

Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5530 OF 2025

Sanjay Laxman Sonawane

...Petitioner

Versus

The Union of India & Ors

...Respondents

Mr Archit Jayakar, with *Mr Rishi Patodia, Ms Namrata Vashisht & Mr Atharva Gade, i/b, Jayakar & Partners, for the Petitioner.*

Mr Pavan S Patil, *for the Respondent No. 1.*

Mr A. K Saxena, *for the Respondent-Revenue.*

Mr Rakesh Singh, with *Ms Heena Shaikh, i/b, M. V. Kini & Co, for the Respondent No. 3-NHAI.*

Mr B. V. Samant, Addl GP, with *Ms M. S. Bane, AGP, for the Respondent-State.*

CORAM **M.S. Sonak &
Jitendra Jain, JJ.**

DATED: **25 April 2025**

PC:-

1. According to us, this Petition is a gross abuse of the legal process. This Petition was circulated urgently by suppressing material facts, and an attempt was made to secure ad interim reliefs. Fortunately, on a notice, the Counsel for the National Highways Authority of India (NHAI) appeared and stated that the Petitioner had instituted a Civil Suit and had also sought interim reliefs quite similar to those that were now being

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pressed in this Petition. He submitted that to the best of his knowledge, the application for interim relief had been recently dismissed.

2. The learned Counsel for the Petitioner stated that he was unaware of any such proceedings and would obtain instructions. The Counsel for NHA also stated that he would try to get the orders of the Civil Court in the afternoon session. That is why we deferred the matter to the afternoon session. The plaint in the suit and the order rejecting interim reliefs passed on 12 February 2025 were produced. These proceedings and the order were material facts that warranted disclosures. They were suppressed, and by citing utmost urgency, interim reliefs were attempted to be obtained. Upon hearing the learned Counsel for the parties, we are satisfied that the very institution of this Petition by suppressing material facts amounts to a gross abuse of the legal process.

3. Furthermore, we note that though this Petition was moved for urgent circulation, the reliefs therein relate to quashing a notification under Section 3A of the National Highways Act, 1956 (NHA) issued on 1 March 2011. Prayer clauses (a), (b) and (c), which are the substantive prayers, concern quashing of this notification of 2011, though this Petition was instituted on 24 March 2025. In the Petition, there is no explanation for this inordinate delay.

4. Apart from the unexplained delay and laches, the main argument is that the Section 3A notification and the Section 3D declaration had referred to the acquisition of an area of 2700 sq metres belonging to the Petitioner. The award determining compensation, however, has determined

compensation only for an area of 1700 sq metres. The learned Counsel for the NHAI submitted that only 1700 sq metres have been acquired and possession taken or is in the process of being taken.

5. The learned Counsel for the Petitioner argued that once the initial declarations referred to the acquisition of 2700 sq metres, compensation for the entire property measuring 2700 sq metres had to be necessarily deposited before the NHAI could take possession of even 1700 sq metres of the property. This contention cannot be accepted in the facts of the present case. Based upon such a contention, neither can the impugned 2011 notifications be quashed, nor can any interim relief to restrain taking over possession of the acquired property be granted. This assumes that such possession has not already been taken over.

6. The learned Counsel for the NHAI pointed out, and it was not disputed by the learned Counsel for the Petitioner, that upon determination of compensation for the area of 1700 sq mtrs, the Petitioner, dissatisfied with the award, did resort to the alternate remedy provided by Section 3G of the NHA, i.e., the remedy before the statutory arbitrator. The learned Counsel for the Petitioner accepted that the arbitrator did not make any award in favour of the Petitioner. The Petitioner's Appeal, or rather Petition, under Section 34 of the Arbitration and Conciliation Act, 1996, was also dismissed on the ground of limitation.

7. The Petitioner, in this case, was served with a notice dated 15 April 2024 under Section 26 of the Control of National Highways (Land and Traffic) Act, 2022, alleging that

the Petitioner had encroached upon the national highway property. The notice required the Petitioner to remove the encroachment. The Petitioner instituted Regular Civil Suit No. 579 of 2024 before the Civil Judge Senior Division at Nashik, seeking to restrain the highway authorities and the State from disturbing “*peaceful possession of the Plaintiffs over the suit property without following due process of law*”. The Petitioner also sought a perpetual injunction in the above terms.

8. From the bare plaint, which is now handed over to us, it does not appear that the suit property was restricted only to the encroached portion. Still, the suit property is extensively described, including the acquired property. This suit was instituted on 20 July 2024 or thereabouts.

9. The Civil Court, by order dated 12 February 2025, by a detailed order, has dismissed the Petitioner’s application for interim reliefs. By prayer clause (d) of this Petition, the Petitioner has sought interim reliefs, which include the interim relief to restrain the Respondents “*from taking any steps to demolish any structures as threatened by the notice dated 15 April 2024, Exhibit ‘S’ to the Petition*”.

10. The learned Counsel for the Petitioner states that the cause of action in the suit and the cause of action in this Petition are different. In the context of the explicit reference to the notice dated 15 April 2024 in prayer clause (d) of this Petition, the learned Counsel for the Petitioner explains that this was only a consequential interim relief, not the main relief. Such arguments, cannot be countenanced and indeed, cannot be a defense for not abiding by the hallowed rule that all facts must be disclosed to the Court and the petitioner

should never suppress material facts or particulars when invoking the extraordinary, discretionary and equitable jurisdiction of this Court under Article 226 of the Constitution.

11. The factum regarding the institution of the suit and the rejection of the application for interim relief by the Civil Court was entirely suppressed by the Petitioner. An attempt was made to circulate this matter urgently and possibly obtain the same relief that was sought but rejected by the Civil Court on 12 February 2025. Soon after the dismissal of the interim relief, this Petition was instituted, and an attempt was made to obtain interim orders from this Court.

12. The contention that the compensation amount in respect of the area of 2700 sq mtrs ought to have been deposited without vesting is entirely misconceived. The NHAI authorities have made it clear, and even their award has made it clear, that an area of 1700 sq mtrs has been acquired and compensation for the same has been determined and deposited. The Petitioner contends that the compensation for only 1200 sq mtrs was determined. That was a matter which, in all probability, the Petitioner must have agitated before the arbitrator upon expressing dissatisfaction with the award. In any event, that was a matter which the Petitioners should have raised before the arbitrator. The arbitral award does not favour the Petitioner. The Petition under Section 34 of the Arbitration and Conciliation Act has also been rejected on the ground of limitation as submitted by the learned Counsel for the Petitioner.

13. The learned Counsel for the Petitioner relied on the decision of the Hon'ble Supreme Court in the case of

Competent Authority Vs Barangore Jute Factory & Ors¹. This ruling, in the context of the National Highways Act states that the statutory provisions must be complied with. Further, where the statutes require an act to be done in a particular manner, it must be done in that manner alone. There can be no quarrel with these propositions. However, in the facts of this case, we are satisfied that there is no breach of statutory procedure. Based on the argument made, no breach was demonstrated. We are sorry to say that the entire objective was to wriggle out some interim order after failing to secure one from the Civil Court, and then to rely on the delay the legal process unfortunately entails.

14. Besides, as pointed out earlier, the Petitioner challenges the notification of 2011 by filing a Petition in 2025. The Petitioner has already taken chances before the Civil Court and even before the arbitrator. Such facts find no place in the decision relied upon. It is well settled that once it is established that the Petitioner has suppressed material particulars, the Petition can be dismissed on that ground alone without even advertng to the merits of the matter. Nevertheless, we have adverted to the merits but found no substance in the belatedly advanced contentions.

15. Thus, after suffering a series of setbacks, this Petition appears to be a crude attempt to take chances with the judicial process and that too by suppressing material facts, particulars and documents. Such an approach cannot be countenanced or encouraged. Because of the extreme urgency expressed, the matters on the regular cause list had to be

¹ (2005) 13 SCC 477

bypassed to hear this matter. Arguments had to be heard, and the order dictated in open Court. At the mentioning stage, we did not have the benefit of the case papers, and even otherwise, at that stage, we are inclined to accept counsel's statement. This petition deserves to be dismissed with exemplary costs.

16. For all the above reasons, we dismiss this Petition with a cost of Rs. 1,00,000/- to be paid by the Petitioner within four weeks from today to the Tata Memorial Hospital. The details of which are as follows:

Bank Name	:	Central Bank of India
Branch	:	Tata Memorial Hospital
Address, Telephone & No. Fax No.	:	Dr. Ernest Borges Road, Parel Mumbai, 400 012. Tel. No. 022-24126487, Fax No. 022-24126487
Bank Account No.	:	1002449683
Account Type	:	Current
IFSC Code	:	CBIN0284241
MICR Code	:	400016112

17. The Petitioner should file an affidavit of compliance in this registry after serving an advance copy to the learned Counsel appearing for the Respondents.

18. If the affidavit of compliance is not filed by 13 June 2025, the registry will place the matter on the cause list for directions.

(Jitendra Jain, J)

(M.S. Sonak, J)