

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.1164 OF 2022

1. Nisar Ali Mumtaz Ali
Age-74 Occupation-Business.
2. Dilawar Inayat Khan
Age-65 years, Occupation- Business.

Both 1 and 2 R/o Plot no. 1 3, Thakur Plot
Bada Tajabad Ayodhar Nagar,
Nagpur – 440 024.

..... **PETITIONERS**

...V E R S U S...

1. Government of India, through its
Secretary, Ministry of Shipping Road,
Transport and Highways (Department of
Road, Transport and Highway),
Dwarka, New Delhi – 110 074.
2. The Deputy Collector and Land
Acquisition Officer (General) Nagpur
(Maharashtra) and Competent Authority
for Acquisition of Land for National Highway,
Nagpur, Office situated Collectorate Building,
Civil Lines, Nagpur – 440 001.
3. National Highway Authority of India
(Ministry of Road Transport and Highways)
through its Project Director, Project
Implementation Unit, Yawatmal,
Office at Chandan Niwas, Plot No.13,
Kolhe Layout, Part II, Darwha Road,
Yawatmal – 445 001.

..... **RESPONDENTS**

Mr. S. P. Dharmadhikari, Senior Advocate with Mr. Nishant
Gurnani Advocate for Petitioners.
Mr. N. S. Rao, AGP for Respondent 2/State.
Mr. Anish A. Kathane, Advocate for Respondent 3.

CORAM: ROHIT B. DEO AND Y. G. KHOBRADE, JJ.
DATE: 13th FEBRUARY, 2023.

ORAL JUDGMENT: (PER ROHIT B. DEO, J.)

Heard. Rule. Rule made returnable forthwith by consent of the learned counsels for the parties.

2. This petition is preferred seeking the following relief:

(A) Kindly immediately compensate the petitioner as per the admitted rate of Rs.4210/- along with interest and damages for acquiring the petitioners' properties or hand over the possession of the said acquired land.

(B) Kindly direct the respondent no.2/Sub Divisional Officer and Land Acquisition Officer, Nagpur (City) to pass a fresh award as per 1956 Act, to the extent of the petitioners' properties ad incorporated in Annexure in respect of the petitioners' properties.

(C) Kindly compensate the petitioners with the additional damages for the illegal acquisition made by the respondent from the effective year 2019 till the fresh award is passed.

3. The relief *supra* is prayed on the premise that land admeasuring 3800 square meters which was originally part of survey 155, which came to be sub-divided, was acquired and possession taken in July, 2019 while the notification under section 3-A of the National Highways Act, 1956 (Act) was issued on 28.01.2022, and the notification under section 3-D of the Act was issued on 15.03.2022 during the pendency of the petition, and the compensation is determined by the competent authority under section 3-G of the Act on 30.08.2022. The grievance of the petitioner is that the competent authority has not determined the amount to which the petitioner is entitled as damages in view of the taking over of possession of the subject land prior to deposit of the compensation under section 3-E of the Act.

4. In our considered view, the claim towards damages, which is not considered by the competent authority, and which non-consideration in a sense is deemed rejection, can be raised by the petitioner before the Arbitrator under section 3-G (5) of the Act. The learned counsel for the National Highways Authority Mr. Kathane fairly does not dispute that the petitioner is entitled to raise such claim before the Arbitrator.

5. In this view of the matter, we dispose of the petition by reserving liberty if the petitioner to raise the claim towards damages, referred to *supra*, before the Arbitrator under section 3-G (5) of the Act. If the Arbitrator is approached within the next two weeks, we expect the Arbitrator to decide the arbitration case as expeditiously as possible.

6. Before parting with the order we may note the submission of Mr. Kathane that there is a dispute as regards the date on which the physical possession is actually taken. Needless to observe, it shall be open for the Arbitrator to consider the respective contentions on merit.

(Y. G. KHOBRAGADE, J.)

(ROHIT B. DEO, J.)

NSN