken by the

respondent No.2 who represents the National Highway Authority about he having failed to file any objection is not sustainable inasmuch as, the preliminary and final notification vaguely gave description as Gut No.53/1. In any case, Mr. Kale would submit, when the petitioner's land is affected by the construction of National Highway, not paying any compensation to him is unconscionable and is in violation of Article 300A of the Constitution. When the petitioner had moved the respondents, it was imperative for them to have undertaken a fresh measurement to verify his claim. The reply of the respondent No.2 is evasive. The State has not filed any reply and in the circumstances, respondents ought to be directed to undertake acquisition proceeding to the extent of petitioner's land.

4. Mr. Kale would further submit that in case it is the stand of the respondents that the petitioner's land has not been used for constructing the National Highway, then in that case he may be allowed to use the land to the fullest extent. He would, therefore, submit that it is unbecoming of the respondents to take such indifferent stand without resorting to any inquiry to verify petitioner's claim.

5. Learned AGP would submit by referring to the copy of the sale deed that the petitioner has purchased the writ land which mentions Gut No.53/2/2, but is now claiming compensation by posing to be the owner of the land Gut no.53/2/B.

6. Learned advocate Mr. Manorkar for the respondent No.2 submits that the provisions of the National Highways Act particularly

Section 3A merely requires a rough description of the properties likely to be affected by the public project. Any person interested is expected to submit objections. Several such objections were lodged but the petitioner did not lodge any objection. The acquisition has taken place in two phases first in the year 2013 and again in the year 2016. The owners of the land Gut No.53/1 and 53/2/1 which are affected by the construction of the National Highway have been compensated. The petitioner having failed to raise any objection and having failed to come forward to claim compensation and in the absence of any material to show that his land is affected by the public project, he is not entitled to claim compensation.

7. We have considered the rival submissions and perused the papers. Admittedly, the respondents had undertaken construction of the National Highway by resorting to acquisition under the National Highways Act. Several properties were acquired for the purpose including some portion of land Gut No.53/1, 53/2/1 and the owners have been paid compensation. Admittedly, the petitioner's land Gut No.53/2/B is not mentioned as affected by the acquisition.

8. Whether the land of the petitioner is indeed affected by the acquisition is a pure question of fact. The respondent No.2 in the affidavit-in-reply has specifically emphasised the fact that there has been no material to demonstrate that the petitioner's land is affected by the acquisition. Irrespective of any other aspect of the matter, it is necessary to emphasise at this juncture that except the bald statement of the petitioner that his land

has been affected by construction of the National Highway, there is absolutely nothing on the record to substantiate this stand.

9. It is also not clear as to on what basis the petitioner is coming with such a stand/claim. It does not appear that he has undertaken any independent scrutiny by resorting to, may be a private measurement, to substantiate his claim. It was imperative for him to plead and establish as to on what basis he has been putting up such a plea about his land having been affected by the acquisition.

10. If at all according to the petitioner, his land was affected by the construction of the National Highway, it would have been in consonance with the conduct of a natural human being to have no sooner a notice was published and his neighbours had put up the objections, to approach respondents by putting up a claim. The first notification under Section 3A was issued in the year 2013 and even award was passed in the year 2016. Another acquisition proceeding was initiated in the year 2017 and was concluded by passing an award in the year 2018. Couple of individuals from the same Gut No.53, Shilpa Rajendra Shinde and Rajendra Walchand Shinde were paid compensation in respect of a portion of lands Gut No.53/1 and 53/2/1 and the petition has been filed in the year 2021. We are not on the point as to whether the petitioner's claim is stale or suffers from delay and latches. We are pointing out these aforementioned circumstances to demonstrate that apart from the fact that the petitioner had failed to lodge any objection under Section 3C of the National Highways Act has even failed

to demonstrate even by some *prima facie* material that his land Gut No.53/2/B is affected by the National Highway.

11. True it is that a person cannot be deprived of his property without due process of law. However, as the petitioner is coming with the vague and bald statement that his land has been affected by the National Highway that too after so many years, it would be difficult for this Court to issue a mandamus under the assumption that his land is in fact affected by such construction of the National Highway.

12. The Writ Petition is dismissed. The Rule is discharged.

(S.G. CHAPALGAONKAR, J.)

(MANGESH S. PATIL, J.)