

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

**WRIT PETITION NO. 5595 OF 2021**

Subhash Sitaram Pathari.

...Petitioner

Versus

The Competent Authority and SDO,  
Bhiwandi Division, Bhiwandi & Ors.

..Respondents.

Mr. R. D. Suryawanshi a/w. Adv. Suraj N. Naik for the Petitioner.

Mr. Rajiv Chavan, Senior Advocate a/w. Ms. Priyanka Chavan for  
Respondent No. 4, 5 and 7.

Adv. Rakesh Singh i/b. M. V. Kini & Co for the Respondent No. 2 -  
NHA.

Mr. A. I. Patel, Addl. GP a/w. Rupali Shinde, AGP Respondent -State.

**CORAM : NITIN JAMDAR &  
M. M. SATHAYE, JJ.**

**DATED : 27<sup>th</sup> FEBRUARY, 2024**

**P.C.:**

1. The Petitioner has sought the following prayers:

*"(b) This Hon'ble Court be pleased to issue writ of certiorari, directions, order or any other appropriate writ in that nature, directing the Respondent Nos. 1 and 2 to produce the record and proceedings in respect of acquisition and compensation of land bearing Survey No. 40, lying, being and situate at Village Ghotgaon, Taluka Bhiwandi, District Thane and after perusing the legality and validity of the same, quash and set aside the order dated 19.7.2019 (Exhibit H) passed by the Respondent No. 1;*

*(c) This Hon'ble Court be pleased to issue writ of certiorari, directions, order or any other appropriate writ in the nature, directing the Respondent No. 1 to decide the objection of the Petitioner dated 28.7.2021 and make a reference under section 3(H)(4) of the National Highways Act to the Principal Civil Court of the original jurisdiction in respect of compensation paid to the Respondent Nos. 4 to 7 in respect of land bearing Survey No. 40, lying, being and situate at Village Ghotgaon, Taluka Bhiwandi, District Thane."*

2. Rest of the prayers are consequential such as recovery of the amount, fresh measurements etc.
3. The Petitioner is primarily aggrieved by the order passed by the Respondent No. 1 – Competent Authority and Sub-Divisional Officer under section 3H(3) of the National Highways Act. By this order, the objections of the Petitioner for disbursing the amount of compensation to the Respondent Nos. 4 to 9, was rejected on 19 July 2019. Thereafter, the amount has been disbursed to the Respondent Nos. 4 to 9.
4. We had heard the learned Counsel for the parties on 23 February 2024 and had kept the matter today for the Respondent – Authority to take instructions. That was so, because the Competent Authority has not recorded the conclusive finding as regards the contention of the Respondent Nos. 4 to 9 that the Petitioner has no locus since the Petitioner's property is not acquired. On the contrary, it is the case of the Petitioner that his property has been acquired.
5. Therefore, the issue squarely arose before the Competent Authority

as regards the acquisition of the Petitioner's land. Though there is reference in detail to the contentions of the Respondent Nos. 4 to 9 on this aspect, there is no clarity in the reasoning, nor it conclusively stated that the Petitioner's land was never acquired. If the Petitioner's land is not acquired, it would have consequences, as then the Petitioner would remain the owner of such land and further issue of possession etc. would arise. Therefore, if the Petitioner's objection was to be rejected on this ground, it was not sufficient to record only the contention of Respondent Nos. 4 to 9 but to record a conclusive finding. Further more, the Respondent – Competent Authority has to keep in mind the limited jurisdiction under section 3H(3) of the National Highways Act. Since, this was the reason, we have called upon the Respondent-Authority whether a fresh order with reasons would be passed. The learned Counsel for the Respondent-Authority, upon instructions states that a fresh order would be passed.

6. In light thereof, the impugned order dated 19 July 2019 is quashed and set aside. The objection of the Petitioner stands restored to the file of Respondent No. 1, who would pass a specific order within the ambit of section 3H(3) of the Act. In light of what is stated above, the amount disbursed to the Respondent Nos. 4 to 9 would be subject to further proceeding that would be undertaken.

7. The parties will appear before the Competent Authority on 8 March 2024. Thereafter, the Competent Authority, subject to urgent

public duties, will make an endeavor to dispose of the proceedings instituted by the Petitioner within a period of 8 weeks from that date.

8. All contentions are kept open.

(M. M. SATHAYE, J.)

(NITIN JAMDAR, J.)