



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

**FIRST APPEAL NO. 726 OF 2025
WITH
CIVIL APPLICATION NO. 3879 OF 2025**

Kailash Gopinath Gaikwad and others .. Appellants

Versus

The Competent Authority of Land
Acquisition and others .. Respondents

Shri Vilas Balgir Giri, Advocate for the Appellants.
Shri S. W. Munde, Advocate for the Respondent No. 1.
Shri Avinash P. Khande, Advocate for the Respondent No. 2.

**CORAM : SHAILESH P. BRAHME, J.
DATE : 04TH AUGUST, 2025.**

FINAL ORDER :

. Heard both sides on the issue of maintainability of first appeal. Appellants have challenged judgment and order dated 20.02.2025 passed by the 04th Joint Civil Judge Senior Division, Aurangabad in L.A.R. No. 46 of 2018. In pursuance of the order U/Sec. 3(H)(4) of the National Highways Act, competent authority referred matter to the Civil Court for deciding the dispute and/or entitlement to receive the compensation interse between the parties. The respondent No. 2 has raised preliminary objection of tenability of the first appeal.

2. Learned counsel for the appellants has placed on record the

following judgments of the Supreme Court and other High Courts :

- I Union of India and another Vs. Tarsem Singh and others reported in (2019) 9 SCC 304.
- II National Highways Authority of India Vs. P. Nagarju @ Cheluvaiah and another reported in (2022) 15 SCC 01.
- III Judgment dated 21.06.2024 in the matter of Chandra Kumar Chettri Vs. Kipu Lepcha (Sikkim High Court)
- III Sreeja Vs. Union of India and others reported in 2022 SCC OnLine Ker 5428.
- IV Judgment dated 08.07.2015 in Regular First Appeal No. 2764 of 2015 in the matter of Bhoop Singh and others Vs. Kuria and others (Punjab and Haryana High Court).
- V Judgment dated 29.09.2024 passed by the Division Bench in Writ Petition No. 15282 of 2022 in the matter of Roshanbi Aziz Motiwala Vs. The Union of India through the Secretary and others with other connected writ petitions.
- VI Judgment dated 07.01.2025 in First Appeal Defective No. 447 of 2023 in the matter of Roopchand and others Vs. National Highway Authority of India and others (Allahabad High Court)

3. Per contra, learned counsel Mr. Avinash Khande for the respondent No. 2 has referred to following judgments to corroborate his objection.

- (i) Judgment dated 26.02.2015 in Writ C. No. 69020 of 2014 in the matter of Shri Gurudwara Committee Chakeri Vs. Union of India Through Secretary Transport and others (Allahabad High Court)
- (ii) Dr. Abhay Laddulal Shah Vs. Udaykumar Radhakisan Dubey and others reported in 2016(4) All MR 732.

4. Learned counsel for the appellants submits that his client is entitled to receive the compensation because sale deed executed on 28.02.2001 is bad in law. No title could be transferred to the respondent No. 2. It is submitted that the respondent No. 2 and other persons are out to grab the compensation. It is contended that the appellants approached the competent authority under the provisions of the Maharashtra Land Revenue Code. But the matter was delegated to different authorities. No decision has been rendered so far. It is further submitted that the respondent No. 2 is not entitled to receive any compensation.

5. Learned counsel for the respondent No. 2 submits that appellant had preferred wrong remedy of Writ Petition No. 2953 of 2025, which was withdrawn vide order dated 28.02.2025. Present appeal is also not tenable. Because of the interim orders the respondent No. 2 is unable to receive the compensation. He would submit that no permission should be granted to the appellant to convert the proceeding and ad-interim relief should

be vacated.

6. Taking survey of above referred judgments, what reveals is that in judgment of Shri Gurudwara Committee Chakeri Vs. Union of India Through Secretary Transport and others (supra) Allahabad High Court has categorically held that no statutory remedy is provided for the order passed by the Civil Court in a reference U/Sec. 3(H)(4) of the Act and, therefore, civil revision application U/Sec. 115 of the Code of Civil Procedure would be maintainable.

7. Learned counsel for the respondent No. 1 also pointed out the judgment of the Gauhati High Court in the matter of Arun Ch. Baruah and another Vs. The State of Assam and others in Case No. C.R.P. 80 of 2018. In such a case remedy of revision is available and not appeal.

8. The maintainability of the appeal has not been decided in any of the judgments except judgment of the learned Single Judge of this Court at Nagpur in the matter of Dr. Abhay Laddulal Shah Vs. Udaykumar Radhakisan Dubey and others (supra) and Division Bench judgment dated 27.01.2025 of the Andhra Pradesh High Court in the matter of Bollineni Srihari Rao vs Competent Authority and others in A. S. No. 08 of 2025.

9. The remedy of the appeal has to be provided by the statutory provision expressly. Sec. 54 of the Land Acquisition

Act, 1884 provides for remedy of appeal. Likewise Sec. 74 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for the sake of brevity and convenience hereinafter referred as to the “Act of 2013”) also provides for remedy of appeal. There is no provision either in the National Highway Act or Act of 2013 prescribing remedy of appeal.

10. In the judgment of this Court in the matter of Dr.A bhay Laddual Shah Vs. Udaykumar Radhakisan Dubey & Ors. reported in *2016(4) ALL MR 732*, learned Single Judge of the Bombay High Court was dealing with old Land Acquisition Act, 1894. The land was acquired in that case by the authority of National Highways. The judgment will not help the appellants. In the Division Bench’s judgment of Andhara Pradesh High Court Bollineni Srihari Rao vs Competent Authority And others (supra), it has been held that order passed by the civil court after the reference under Section 3(H)(4) of National Highways Act, 1956 is a decree and it is appealable but in the absence of appeal, by implication inference can not be drawn for the remedy of appeal.

11. I am of the considered view that present first appeal is not tenable and only remedy for the appellant is to prefer civil revision application U/Sec. 115 of the C. P. C.

12. A request is made by the learned counsel for the appellants to grant leave to convert present first appeal into civil revision

application. The parameters and the scope of first appeal and civil revision application U/Sec. 115 of the C. P. C. are totally different. A permission to convert first appeal into revision cannot be granted. However, appellants should be at liberty to prefer distinct revision application and the time consumed in prosecuting first appeal can be requested to be condoned by resorting to Sec. 14 of the Limitation Act.

13. Another request is made by the learned counsel for the appellants for continuation of interim relief, which was granted on 09th April, 2025 in Civil Application No. 3879 of 2025.

14. The entitlement to receive compensation by the parties is at stake. The respondent No. 2 and other private parties are successful before the Trial Court. Initially writ petition was filed, which was requested to be withdrawn for filing first appeal. Today first appeal is found to have been not maintainable. If the appellants succeed in the remedy chosen by them, their right to receive the compensation will be upheld. Even in the mean time amount is disbursed, they will not be remediless and they can resort to remedy available in the law for the recovery of the amount. In that view of the matter, I am not inclined to continue interim relief.

15. First appeal is disposed of as not maintainable. Appellants shall be at liberty file civil revision application or any other remedy as permissible in law. There shall be no continuation of

earlier interim relief.

16. The civil application also stands disposed of.

[SHAILESH P. BRAHME J.]

bsb/Aug. 25