

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

WRIT PETITION NO.9419 OF 2021

Ismail s/o Aminsahab Shaikh
Age: 93, Occu: Nil,
R/o: Near Post Office,
Kazi Mohalla, Latur,
Tal. & Dist. Latur

... Petitioner

Versus

1. The State of Maharashtra
Through Secretary, Revenue of Forest Department,
Mantralaya Mumbai – 32

2. The District Collector, Latur

3. Sub-Divisional Officer, Latur
Tal. & Dist. Latur

4. Project Director
National Highway Authority No.361,
Ikai Nanded Tal. & Dist. Nanded

5. Union of India
Through Secretary Ministry of Road Transport and Highways,
New Delhi 110001

... Respondents

...

Mr. Shaikh Naseem R, Advocate for the Petitioner
Mr. S. J. Salgare, AGP for Respondent Nos.1 & 2/State
Mr. A. G. Talhar, Advocate for Respondent No.3

...

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

DATE : 04.01.2023

ORAL ORDER: [MANGESH S. PATIL, J.]

Heard.

2. **RULE.** Rule made returnable forthwith.

3. Learned AGP waives service for respondent Nos. 1 & 2 and the learned advocate Mr. A. G. Talhar waives service for respondent No.3. At the joint request of the parties, the matter is heard finally at the stage of admission.

4. The petitioner's land Gat No.308 to the extent of 4 Are was shown to have been acquired under the National Highways Act, 1956. Since there was some dispute *inter se* amongst the petitioner and his siblings, they were involved in the civil dispute. On petitioner's objection, the respondent No.3 – Competent Authority undertook the re-measurement and by reaching a conclusion that the petitioner's land was not affected by the project has rejected his objection by the impugned communication.

5. Going by the affidavit-in-reply of respondent No.3, apparently, the original award has not been modified/rectified after the re-measurement. It is trite that the respondent No.3 - Competent Authority under the National Highways Act does not have power and jurisdiction to revise the award. Be that as it may, so long as the original award has not been modified, we need not go into that aspect.

6. Suffice for the purpose to observe that without there being any power and jurisdiction vesting in the respondent No.3 to decide the disputes under Section 3H(4) of the National Highways Act, 1956, the only course that is available is to refer the matter to the Civil Court of original jurisdiction. The entire exercise undertaken by the respondent No.3 to resort to re-measurement and to refuse to make a reference to the Civil Court and out-

rightly rejecting the objection is sans jurisdiction and void ab initio.

7. We allow the writ petition and quash and set aside the order passed by respondent no.3 under challenge and direct him to make a reference to the Civil Court under Section 3H(4) by following our decision in the matter of **Arun Trimbukrao Lohkare Vs. State of Maharashtra; (WP No.1949/2017 decided on 29.06.2017)**.

8. Rule is made absolute.

(S. G. CHAPALGAONKAR, J.)

(MANGESH S. PATIL, J.)

Sameer