

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

WRIT PETITION NO. 7224 OF 2022

1. **M/s. Manidhari Realtors Private Limited** .Petitioners
(A company registered under the provisions
of the Companies Act, 1956
Through its Director – Kanaiyalal Babulal
Agrawal, aged : 57 years
2. **M/s. Heriytag Ashcon Properties**
(A partnership firm)
Through its partner – Manoj Kantilal Shah
Male, Aged : 53 years
Both having address at
Survey No. 145/146, Akkalkot Road,
Solapur, Maharashtra.

Vs.

1. **Union of India** .Respondents
Ministry of Road, Transport and Highways,
Through Principal Secretary, Transport
Bhavan, 1, Parliament Street,
New Delhi.
2. **The Additional Deputy Collector & Land
Acquisition Officer** (Unit – 1 – N.H.150E),
Collector Office Compound
Solapur.
3. **The Collector,**
Office of the District Collector,
Solapur.
4. **National Highway Authority of India,**
Through Chief General Manager,
Regional Office, 4th floor,

MTNL Tower, Belapur,
Navi Mumbai.

5. **National Highway Authority of India,**
Through Project Director (150-E),
Plot No. E-2, JAI jalaram Nagar,
B/H Shivadre College, Jule Solapur,
District – Solapur.

Mr. Ashish Asthawadi i/b. Mr. Rahul Karnik, Advocates, for the
Petitioners

Mr. Sagar Varma (Through VC) i/b. Mr. Sandeep S. Ladda,
Advocates, for Respondent Nos. 4 & 5

Ms. S. D. Vyas, Addl. GP a/w. Mr. Aditya R. Deolekar, AGP, for the
Respondent – State

**CORAM : M. S. SONAK &
JITENDRA JAIN, JJ.**

DATE : 25.04.2025

ORAL JUDGMENT (PER : M. S. SONAK, J.)

1. Heard learned Counsel for the parties.
2. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned Counsel for the parties.
3. The Petitioners seek the following substantive reliefs by instituting this Petition.

“(A) Issue Rule;

(B) This Hon’ble Court may be pleased to admit and allow the petition;

(C) This Hon’ble Court may be pleased to issue writ of mandamus or any other appropriate writ, order or direction, directing the respondent authorities to pay amount of compensation of Rs. 13,20,34,413/- as per award dated 29.09.2020 and Notice dated 08.03.2022;

(D) This Hon’ble Court may be pleased to issue writ of mandamus or any other appropriate writ, order or direction, directing the respondent authorities to pay interest on the awarded amount of Rs. 13,20,34,413/- from the date of taking over possession, i. e. 16.4.2019 at the rate of 9% for the first year and at the rate of 15% per annum thereafter, till the actual payment as per Sec 80 of Compensation Act 2013.”

4. Admittedly, relief in terms of prayer Clause (C) stands granted because the Petitioners were paid compensation of Rs. 13,20,34,413/- in terms of the Award dated 27.04.2022.

5. The issue that remains to be adjudicated is the interest on the alleged delayed compensation payment in Section 80 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (**“2013 Act”**).

6. The Petitioners have contended that the possession of the acquired property was taken over by the National Highway Authority of India (**“NHAI”**) on 17.04.2019. Therefore, in terms of

Section 80 of the 2013 Act, interest should be paid for the first year @ 9% p. a. and for the balance years @ 15% p. a., until the full compensation amount was actually paid to the Petitioners on 27.04.2022.

7. The NHAI has filed an Affidavit before us stating that possession of the acquired land was taken over not on 17.04.2019, but on 05.12.2019. The State has filed an Affidavit claiming that possession was taken over only on 27.04.2022 and has also relied upon a possession receipt duly signed by the Petitioners' representatives in this regard.

8. Therefore, broadly two issues arise in this Petition:-

- (a) The factual issue regarding the date on which the possession of the acquired land was taken over from the Petitioners.
- (b) The legal issue as to whether, in terms of Section 80 of the 2013 Act, interest as provided therein becomes payable to the Petitioners.

9. Regarding the first issue, the pleadings in the Petition are far from satisfactory. The Petitioners seek to rely upon a letter dated 17.04.2019, which refers to the removal of fencing and compound wall. Still, even this letter does not categorically state that the Petitioners were dispossessed on 17.04.2019. Reliance is placed

upon certain documents like toll plaza, advertisement etc. which, according to the Petitioners, inferentially suggest that possession of the acquired land was taken over on 17.04.2019.

10. We have perused the pleadings in the Petition and the documents relied on by the learned Counsel for the Petitioners. Based on the same, we are not satisfied that a clear case of possession having been taken over on 17.04.2019 is made out. As it is, these are disputed questions of fact that cannot be effectively adjudicated in the exercise of our summary jurisdiction under Article 226 of the Constitution of India. Based on the pleadings and the material produced, it is difficult to accept the Petitioners' case that the possession of the acquired lands was taken over by the NHAI on 17.04.2019.

11. As noted earlier, Rakesh Jawade, Project Director, NHAI, PIU – Solapur, has filed an Affidavit on 03.03.2025. Paragraph 4 of his Affidavit clearly states that possession of the Petitioners' land was taken over in December 2019 upon publication of Section 3-D Notification on 05.12.2019. This statement, coupled with certain documents produced by the Petitioners, which also suggest that the possession was taken over prior to the making of the Award does establish that the possession of the acquired land was taken over on 05.12.2019. Ultimately, we cannot ignore that NHAI is the agency on-site undertaking highway works. Therefore, the

statement made by NHAI on an Affidavit has much greater credence than any statement made by a State Government official based on records or information.

12. On behalf of the State Government/Land Acquisition Officer, Santosh Deshmukh has filed an Affidavit dated 06.03.2025. In this Affidavit, a statement has been made that possession of the acquired lands was taken over from the Petitioners only on 27.04.2019 by simultaneously paying a compensation amount of Rs.13,20,34,413/- to the Petitioners. A possession receipt signed by representatives of the Petitioners is also enclosed.

13. Though the possession receipt is enclosed along with this Affidavit, we think that this possession receipt is a formal receipt in the context of possession and payment of compensation. Factually, it would be appropriate to go by the Affidavit of the NHAI for reasons indicated above, rather than go by the statements in the Affidavit of the Land Acquisition Officer, since such statements are mainly based on records or information. Neither the LAO nor the NHAI have produced any panchanama or adverted to any formal procedure for taking over possession of the acquired property.

14. Upon cumulative consideration of all the above circumstances, we hold that in this case, the possession of the

Petitioners' property was taken over on 05.12.2019 and not on 17.04.2019 as claimed by the Petitioners or 27.04.2022 as contended by the LAO. The first issue is answered accordingly.

15. Adverting to the second issue, we note that Section 80 of the 2013 Act provides that when the amount of compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon @ 9% p. a. from the time of so taking possession until it shall have been so paid or deposited. Provided that if such compensation or any part thereof is not paid or deposited within the period of one year from the date on which possession is taken, the interest @ 15% p. a. shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry. The provisions of Section 80, per se, may not apply to the present acquisition, which was undertaken under the National Highways Act, 1956 (NHAI). However, Hon'ble Supreme Court, in the case of *Union of India vs. Tersem Singh and ors.*, reported in **(2019)9 SCC 304** struck down Section 3-J of the NHAI to the extent it had excluded the applicability of the Land Acquisition Act, 1894 resulting in non-grant of solatium and interest in respect of the lands acquired under the NHAI, which were available if the lands had been acquired under the Land Acquisition Act, 1894. Thus, the provisions of Sections 23(1)(a), 28 & 52 of the Land Acquisition Act, 1894 were made applicable

to acquisitions under the NHAI.

16. Learned Counsel for the Petitioners pointed out that Section 28 of the Land Acquisition Act, 1894 is *pari materia* to Section 80 of the 2013 Act. He, therefore, submitted that Section 80 of the 2013 Act also becomes applicable to the present acquisition, though under the NHAI. He relied on the decision of the Kerala High Court in the case of ***Shiji vs. The Project Director & ors.*** in ***Arbitration Appeal No. 1 of 2022*** decided on ***10.04.2023*** and of the Allahabad High Court in the case of ***Balwan Singh And Another vs. National Highway Authority Of India And Another*** in ***WRIT – C No. - 11417 of 2023*** decided on ***16.12.2023*** to submit that in similar circumstances, the two High Courts have held that the provisions of Section 80 of the 2013 Act would apply to acquisitions under the NHAI. Mr. Asthawadi, learned Counsel for the Petitioners, also relied upon the Order dated 04.02.2025 disposing of the Union of India's Miscellaneous Application No. 1773 of 2021 in ***Tarsem Singh (Supra)***.

17. In contrast, Mr. Sagar Varma, learned Counsel for the NHAI, has relied upon the ruling of the Co-ordinate Bench in the case of ***Roshan B. Motiwala vs. Competent Authority*** in ***W. P. No. 1910 of 2022*** decided on ***06.04.2023***. He pointed out that in the said decision, after considering ***Tarsem Singh (Supra)***, it is held that the provisions regarding interests under Sections 37, 72 and 80 of

the 2013 Act would not apply to acquisitions under the NHAI. He pointed out that this Court, instead, has awarded interest @ 9% p. a. from the date of the Award till the date of actual payment of compensation.

18. Though we see the point in the submissions made by Mr. Asthawadi, learned Counsel for the Petitioners, we are confronted with the ruling of the Co-ordinate Bench in the case of ***Roshan B. Motiwala(Supra)***. The Co-ordinate Bench, after considering the decision in ***Tarsem Singh (Supra)*** and analyzing the provisions of the NHAI has held that the provisions of Section 80 of the 2013 Act would not *Ipso facto* apply and further, the NHAI does not lay down a statutory outer limit for deposit or payment of the compensation amount. But at the same time, the Co-ordinate Bench noted that merely because no outer limit may have been prescribed, the authorities cannot unreasonably delay the deposit or payment of compensation. Any unreasonable delay would fall foul of Article 14 of the Constitution of India. Accordingly, the Court directed payment of interest @ 9% p. a. from the date of the Award till the date of the actual payment of compensation.

19. Adhering to judicial discipline, we follow the ruling of the Co-ordinate Bench in the case of ***Roshan B. Motiwala(Supra)*** in preference to the decisions of the Kerala High Court and

Allahabad High Court, which only have persuasive value. No arguments were urged for a reference to a larger bench.

20. Though the Co-ordinate Bench directed payment of interest from the date of the Award till the date of actual payment of compensation, the issue about whether similar interest would become payable where possession of the acquired land is taken over even before the making of the Award did not arise and consequently was not considered.

21. In our judgment, interest @ 9% p. a. will have to be paid from the date of taking over the possession in a case where the possession is taken over even before the making of the Award. This would be a fair manner to construe the decision of the Co-ordinate Bench, and such a view would align with the mandate of Article 14 of the Constitution of India, which shuns discrimination or arbitrariness. The authorities can certainly not derive some premium for dispossessing the petitioners even before the award was made, and then resist interest payment from the date of dispossession.

22. Accordingly, for the above reasons, we allow this Petition partly and dispose of the Rule by making the following order.

O R D E R

(A) The Respondents are directed to pay the Petitioners interest @ 9% p. a. from 05.12.2019 till 27.04.2022 on the compensation amount of Rs.13,20,34,413/- within two months from the date of uploading of this Order;

(B) The NHAI must deposit the interest component with the competent authority within a maximum of six weeks from the date of uploading of this Order so that the competent authority can pay this amount to the Petitioners within two months as directed above;

(C) If the above amount is not paid within two months, then the concerned officials of the NHAI and the Competent Authority, as the case may be, shall be liable to pay costs of Rs. 5,00,000/- to the Petitioners. Responsibility will have to be fixed on the officials responsible for the delay, and such costs will have to be personally recovered from such officials rather than burdening the public exchequer. This shall be without prejudice to any action that the Petitioners might choose to initiate under the provisions of the Contempt of Courts Act, 1971.

23. The Rule is made absolute in the above terms without any order for costs.

24. All concerned are to act on an authenticated copy of this order.

(JITENDRA JAIN, J.)

(M. S. SONAK, J.)