

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

MISC. CIVIL APPLICATION NO.809 OF 2022

IN

WRIT PETITION NO.8506 OF 2019

Seemabai Bhaiyyalal Saoji (since deceased) Thr. Harish Ravindra Saoji and ors.

-vs-

The National Highway Authority of India, Dwarka, New Delhi and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri R. D. Dhande, Advocate for applicants.

Shri A. A. Kathane, Advocate for respondent Nos.1 and 2.

Ms N. P. Mehta, Assistant Government Pleader for non-applicant Nos.3 and 4/State.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

DATE : April 21, 2023

P. C.

1. Admit. Heard the learned counsel for the parties.
2. The applicants' land came to be acquired under the provisions of National Highways Act, 1956 (for short, the said Act). It is their grievance that the Arbitrator failed to grant the benefit of solatium to them while passing the award. The applicants thereafter filed a reference under Section 3G(5) of the said Act and the Additional Collector partly enhanced the amount of compensation. Since the Arbitrator failed to award the amount of solatium, Writ Petition No.8506/2019 came to be filed praying that the respondents be directed to pay solatium along with interest. For that purpose the applicants relied on the judgment in 2438/2013 (*Kishor s/o Shankarrao Choudhari vs. Union of India and ors.*) that arose from the acquisition proceedings under the same Notification.

3. By order dated 03/10/2022, the writ petition was not entertained on the ground that the prayer made in the writ petition could be prosecuted in proceedings under Section 34 of the Arbitration and Conciliation Act, 1996. Hence review of this order is sought in view of the judgment in *Rishabhkumar vs. Secretary to the Government of India, Ministry of Road Transport and Highways... (2022) 1 Bom CR 659*, wherein it has been held that in proceedings under Section 34 of the Act of 1996, the award as passed by the Arbitrator cannot be modified.
4. After hearing the learned counsel for the parties, we find that the writ petition was not entertained on merits. By holding that the prayer for grant of solatium could be prosecuted under Section 34 of the Act of 1996, we find that said course would not be open for the applicants in the light of the decision in *Rishabhkumar* (supra). The writ petition will therefore have to be entertained on merits.
5. Hence for aforesaid reasons, the order dated 03/10/2022 is recalled. Writ Petition No.8506/2019 is restored to file. It is clarified that it is open for the respondents to raise all permissible defences.
6. Misc. Civil Application is allowed and disposed of. No costs.

(Urmila Joshi-Phalke, J.)

(A. S. Chandurkar, J.)

Asmita

Digitally signed by ASMITA
ADWAIT BHANDAKKAR
Signing Date: 21.04.2023
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