



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11610 OF 2024

Himmatrao Goba Patil (Died)
Through L.Rs.
Vimalbai Himmatrao Patil and Others ..PETITIONERS

VERSUS

Government of India and Others ..RESPONDENTS

WITH
WRIT PETITION NO. 11611 OF 2024

Sureshkumari Pratapsingh Rana and Another ..PETITIONERS

VERSUS

Government of India and Others ..RESPONDENTS

WITH
WRIT PETITION NO. 11830 OF 2024

Vitthal Bhila Patil (Died)
Through L.Rs.
Jijabai Vithoba & Vitthal Patil and Others ..PETITIONERS

VERSUS

Government of India and Others ..RESPONDENTS

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Mr. M.R. Malpani, Advocate for petitioners
Mr. Rahul Bagul, Advocate for respondent nos.1 and 3
Mr. S.R. Yadav Lonikar, A.G.P. for respondent no.2 in WP/11610/2024
Mr. P.S. Patil, Addl.G.P. for respondent no.2 in WP/11611/2024
Mr. P.K. Lakhotiya, A.G.P. for respondent no.2 in WP/11830/2024
Mr. D.S. Manorkar, Advocate for respondent no.4

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CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : 09th JUNE, 2025

PER COURT :

1. The petitioners have made the following prayer :-

“C) To direct the respondent authorities to calculate and pay all the statutory benefits of solatium, interest component etc. as per the 2015 Notification r/w the 2013 Act along with National Highways Act in the arbitration proceedings filed by present petitions before the Ld. Arbitrator and District Collector, Jalgaon within 1 month from today and for that purpose issue necessary writ/order/direction.”

2. There is no dispute that the petitioners' lands were came to be acquired for National Highway No.6. Though the petitioners were paid the compensation, statutory benefits in the nature of solatium were not paid. Therefore, the petitioners have approached this Court.

3. Learned counsel for the petitioners submits that this Court in identical petition, no. 12851 of 2023 granted similar relief by judgment and order dated 26th June, 2024. He submits that the land acquired in the said petition was for the very same purpose for which the present petitioners' lands have been acquired. He submits that the present petitions be allowed in terms of the order in the said petition.

4. Learned counsel for Respondent No.4 – National Highways opposed the petition. He submits that the petitioners are having alternate remedy before the District Court under Section 34 of the Arbitration and

Conciliation Act, 1996. He further submits that the petitioners be asked to approach the said Court and avail the alternate remedy. He submits that the petitions be dismissed.

5. Learned counsel for Respondent Nos.1 and 3 also submits that the petitioners have alternate remedy under the law, and therefore, petitions be dismissed.

6. Having heard all the sides and after perusing the papers on record, there is no dispute that the petitioners' lands have been acquired for National Highway No.6. There is also no dispute that this Court in above mentioned petition arising out of same acquisition proceeding, after hearing all the sides, granted relief to the petitioner therein. Operative part of the said order reads thus :-

“15. In view of the above, this Writ Petition is partly allowed. We direct the Competent Authority (Land Acquisition) and Special Land Acquisition Officer, Amalner, Respondent No.4 herein, to add the component of solatium and interest on the enhanced amount, and after making due calculations, the concerned Arbitrator shall call upon the NHAI to make the funds available. The payment shall be made to these Petitioners within a period of 90 days after the Competent Authority corrects the Award. The interest component shall be computed upto the date of payment.”

7. In the said order, the aspect of availability of alternate remedy for the petitioner was also cited. The judgment delivered by the Principal Seat of

this Court in group of writ petitions, one of which is Writ Petition No. 9608 of 2023, wherein availability of alternate remedy was considered and it was held that the petition was maintainable in view of the judgment of Apex Court in case of ***Union of India Vs. Tarsem Singh and Ors. (2019) 9 SCC 304.***

Relevant paragraphs from the said judgment reads as under :-

“8. Incidentally, Rishabhkumar Vs. Secretary to Government of India, 2021 SCC OnLine Bom 4561, takes the view that whatever the Principal District Judge in a Petition under Section 34 of the Arbitration Act could not have done, the same cannot be done by the Appeal court under Section 37 of the Arbitration Act. In such circumstances, we cannot appreciate the NHAI's stance of raising the plea that these petitions should not be entertained because the Petitioners have an alternate remedy under Section 37 of the Arbitration Act.

9. It is well settled that the rule of exhaustion of alternate remedies is a self-imposed restriction on exercising extraordinary jurisdiction under Article 226 of the Constitution of India. Before applying this Rule, the court must see whether the alternate remedy is indeed efficacious. There is no point in relegating the Petitioners to the remedy under Section 37 of the Arbitration Act, when the relief they claim cannot be granted under such proceedings.

10. If we were to relegate the Petitioners to the remedy of Section 37, the Appeal Court, being bound by the decision in Rishabhkumar (supra), would have no option but to dismiss such appeals by declining to modify the arbitral award. This would be futile. Such a remedy can hardly be called an efficacious one. Accordingly, we reject the unfortunate contention that these Petitions should not be entertained because the Petitioners have an alternative remedy under Section 37 of the said Act.

11. In the case of M/s Godrej Sara Lee Ltd Vs The Excise and Taxation officer-cum-Assessing Authority and Ors., 2023 (384) ELT 8 (SC), Civil Appeal no.5393 of 2010 decided on 1 February 2023, the Hon'ble Supreme Court interfered with the dismissal of

the writ petition by the High Court because the petitioner had not availed the alternate remedy. The Hon'ble Supreme Court noted that such dismissal was improper because the High Court failed to examine whether an exceptional case has been made out. The Hon'ble Supreme Court also noted that mere availability of an alternative remedy of appeal or revision would not oust the jurisdiction of the High Court and render a writ petition 'not maintainable'. Where the controversy is purely legal one and it does not involve disputed questions of fact but only involves questions of law, then it should be decided by the High Court instead of dismissing the writ petition on the ground of an alternative remedy being available.”

8. Since the issue involved in this petition is already considered and decided by this Court, we allow the petition in terms of prayer clause (C).

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

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