

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14458 OF 2024

Sunil Laxman Patil

... Petitioner

Versus

National Highways Authority of India
Through Its Chairman and Ors.

... Respondents

Mr. Suresh M. Sabrad, with Mr. Amey C. Sawant, Ms. Neha Zanje, Gracy S., Mr. Pratik Sabrad and Mr. Sarvesh Deshpande, for the Petitioner.

Ms. M.S. Bane, AGP, for the State.

Mr. Rakesh L. Singh, i/b M.V. Kini & Co, for Respondent Nos. 1 and 2.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 18th OCTOBER, 2024

P.C.

We have heard Mr Sabrad, learned counsel for the Petitioner, Mr. Singh, learned counsel for Respondent Nos.1 & 2, Ms. Bane, learned counsel for Respondent No.3 - Sub Divisional Officer, Respondent No.4 although served is not represented.

2. This Petition under Article 226 of the Constitution of India is filed praying for the following substantive relief in terms of prayer Clauses (a) and (b) :

- “a) rule be issued, records and proceedings be called for;
- b) that by an appropriate writ, order or direction, this Hon’ble Court be pleased to direct the Respondents to release the land of the Petitioner bearing Survey Nos.64/19 admeasuring 1521 square meters and Survey 64/21/2 admeasuring 71 square meters, situated at Ovali, Bhiwandi, Thane, from acquisition project, i.e. building (widening six/eight-laning, etc) maintenance,

management and operation of Mumbai-Agra NH848 on the stretch of land from km 539.2 to Km 558.178 in the District of Thane in the State of Maharashtra, especially when the purpose of acquisition is serviced and the Respondents no longer required for the said project”

3. The case of the Petitioner is that the Petitioner’s land bearing Survey No.64/19 admeasuring 1521 Sq.Mtrs. And Survey No.64/21/2 admeasuring 71 Sq. Mtrs. situated at Covli, Bhivandi Thane was subject matter of land acquisition for the Vadpe Thane, National Highway No.3 (New NH 848) to be widened from 6/8 Lanes. The land acquisition proceedings were accordingly adopted culminating into an award acquiring the Petitioner’s land which came to be published on 25 March 2019. The Petitioner has placed on record documents that the Petitioner has received notices for the land acquisition compensation to be collected, however, the Petitioner so far has not collected the land acquisition compensation. Finally, Respondent No.3 by letter dated 30 September 2024 called upon the Petitioner to receive compensation within seven days failing which it would be deposited with the Civil Court as also the possession of the land would be taken over. It is at such juncture, the Petitioner made an application dated 3 October 2024 to Respondent No.2 that the land of the Petitioner as acquired be deleted from acquisition as the same is not required, as also considering that the Petitioner is running a Petrol Pump and according to the Petitioner the said land ought not to be required for such public purpose. It is the Petitioner’s grievance that such application of the Petitioner is not being decided. The Petitioner accordingly has filed this Petition making his prayers as noted herein above.

4. Having heard learned counsel for the parties and having perused the record, in our opinion in some other situation the authorities could have been directed to consider to decide such application. However, we cannot do so qua the Petitioner’s application dated 03 October 2024 Exhibit-P [Page-98]

made to Respondent No.2, as also the application dated 03 October 2024 made to Respondent No.3. This for the reason that for the Writ Court to consider such plea for a direction to be issued that the Petitioner's application, for the land to be deleted from acquisition be decided, and more particularly in the light of the provisions of the National Highways Act, 1956 cannot be straight away granted. In the present case, Petitioner is not before the Court to contend that any other prior proceedings including challenge to the award was raised by the Petitioner. It will also not be possible for the Court to recognize any right of deletion of the land post the award, unless it is specifically conferred by law that the competent authority under the National Highways Act, 1956 can delete the land from acquisition, after the award is published which in the facts of the present case was almost about four years back. It is at this stage where the compensation is offered, and which is not being accepted by the Petitioner and when the possession of the land is sought to be taken over, this Petition is filed.

5. Ms. Bane, learned A.G.P. is also not in a position to point out to us any specific provisions under the National Highways Act which would confer any such legal right of the Petitioner for deletion of the land from acquisition. This more particularly considering the settled principles of law that for the purposes of acquisition of land, such law would be required to be considered as a Code in itself.

6. From the scheme of the National Highways Act, 1956 and more particularly Section 3J, the provisions of the Land Acquisition Act, 1894 are not applicable. Hence there is no question of Section 48(1) of the Land Acquisition Act, 1894 being applied in the present case. In any event, the acquisition itself having stood concluded in the award being rendered in 25 March 2019 and the same having attained finality, we do not see any legal rights much less any existing/live rights vested with the petitioner for this

Court to direct respondent No.3 to consider the petitioner's representation for deletion of the land from acquisition. The right to seek deletion of the land from acquisition to be recognized post the award, is required to be conferred by law, like the one as conferred under Section 48(1) of the Land Acquisition Act, 1894, however, a similar provision does not find place in the National Highways Act. In fact, the National Highways Act provides that the provisions of Land Acquisition Act, 1894 are not applicable insofar as the acquisition proceedings in respect of National Highways Act are concerned.

7. In the event, once there is no existing or a live legal right vested in the petitioner, considering the settled position in law as laid down by the Supreme Court in **C. Jacob vs. Director of Geology & Mining & Anr.**¹ as considered by this Court in the decision of the Division Bench of this Court in **Tatoba Rama Chavan Decd. Through Lhr vs Collector, Kolhapur District**², it would not be possible for the Court to exercise its writ jurisdiction directing the competent authority to decide the petitioner's representation for deletion of the land from acquisition.

8. In the aforesaid circumstances, we are not inclined to entertain this petition. It is accordingly dismissed, however, keeping open all contentions of the Petitioner, if the Petitioner is aggrieved by the quantum of compensation granted under the award.

9. Disposed of. No costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)

¹AIR 2009 Supreme Court 264

²(Writ Petition No.3883 OF 2022 decided on 26 July 2023)