

Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5494 OF 2022

Ms.Savita Parchuram Khatu (Widow) & Ors ...Petitioners

Versus

The Union of India
Thr. Secretary Ministry of Road
Transport & Highways & Ors ...Respondents

Mr Owais Anwar Pechkar, *i/b, FIN Law Associates, for the
Petitioner.*

Mr Aditya R Deolekar, AGP, *for the Respondent-State.*

Mr Rakesh Singh, *with Ms Heena Shaikh i/b, M V Kini & Co,
for the Respondent No. 7.*

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CORAM M.S. Sonak &
Jitendra Jain, JJ.
DATED: 07 April 2025

PC:-

1. Heard learned Counsel for the parties.
2. The Petitioners seek the following reliefs.

“(b) That an appropriate writ, order, direction in the nature of mandamus to be issued by this Hon’ble Court to the Respondents to consider the order passed by the Additional Collector (Arbitrator), Ratnagiri dated 28.03.2018 in Appeal No. LA/NH-66/08/2017 in favour of Petitioners.

(c) That an appropriate writ, order, direction in the nature of mandamus to be issued by this Hon'ble court to the Respondents to directing to declare and publish notification in regards to seeking additional acquisition of the house No. 498 around 899 sqft against the compensation amount of INR. 11,89,098/- (Indian Rupees Eleven Lakhs Eighty-Nine Thousand and Ninty-Eight only) as per present market price and additional INR. 30,00,000/- (Indian Rupees Thirty Lakhs Only) compensating for buying a new land and constructing permanent house on the said land; in total INR 41,89,098/- (Indian Rupees Fourty-One Lakhs, Eighty-Nine Thousand and Ninty-Eight) shall be granted to the Petitioners;”

3. Learned Counsel for the Petitioners submits that the Petitioners' house is not acquired according to the Respondents. He further submits that no compensation has been paid for the house. Still, by placing photographs on record, he points out that the excavations to widen the national highway or for the national highway are so close to the Petitioners' house that there is a danger to the life of the residents of this house, i.e., the Petitioners herein. The learned Counsel for the Petitioners submits that, therefore, the Respondents should be directed to either acquire the house and pay the Petitioners' compensation or to at least not do any activities which would interfere with the house, cause it damages and pose a danger to its inhabitants, i.e., the Petitioners herein.

4. The learned Counsel for the National Highways submits that the issue about this house was raised in the arbitration

proceedings under Section 3G (5) of the National Highways Act, 1956. The arbitrator, upon considering the position of the house, has already awarded the compensation to the Petitioners, and such compensation has also been paid to the Petitioners. Therefore, the learned Counsel for the National Highways submitted that this Petition should be dismissed because the Petitioners have not bothered to challenge the arbitral award in accordance with law.

5. This Petition involves disputed questions of fact. Though the photographs produced on record prima facie show that there is a danger to the Petitioner's house still, there is a dispute about whether the arbitration award or the initial compensation offered to the Petitioner includes compensation towards the house or the damages that are likely to be caused for the house. The highway authorities state that they do not need to acquire the house for highway purposes, at least as of now.

6. In the above circumstances, the exercise of writ jurisdiction may not be appropriate. We dispose of this Petition by clarifying that the Petitioners, if entitled under the law, are free to avail of other remedies, including approaching the Civil Court with apprehensions of damage to the house and its inhabitants. The reliefs that the Petitioners now seek, i.e., compensation or taking protective measures, can, if permissible, be applied before such appropriate forum. All contentions of all parties in this regard are left open. There are disputed questions of fact involved.

7. This court cannot compel the Highway Authorities to acquire land if, according to them, it is unnecessary. If

activities on the adjacent acquired lands are causing damage to the Petitioner's unacquired property or home, it may have been for the Petitioners to seek compensation. If such compensation was sought and the Petitioners were unsatisfied because, in their view, it was either denied or insufficiently awarded, pursuing a writ petition may not be the most appropriate remedy. The award could have been contested, or alternative remedies, if allowed by law, where evidence can be presented and disputed matters settled, could have been considered. In this case, the Respondents maintain that the compensation was awarded by considering the house's position. The Petitioners refute this. This would require evaluating the arbitral award, pleadings, and opposing claims. Such an exercise cannot be carried out exercising the summary writ jurisdiction.

8. Accordingly, we decline to invoke our Writ jurisdiction in this matter. We dispose of this Petition with the above liberty and without expressing any opinion on the rival or factual contentions. All concerned to act on an authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)