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wp 3840.23

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

WRIT PETITION NO. 3840 OF 2023

Niranjan S/o Omprakash Agrawal,
Age: 49 years, Occu: Agri. & Business,
R/o B.G. Agrawal Memorial English
Medium School, Chinchpada,
Navapur, Dist. Nandurbar.

... **PETITIONER**

V/s.

1. The Competent Authority and or
Special Land Acquisition Officer
(National Highway No.6) /
Assistant Collector, Nandurbar,
Tq. & Dist. Nandurbar.
2. National Highway Authority of India,
Through Project Director,
NHAI-PIU, Dhule, Mansaram Nagar,
Near Circuit House, Sakri Road,
Dhule – 424 002.
3. Deputy Superintendent of Land Record,
Nandurbar Tal. & Dist. Nandurbar.
4. The learned Collector,
Nandurbar.

... **RESPONDENTS**

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Mr. D.S. Bagul, Advocate for the Petitioner
Mr. R.B. Bhosale, Advocate for Respondent-OUI
Mr. S.K. Tambe, AGP for Respondent-State
Mr. V.D. Sapkal, Sr. Advocate i/b. Mr. D.S. Manorkar, Advocate for Resp. No.2

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CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRADE, JJ.

RESERVED ON : 27th June, 2024

PRONOUNCED ON : 16th August, 2024

JUDGMENT (Per: Y.G. Khobragade, J.) :-

1. Rule. Rule made returnable forthwith. With the consent of both the sides, the matter is heard finally at the stage of admission.

2. By the present petition under Article 226 of the Constitution of India, the Petitioner has put-forth prayer clauses-B, C, D, E, F & G as under :-

“B) By way of appropriate writ, order or directions in the like nature the respondent authorities be directed to forthwith stop the construction activities of national highway No. 6 at the sites (Gat No. 93/2) of petitioner.

C) By way of appropriate order or directions in the like nature, appropriate contempt proceedings be initiated against respondents authorities for deliberately violating the order passed by the Hon'ble High Court in Writ petition No.7499/2022 and others.

D) By way of appropriate order or directions in the like nature, the respondent authorities be directed to initiate and complete land acquisition proceedings in respect of property of petitioner bearing Gut No. 93/2 situated at Mauje Navapur Tal. Navapur, Dist. Nandurbar and further pay compensation to the petitioner.

E) Pending the hearing and final disposal of this Writ Petition the respondent authorities directed to stop the construction of national highway No. 6 at the sites of petitioner immediately and for that purpose issue necessary orders;

F) Pending the hearing and final disposal of this Writ Petition appropriate contempt proceedings be initiated against respondents authorities for the deliberately violating the order passed by the Hon'ble High Court in Writ petition No. 7499/2022 and others and for that purpose issue necessary orders;

G) Pending the hearing and final disposal of this Writ Petition the respondent authorities be directed forthwith to initiate and complete land acquisition proceedings in respect of property of petitioner bearing Gut No. 93/2 situated at Mauje Navapur Tal. Navapur, Dist. Nandurbar.”

3. Heard at length Mr. D.S. Bagul, the learned counsel for the Petitioner, Mr. Bhosale, the standing counsel for the Respondent No.1, Mr. V.D. Sapkal, the learned senior counsel appearing for the Respondent No. 2 and Mr. Tambe the learned AGP for the Respondent Nos. 3 & 4.

4. Perused the written notes of arguments tendered on behalf of both the sides. Having regard to the rival submissions canvassed on behalf of the rival parties as well after going through the written submission the issue arises for our consideration is that whether this Court can exercise Writ jurisdiction under Article 226 of the Constitution of India to adjudicate disputed question of facts about measurement carried out by the Respondent No.3 to show how much area of the Petitioner's land has been acquired for four lane widening of National Highway No.6 issued under Section 3A of National Highways Act, 1956 (hereinafter to be referred as the Act, 1956).

5. Mr. Bagul the learned counsel appearing for the Petitioner canvassed that originally Gut No.93 (S.No.68) ad-measuring 7 H 42 R (total 742 R) at Navapur, Dist. Nandurbar was Gairan land. Smt. Jenabai Budya

Mavachi was the owner of land to the extent of 5 H 97 R and one Kashiram Aahir was the owner to the extent of 1 H 45 R out of Gut No.93 (S.No.68). The same was allotted by the State Government to said Kashiram Aahir and mutation entry no.68 was recorded in the revenue record. Subsequently, Ms. Sarubai Kashinath Aahir inherited the land ad-measuring 1 H 45 R. As a result Gut No. 93 was bifurcated in two parts i.e. Gut bearing No. 93/1 (93/A) of Smt. Jenabai Budya Mavachi and Gut No. 93/2 (93/B) of Sarubai Kashinath Aahir.

6. He further canvassed that the State authorities did not acquire any part of land out of Gut No. 93/2 for the purpose of road. KJP (Lesser Assessment Register) maintained by Revenue Department suggest that no existing old road passes from Gut No.93/2. Smt. Jenabai Budya Mavachi had given part of her land to the extent of 2 H 98 R out of her total land admeasuring 5 H 97 R to her daughter namely Fulabai and Smt. Jenabai Budya Mavachi kept remaining land ad-measuring 2 H 99 R with herself. As a result again Gut No. 93 was divided into 2 parts i.e. Gut No.93/1/A to the extent of 2 H 99 R belonging to Smt. Jenabai Budya Mavachi and Gut No.93/1/B to the extent of 2 H 98 R belonging to Smt. Fulabai.

7. The learned counsel appearing for the Petitioner canvassed that in the year 2006 Smt. Sarubai Kashiram Aahir sold her entire land ad-measuring 1

H 45 R out of Gut No. 93/2 (93/B) to one Shri Vipinbhai Chokhawala and on 20.06.2019, the Petitioner has purchased the entire Gut No. 93/2 (93/B) ad-measuring 1 H 45 R from said Shri Vipinbhai Chokhawala by registered sale-deed dated 20.06.2019 and the same is subject matter of the present Writ Petition.

8. Mr. Bagul, the learned counsel appearing for the Petitioner canvassed that in the year 2016 Smt. Jenabai Budya Mavachi owner of Gut No.93/1/A sold 1 H out of 2 H 99 land in favour of the Petitioner. As a result again Gut No.93/1/A was sub-divided in two parts i.e. 93/1/A/1 belonging to Smt. Jenabai Budya Mavachi and 93/1/A/2 belonging to Petitioner. Subsequently, on 24.07.2017, the Petitioner again purchased remaining land ad-measuring 1 H 99 R from Gut No.93/1/A/1 from Smt. Jenabai Budya Mavachi.

9. Prior to execution of sale-deed i.e. on 24.02.2015 the Assistant Director of Town Planning, Nandurbar sanctioned the lay out plan for Gut No. 93/1/A ad-measuring 2 H 99 R. As per said layout map Gut No. 93/1/A is towards northern side of Gut No.93/2. Even in the year 2013, Smt. Jenabai Budya Mavachi had applied to the Collector, Nandurbar for permission under Section 36A of the M.L.R. Code and in pursuance of same necessary enquiry

was conducted by the Collector. During the course of enquiry, the Circle Officer recorded statements of neighboring owners of land.

10. The learned counsel appearing for the Petitioner canvassed that, on 30.10.2015, the Central Government issued a notification under Section 3A of the Act, 1956 for acquisition of specified land for NH-6 bye-pass on stretches of land kilometers 606-000 to 649-000 (Jalgaon – Maharashtra / Gujarat border section) in Nandurbar District. As per the notification dated 30.10.2015, land ad-measuring 5115 sq.mtrs from Gut No.93 was shown to be acquired. Thereafter, on 28.10.2016 the Central Government published a notification under Section 3D (2) of the Act, 1956 was published showing intention for acquisition of land ad-measuring 5080 sq.mtrs from Gut No.93/1/A and 35 sq.mtrs from Gut No.93/2 i.e. total 5115 sq.mtrs from Gut No.93. Though the land of the Petitioner was affected due to widening of NH. 6, but his land was not included in the notification dated 28.10.2016 published under Section 3D of the Act.

11. It is further canvassed that Smt. Jenabai Budya Mavachi did not receive any compensation in respect of acquired land from Gut No.93/1/A ad-measuring 5080 sq.mtrs, as her land was not under acquisition and the adjacent land owner of Gut No.93/2 (93/B) namely Vipinbhai Chokhawala,

the vendor of Petitioner had objected Smt. Jenabai Budya Mavachi from accepting compensation by instituting a suit bearing RCS No.27/2017.

12. Mr. Bagul, the learned Counsel appearing for the Petitioner further canvassed that on 08.06.2017, the Central Government published second notification under Section 3A of the Act, 1956 and decided to acquire land ad-measuring 11876 from Gut No. 93. On 09.01.2018, second notification under Section 3D was published and decided to acquire 3476 sq.mtrs land from Gut No.93/1/A/2, which was purchased by the Petitioner. The Petitioner has received the compensation for the acquired land ad-measuring 3476 sq.mtrs. Thereafter, on 24.05.2018 the Central Government published third notification under Section 3D and decided to acquire 350 sq.mtrs land out of Gut No.93/B (93/2) of Shri Vipinbhai Chokhawala and compensation for the same was received in the month of June-July 2019 by the Petitioner after he purchased the land from said Shri Vipinbhai Chokhawala.

13. Mr. Bagul, the learned Counsel appearing for the Petitioner further canvassed that as per third notification under section 3D dated 24.05.2018, land of Smt. Jenabai Budya Mavachi bearing Gut No. 93/1/A admeasuring 5080 sq.mtrs., was shown to be acquired, but the Gut was wrongly typed as Gut No. 93/A/1 in the notification dated 24.05.2018. Though, after publication of 3A and 3D notifications however, while passing the award the

Respondents realized that the land of Smt. Jenabai Budya Mavachi is not affected for road widening. Therefore, the Respondent-Authorities deleted Gut No.93/1/A and no compensation was paid to said Smt. Jenabai Budya Mavachi. Therefore, the notification issued for acquisition has been lapsed to the extent of land ad-measuring 8050 sq.mtrs out of 2 H 99 R.

14. It is further canvassed that on 23.08.2018, fourth notification under Section 3D of the Act, 1956 was published for acquisition of 715 sq.mtrs land from Gut No.93/B (93/2) for widening of road which was owned by Vipinbhai Chokhawala and the proceeding for determination of compensation is pending with the Competent Authority.

15. It is further canvassed that Smt. Jenabai Budya Mavachi never received any compensation as her land Gut No.93/1/A was never under acquisition and in the meanwhile the Petitioner has purchased the remaining land ad-measuring 1 H 99 R from Smt. Jenabai Budya Mavachi on 24.07.2017. On 20.06.2019, the Petitioner purchased the land ad-measuring 1 H 45 R bearing Gut No.93/2 (93/B) from Vipinbhai Chokhawala.

16. Mr. Bagul, the learned Counsel appearing for the Petitioner further canvassed that since more land has been affected in the acquisition, therefore, the Petitioner had moved to the Respondent Authorities for measurement of the

land. Accordingly, on 28.12.2018 the office of Respondent No.3 issued notice dated 05.01.2019 to the interested owners and directed them to remain present on 18.01.2019 at the site for measurement. Accordingly, the officers of Respondent No. 3 measured the land and submitted its report dated 15.06.2019 along with map and measurement sheet. As per measurement sheet, the Petitioner's land ad-measuring 11150 sq.mtrs out of 13400 sq.mtrs from Gut No.93/2 (93/B) has been affected. So also, land ad-measuring 3476 sq.mtrs out of 10000 sq.mtrs from Gut No. 93/1/A/2 in total 14976 sq.mtrs has been affected due to acquisition.

17. It is further canvassed that on receipt of measurement report dated 15.06.2019 from Dy. SLR, Navapur, the Respondent No. 1-CALA prepared a report and submitted it to Respondent No. 2-NHAI to notify the same under section 3A of the Act, 1956, but Respondent No. 2-NHAI on 06.09.2019 raised certain queries to the said report and directed to rectify the same. Therefore, Respondent No.1 rectified said queries and submitted fresh report dated 20.12.2019 and requested for issuance of notification under Section 3A of the Act, 1956. Again, Respondent No. 2-NHAI raised queries in report dated 20.12.2019, therefore, Respondent No.1 again submitted a fresh report dated 23.06.2020. Thereafter, again Respondent No.2 raised queries on report dated 23.06.2020 vide communication dated 27.07.2020 in respect of

six different gut numbers. Thereafter, vide letter dated 17.08.2020, Respondent No.1 rectified those queries and requested the office of Respondent No.2 for issuance of notification under Section 3A of the Act, 1956.

18. It is further canvassed that pursuant to above proposal dated 23.06.2020 and letter dated 17.08.2020, Respondent No.2 deputed its representatives and Respondent No.3 - Dy. SLR, Navapur to revisit the Writ land for verification of the actual position, however, the Respondent Nos.2 & 3 visited the writ land behind the back of the Petitioner and without giving prior notice to him and without carrying out any measurement, submitted a report. Therefore, the Project Director of NHAI-PIU, Dhule issued the impugned order on 19.10.2020 and refused to issue notification u/s 3A of the Act, 1956 but observed that the land of the Petitioner should not be considered as a new land pocket.

19. Being dissatisfied by order dated 19.10.2020, the Petitioner had filed W.P. No.7499/2020 before this Court. On 29.07.2021, the Co-ordinate Bench of this Court has passed an order and observed that, the area of 9656 sq.mtrs land is acquired and compensation has been paid to the beneficiaries. Further, the NHAI desires to acquire 8050 sq. mts. land, a notification is issued and an award is yet to be passed. The NHAI submits that the legal procedure set out u/s 3 of the Act, 1956, shall be followed and any person who may have

a title or interest, may raise an objection before the Competent Authority. The Ld. Collector Nandurbar was directed to monitor the measurement in presence of all the litigating parties/ title holders/ persons having interests in the property. So also, any land over and above the details set out in 'X-1' is to be acquired, the procedure laid down in law shall also be followed.

20. Thereafter, on 27.02.2023, the Petitioner submitted a representation with the Respondent No.1 and requested for carrying out widening of road in respect of field Gut numbers as per chart Exhibit 'X-1' filed in Writ Petition No.7499/2020 and not to carry out laying of road work in other Gut numbers. Again on 13.03.2023 the Petitioner submitted an application with the Respondent No.1 and prayed that the award in respect of 8050 sq.mtrs is pending and only land ad-measuring $3476 + 5080 = 8656$ sq.mtrs has been approved and prayed for enquiry.

21. Mr. Bagul, the learned Counsel appearing for the Petitioner further canvassed that inspite of the undertaking given to this Court in W.P. No. 7499/2020, the Respondent-Authorities forcibly entered the Petitioner's land bearing Gut No.93/2 and carried out construction activities in disregard to the order passed by this Court in W.P. No.7499/2020. Therefore, the Petitioner's right to property under Article 300-A of the Constitution of India is violated.

22. To buttress these submissions the learned counsel for the Petitioner relied on case of **Sukh Dutt Ratra and Anr. V/s. State of H. P; (2022) 7 S.C.C. 508**, wherein the Hon'ble Supreme Court has held that, nobody can be deprived of liberty or property without due process, or authorization of law and the State on ground of delay and laches cannot evade its legal responsibility towards those from whom private property has been expropriated.

23. He further relied on the case of **Govind Poslya Gavit and Anr. V/s. Competent Authority, 2022 (5) Mh. L.J. 632**, wherein the Co-ordinate Bench of this Court has held that the Petitioner cannot be dispossessed without due process of law and without acquiring the land of the Petitioners by following procedure under Section 3-A to 3-E of the Act, 1956. An attempt made by Respondent No. 2 to take possession of the lands of the Petitioners to carry out construction is clearly in breach of Section 3-A to 3-D of the Act, 1956 and Article 300-A of the Constitution of India. However, the ratio laid down in both these judgments are not applicable to the facts and circumstances of this case.

24. Mr. Ajay Yadav, Project Director, PIU Dhule, National Highways Authority of India, the Respondent No.2 filed affidavit in reply and strongly resisted the claim of the Petitioner. Mr. V.D. Sapkal, Sr. Advocate for the Respondent No.2 canvassed that the Respondent No.2, the Central Government issued Gazette notification No. 2958 (A) dated 30.10.2015 u/s 3-A of the

Act, 1956 declaring its intention to acquire 5115 sq.mtrs of land from Gut No.93 village Navapur, Dist. Nandurbar for operation of the NH-6.

25. He further submits that Section 3C provides that any person may raise objection within a period of 21 days from the date of publication of notification to the Competent Authority and object the use of land for the purpose or the purposes mentioned in Section 3A. After publication of notification under Section 3A of the Act, 1956, the Respondents are authorized to enter into the land to be acquired for the purposes of measurement. Accordingly, a joint measurement was carried out in respect of Gut No. 93 and it was noticed that an area of 8556 sq.mtrs land owned by Smt. Jenabai Budya Mavachi from Gut No.93/A/1 and an area of 35 sq.mtrs owned by Vipinbhai Chokhawala (vendor of present Petitioner) from Gut No.93/B i.e. total 8906 sq.mtrs from Gut No. 93 is under acquisition. The joint measurement reports dated 06.05.2016 and 24.06.2016, clearly show the acquisition of land from Gut Nos. 93/A/1 and 93/B.

26. It is further canvassed on behalf of the Respondents that in furtherance of notification under Section 3A, the Central Government issued a notification No. 3345 (A) dated 28.10.2016 under Section 3D of the Act for acquisition of 5080 sq.mtrs land. Accordingly, the Competent Authority passed an award on 27.11.2017, for acquisition of land to the extent of 5080 sq.mtrs

i.e. from Gut Nos.93/A/1 and 93/B, after completion of acquisition vide notification u/s 3D issued on 28.10.2016 from Gut No. 93/A/1. However, subsequently the Petitioner purchased the land admeasuring 1 H which was under acquisition on 23.01.2017 and remaining land ad-measuring 1 H 99 R out of Gut No.93/A/1 on 17.08.2017 out of Gut No.93/A/1 including the land acquired from Smt. Jenabai Budya Mavachi before passing of award under Section 3G of the Act. So also, the Petitioner filed an objection with the CALA, Nandurbar contending that his land ad-measuring 8400 sq.mtrs from Gut No.93/1/A/2 was affected due to acquisition and this fact was recorded by the Competent Authority while passing award dated 27.11.2017. Therefore, the Competent Authority had referred the dispute to the District Court Nandurbar (Exh. R-7).

27. The learned senior counsel further canvassed that as per joint report dated 12.05.2017 an area of 8556 sq.mtrs from Gut No.93/1/A/2 and an area of 750 sq.mtrs from Gut No.93/B is under acquisition. Accordingly, notification dated 08.06.2017 under Section 3A of the Act, 1956 was published for acquisition of land ad-measuring 11876 sq.mtrs for Gut No.93. As per notification dated 09.01.2018 under Section 3D of the Act, the land ad-measuring 3476 sq.mtrs from Gut No.93/A/1, was published and balance area of 8050 sq.mtrs from Gut No.93/A/1 in respect of Smt. Jenabai Budya Mavachi

and area of 350 sq.mtrs from Gut No.93/B, is standing in the name of Vipinbhai Chokhawala.

28. Further, as per joint measurement reports dated 12.05.2017 and 24.06.2016, prepared by Respondent No.3, the area under acquisition from Gut No.93/B was shown to the extent of 350 sq.mtrs and 750 sq.mtrs i.e. total 1100 sq.mtrs. However, acquisition was completed for the area 35 sq.mtrs and 350 sq.mtrs vide notification dated 28.10.2016 and 24.05.2018. Therefore, notification dated 23.08.2018 under Section 3A and notification dated 21.12.2018 under section 3D was published for balance area of land i.e. 715 sq.mtrs and compensation was duly paid to Vipinbhai Chokhawala under award dated 04.09.2019.

29. It is further canvassed on behalf of the Respondent No.2 that as per joint measurement report dated 12.05.2017 and Panchanama executed in presence of Smt. Jenabai Budya Mavachi, Vipinbhai Chokhawala, present Petitioner (Niranjan Omprakash Agrawal) and others have confirmed the boundaries of their fields and on the basis of same, office of land records prepared a report dated 12.05.2017 which shows that the land ad-measuring 8556 sq.mtrs from Gut No.93/1/A/2, an area of 750 sq.mtrs from Gut No.93/B total 9306 sq.mtrs from Gut No.93 was affected due to acquisition.

30. However, Vipinbhai Chokhawala had filed a Civil Suit bearing RCS No. 27/2017 against Smt. Jenabai Budya Mavachi seeking compensation which was granted in her favour. The present Petitioner had also intervened in the said Civil Suit. Subsequently, said Civil Suit was compromised on 13.07.2019. Thereafter, the Competent Authority passed an additional award on 15.12.2018 in respect of land Gut No.93/1/A/2 to the extent of 3476 sq.mtrs which is shown in the name of the Petitioner and an area of land ad-measuring 350 sq.mtrs from Gut No.93/B owned by Vipinbhai Chokhawala (vendor of present Petitioner). However, compensation was not determined in respect of 8050 sq.mtrs land which was standing in the name of Smt. Jenabai Budya Mavachi as she already sold the complete land from Gut No.93/A/1, to the Petitioner. Therefore, by way of all the above said awards the Respondent No. 2-NHAI has acquired 9656 sq.mtrs of land from Gut No. 93.

31. According to the Respondent No.2, the area of 8050 sq.mtrs has not been required for acquisition under communication dated 08.05.2023 but it was requested to direct the Respondent No. 3-Dy. SLR for demarcation of ROW (Right of Way) beyond 45 meters as per acquired land of 9656 sq.mtrs, for which the compensation has already been deposited by the Respondent No.2. The Competent Authority passed an award on 12.06.2023. Though, only 1867 sq.mtrs., of land is required for 45 meters., for right of way (ROW), however,

the Petitioner in collusion with Smt. Jenabai Budya Mavachi and Vipinbhai Chokhawala already gained huge compensation for area of 9656 sq.mtrs and again the Petitioner claimed for compensation for the additional area of 10400 sq.mtrs from Gut No.93/B by showing that he is the only owner of Gut No.93. Therefore, prayed for dismissal of the Petition.

32. Having regard to the submissions canvassed on behalf of both the sides, we have gone through the Petition paper book. It is not in dispute that area of original Gut No. 93 was ad-measuring 7 H 42 R of Smt. Jenabai Budya Mavachi who owned land ad-measuring 5 H 97 R and one Kashiram Aahir was the owner of 1 H 45 R. Further, Smt. Sarubai Kashinath Aahir inherited the land of Kashinath Aahir ad-measuring 1 H 45 R. The land ad-measuring 5 H 97 R was mutated in the name of Smt. Jenabai Budya Mavachi and land ad-measuring 1 H 45 R in the name of Sarubai Kashinath Aahir. The separate Gut Nos. bearing No.93/1 (93/A) given to the share of Smt. Jenabai Budya Mavachi and separate Gut No.93/2 (93/B) was given for the land ad-measuring 1 H 45 R in respect of land of Ms. Sarubai Kashinath Aahir. In the year 2006 Ms. Sarubai Kashiram Aahir sold entire Gut No.93/2 (93/B) ad-measuring 1 H 45 R to Shri Vipinbhai Chokhawala.

33. The Petitioner himself admitted in his Affidavit in Rejoinder that Shri Kashiram Motiram Ahir and Smt. Jenabai Budya Mavachi were

encroachers on the Gairan land vide mutation entry no. 68 dated 29.09.1976 and mutation entry no. 183 dated 15.12.1979. However, Shri Vipinbhai Chokhawala, the vendor of petitioner purchased said Gairan land and subsequently the Petitioner purchased entire Gut No.93/2 (93/B) ad-measuring 1 H 45 R from Shri Vipinbhai Chokhawala under registered sale-deed dated 20.06.2019. The Petitioner has not pleaded about granting of permission for transfer of occupancy rights by the Competent Authority in favour of Smt. Jenabai Budya Mavachi.

34. It is further revealed that in the year 2016, Smt. Jenabai Budya Mavachi sold Gut No.93/1/A to the extent of 1 H out of 2 H 99 R in favour of the Petitioner. After execution of sale-deed of field Gut No.93/1/A to the extent of 1 H land was sub-divided in two parts i.e. 93/1/A/1 and 93/1/A/2 to the extent of land purchased by the Petitioner. Subsequently, on 24.07.2017 the Petitioner again purchased remaining land from Gut No.93/1/A/1 ad-measuring 1 H 99 R from Smt. Jenabai Budya Mavachi. However, prior to execution of sale-deed dated 24.02.2015, the Assistant Director of Town Planning, Nandurbar, sanctioned the layout plan for Gut No.93/1/A ad-measuring 2 H 99 R. As per layout map Gut No.93/1/A is standing towards northern side of Gut No.93/2. In the year 2013, the original owner Smt. Jenabai Budya Mavachi submitted an application for transfer of occupancy of

land under Section 36A of the M.L.R. Code before the Collector, Nandurbar. Thereafter , necessary enquiry was conducted by the Collector.

35. It is not in dispute that on 30.10.2015, the Central Government issued a notification under Section 3A of the Act. The Petitioner purchased the land ad-measuring 1 H 99 R from Gut No.93/2 out of which land ad-measuring 5115 sq.mtrs was shown under acquisition as per notification dated 30.10.2015 under Section 3A of the Act, 1956. The joint measurement report in respect of land owned by Smt. Jenabai Budya Mavachi for the area of 856 sq.mtrs out of Gut No.93/A/1 and area of 35 sq.mtrs standing in the name of Vipinbhai Chokhawala from Gut No.93/B (93/2) in all total 8906 sq.mtrs has been shown under acquisition. Again as per Government gazette No.3345(A) dated 28.10.2016, published under Section 3D, the acquisition of land ad-measuring 5080 sq.mtrs from Gut No.93/A/1 owned by Smt. Jenabai Budya Mavachi and an area of 35 sq.mtrs from Gut No.93/B owned by Vipinbhai Chokhawala, was shown under acquisition.

36. Indeed, on 27.11.2017 the Competent Authority passed an award and determined compensation for the acquired land to the extent of 5080 sq.mtrs and 35 sq.mtrs as observed above. Therefore, it prima facie appears that the Petitioner purchased the land ad-measuring 1 H on 23.01.2017, from Gut No.93/1/A, after publication of notification dated 28.10.2016. So also, the

remaining land ad-measuring 1 H 99 R was purchased on 17.08.2017, before declaration of award under Section 3G of the Act, 1956. Thereafter, the Petitioner filed objection with the Competent Authority Land Acquisition, Nandurbar (CALA) raising objection that his land ad-measuring 8400 sq.mtrs from Gut No.93/1/A/2 is affected. The Competent Authority recorded findings in this regard while passing the award dated 17.11.2017.

37. As per the joint measurement report submitted by the Respondent No.3 on 12.05.2017 it shows that an area of 8556 sq.mtrs from Gut No.93/1/A/2 and an area of 750 sq.mtrs from Gut No.93/B was under acquisition. As per the notification dated 08.06.2017 published under Section 3A of the Act an area of 11876 sq.mtrs was shown under acquisition from Gut No.93. The notification published under Section 3D of the Act on 09.01.2018 for acquisition of land ad-measuring 3476 sq.mtrs standing in the name of the Petitioner (Niranjan Omprakash Agrawal) from Gut No.93/A/1. On 24.05.2018 a notification under Section 3D was published for balance area of 8050 sq.mtrs from Gut No.93/A/1 which was standing in the name of Smt. Jenabai Budya Mavachi and an area of 350 sq.mtrs from Gut No.93/B standing in the name of Vipinbhai Chokhawala.

38. As per joint measurement reports dated 24.06.2016 and 12.05.2017, submitted by the Respondent No.3-Dy. SLR, the area of land ad-

measuring 350 and 750 sq.mtrs total 1100 sq.mtrs have been shown from Gut No.93/B. The acquisition proceeding for acquisition of 350 and 750 sq.mtrs., land has been completed under notification dated 28.10.2016, 24.05.2018. Thereafter, a notification under Section 3A was published on 23.08.2018 and a notification u/s 3D of the Act,1956 was published on 21.12.2018 for balance area of 715 sq.mtrs. As per Award dated 04.09.2019, the compensation paid to Vipinbhai Chokhawala. After confirmation of boundaries of land by the Petitioner (Niranjan Omprakash Agrawal), Smt. Jenabai Budya Mavachi and Vipinbhai Chokhawala, a report dated 12.05.2017 has been submitted which shows the land ad-measuring 8556 sq.mtrs., affected from Gut No.93/1/A/2, an area ad-measuring 750 sq.mtrs., land affected from Gut No.93/2 (93/B) total 9306 sq.mtrs.

39. It is not in dispute that, Shri Vipinbhai Chokhawala, the vendor of the Petitioner had filed RCS No.27/2017 against Smt. Jenabai Budya Mavachi and sought for compensation. The Petitioner intervened in the said suit, which was ultimately compromised before the Lok Adalat on 13.07.2019. Thereafter, additional award came to be passed on 15.12.2018 to the extent of land ad-measuring 3476 sq.mtrs out of Gut No.93/1/A/2 in the name of Petitioner and for area of 350 sq.mtrs from Gut 93/B/1 in respect of Vipinbhai Chokhawala. However, again Smt. Jenabai Budya Mavachi raised an objection before the

Competent Authority under the Land Acquisition Act and claimed that the Petitioner forcibly purchased the land and cheated her.

40. On perusal of joint measurement report, it shows that the NHAI acquired 9656 sq.mtrs from Gut No.93. The Petitioner contended that though the Respondent No.2 acquired more land than notified under notification u/s 3A and 3D of the Act but said fact was disputed by the Respondents. Therefore, it appears that there are disputed questions of facts in respect of measurement carried out while acquiring Gut No.93 which has been considered while passing the additional awards. Needless to say that, the Competent Authority considered the joint measurement report submitted by the Respondent No.3 and held that no additional land out of Gut No.93 is required.

41. In **City and Industrial Development Corporation V/s. Dosu Aardeshir Bhiwandiwalla and Ors.**; (2009) 1 SCC 168, the Hon'ble Supreme Court has held that the High Court while exercising its jurisdiction under Article 226, is duty-bound to consider whether;

- (a) adjudication of Writ Petition involves any complex and disputed question of facts and whether they can be satisfactorily resolved;
- (b) the petition reveals all material facts;
- (c) the Petitioner has any alternative or effective remedy for the resolution of the dispute;

- (d) person invoking the jurisdiction is guilty of unexplained delay and laches;
- (e) Ex facie barred by the law of limitation;
- (f) grant of relief is against public policy or barred by any valid law; and host of other factors.

42. Since it clearly appears that this Petition involves disputed and complex questions of facts, which do not warrant an adjudication while exercising jurisdiction under Article 226 of the Constitution as per ratio laid in case of *City And Industrial Development Corporation*, (supra), present Petition is liable to be dismissed.

43. In so far as prayer clause-F is concerned, the Writ jurisdiction under Article 226 of the Constitution of India cannot be exercised for taking action against the Contemnor for willful disobedience of order passed by this Court. So also, prayer clause-G is hit by Section 20-A of the Specific Relief Act. Therefore, this prayer also cannot be considered by this Court.

44. In view of the above discussion, **this Writ Petition is dismissed. Rule is discharged.**

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]