

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
 CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 457 OF 2023

WITH

INTERIM APPLICATION (STAMP) NO. 17001 OF 2024 (Not on Board)

Dasharath Appa Bankar

...Petitioner

Vs.

The Union of India & Ors.

...Respondents

Mr. Satish B. Talekar with Mr. Vaibhav Ugle for Petitioner/Applicant.

Mr. Ajinkya Jaibhave for Respondent No.1/UOI.

Mr. H. Daruwala, Senior Advocate with Mr. Rakesh Singh, Ms. Heena Shaikh
 i/b. M. V. Kini & Co. for Respondent No.2.

Mr. A. I. Patel, Addl.GP with Ms. Tanaya Goswami, AGP for State.

**CORAM: G. S. KULKARNI &
 SOMASEKHAR SUNDARESAN, JJ.**

DATE: 20 JUNE, 2024.

P.C.

1. We have heard Mr. Talekar, learned counsel for the petitioner, Mr. Daruwala, learned senior counsel for respondent no.2-Project Director, National Highways and Mr. Patel, learned Additional G.P. for the State/respondent no.4, in the backdrop of the earlier order dated 11 January, 2024 passed by a co-ordinate Bench of this Court (Coram: Nitin Jamdar & M. M. Sathaye, JJ.) and subsequent order dated 16 May, 2024 passed by the Vacation Court.

2. At the outset, we may note the operative part of the ad-interim order dated 11 January, 2024, which reads thus:-

“13. The ad interim order granted earlier will continue with the following modifications:

(i) In view of our finding that the land bearing City Survey No. 359 has not vested with the Central Government under Section 3-D(2) of the Act of 1956, it is open to the Central Government to proceed to issue a notification under Section 3-A of the Act of 1956 in respect of the subject land and mention of the said land in the Award will not be considered as an impediment.

(ii) The Petitioner will then file an undertaking that the Petitioner will hand over vacant and peaceful possession to the Respondents.

(iii) Before taking possession and prior to possession being handed over, the joint measurement will be carried out.”

3. Pursuant to the aforesaid directions, the respondents have issued a notification under Section 3-A of the National Highways Act, 1956 (for short, “**NH Act**”) on 07 March, 2024. In compliance with the order dated 11 January, 2024 passed by this Court, it was expected that the petitioner would submit an undertaking to hand over vacant and peaceful possession to the respondents after the issuance of Section 3-A Notification. The possession to be handed over was of construction in question on the petitioner’s land, subject matter of acquisition for the National Highways. However, although the notification under Section 3-A was issued on 07 March, 2024, such undertaking is admittedly not filed. However, we find that implicit in the directions as issued by the Court in its order dated 11 January, 2024, is the statutory obligation on the respondents to issue a notification under Section 3-D of the NH Act. Although the notification under Section 3-A was issued on 07 March, 2024, as per the provisions of Section 3-C of the NH Act, none of

the interested parties had filed an objection. Thus, in our opinion, a notification under Section 3-D needs to be issued. Mr. Daruwala, learned senior counsel for respondent no.2 states that in this regard necessary steps would be taken by the NHAI to move the Central Government within a period of two weeks from today, so that such declaration under Section 3-D can be issued. We accept such statement as made on behalf of the National Highways Authority.

4. Learned counsel for the parties are *ad idem* that the acquisition is for the purpose of National Highways which is a public project of 31.1 kilometers, being undertaken at a substantial cost of Rs.362.46 Crores, of which, 98% work has already been completed. It appears that on account of pending acquisition of the petitioner's premises alone, the Highway Project in respect of a distance of merely 400 meters is held up.

5. Mr. Talekar has also fairly stated that the petitioner is not opposed to the acquisition of his land. However, his contention is that the joint measurement which was undertaken in pursuance of the order dated 16 May, 2024 passed by the Vacation Court does not take into consideration the measurements inside the constructed premises. He has submitted that to this effect, a representation was made on 07 June, 2024 by the petitioner to the respondents making a grievance in regard to such joint measurement. He submits that as soon as an appropriate measurement is completed, the

petitioner is ready and willing to abide by the directions of this Court and will hand over the possession. We accept such statement as made on behalf of the petitioner. We may, however, observe that it was incumbent on the petitioner to comply with the order dated 11 January, 2024, inasmuch as, as ordered by the Court after issuance of notification under Section 3A, an undertaking ought to have been filed, which is yet to be filed.

6. Be that as it may, as the petitioner is also intending that the proceedings ought not to be dragged any further, as also National Highways Authority is taking further steps as observed by us hereinabove, we are of the opinion that the following directions in disposing of the writ petition, would meet the end of justice:-

- i. Within one week from today, a joint measurement of the premises in question must be completed, of which a video recording must be made;
- ii. A separate inventory of immovable assets and whatever items of the construction which are attached to the earth be prepared so that, as permissible in law, the appropriate items can be taken into consideration for the purpose of computing the acquisition compensation payable to the petitioner;
- iii. After such joint inspection is undertaken, within three days thereafter, the petitioner shall hand over the possession to the respondents, so that the public work of the highway is not delayed any further, adding to the cost of the public exchequer;

iv. Needless to observe, in parallel, the respondents would proceed to take appropriate steps for issuance of notification under Section 3D as observed hereinabove.

v. Against such backdrop, the respondents shall proceed to take further appropriate steps to determine the compensation and all contentions of the petitioner in that regard are expressly kept open; and

vi. The computation of the compensation and its deposit shall be undertaken as expeditiously as possible and within a period of six weeks from the date of the possession being handed over.

7. In view of the above directions, further adjudication of this petition is not called for. The petition is disposed of, however, with liberty to the petitioner to adopt appropriate remedies under the Act, in the event of any grievance as to the quantum of compensation. No costs.

8. In view of the aforesaid order, Mr. Talekar, learned counsel for the petitioner fairly states that Interim Application (Stamp) No.17001 of 2024 filed on behalf of the petitioner be permitted to be withdrawn. It is accordingly permitted to be withdrawn. Disposed of. No costs.

(SOMASEKHAR SUNDARESAN, J.)

(G. S. KULKARNI, J.)