

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 344 OF 2018

M/s. Mumbai Nasik Express Way Limited	Appellant
	.. (Org. Defendant)
Versus	
Trambak Parbat Chavan	Respondent
	.. (Org. Plaintiff)

WITH
INTERIM APPLICATION NO. 13480 OF 2025
IN
SECOND APPEAL NO. 344 OF 2018

Igatpuri Highway Pvt Ltd	.. Applicant
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IN THE MATTER BETWEEN

M/s. Mumbai Nasik Express Way Limited	Appellant
	.. (Org. Defendant)
Versus	
Trambak Parbat Chavan	Respondent
	.. (Org. Plaintiff)

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- Mr. Divesh Chamboowala a/w Mr. Dharmesh Pandya i/by Ashwin Pandya & Associates, Advocates for Applicant
 - Mr. Sugandh Deshmukh, Advocate for Respondent
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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 09, 2025

JUDGMENT:

1. Heard Mr. Chamboowala, learned Advocate for Applicant and Mr. Deshmukh, learned Advocate for Respondent.

2. The principal question for determination in the present Second Appeal raised by Appellant is :- "Whether on the date of publication of

declaration / notification under Section 3-D of the National Highways Act, 1956 (for short "**the said Act**") the land acquired would vest in the Central Government from all encumbrances and completely extinguish the right of the owner of the said land. Once this question is answered all other consequential issues, *inter alia*, relating to possession, receipt of compensation will stand answered accordingly.

3. Some brief facts relevant for the purpose of adjudication of aforementioned question of law raised by Appellant are as follows:-

3.1. Appellant is the original Defendant. Respondent is the original Plaintiff. Parties shall be referred to as "*Plaintiff*" and "*Defendant*" for the sake of convenience. Plaintiff is / was owner of the suit property admeasuring 12R out of area of 48R comprised in land bearing Survey No. 217/1 situated at Village Ghoti Budruk, Tal. Igatpuri, Dist. Nashik, hereinafter referred to as the "***suit property***".

3.2. On 24.12.2008 Plaintiff executed a lease agreement with Defendant-Company for a period of 3 years and handed over possession of the suit property to Defendant. In lieu thereof Defendant was to pay monthly rental compensation of Rs. 18,000/- to Plaintiff. Principal terms and conditions of the lease agreement were to the effect that the suit property was leased to Defendant for construction of administrative building and other structures for

operation of Toll Plaza and necessary permission and expenses were to be borne by the Defendant. In Clause (4) of the lease agreement it was stated that suit property was proposed to be acquired by the National Highway Authority of India (for short "**NHAI**") for construction of highway and therefore if so acquired then Plaintiff shall retain right to accept the entire compensation from the Statutory Authorities being owner of the suit property. In clause (6) it was stated that once so acquired the Plaintiff will not claim the lease rental from Defendant on and from the date he receives the compensation from NHAI for acquisition. In this background pursuant to execution of lease agreement and during its tenure Notification under Section 3-D dated 12.01.2010 was issued by Central Government for acquisition of the suit property. All steps prior to issuance of Notification under Section 3-D were admittedly complied with. There is no dispute about these facts.

3.3. According to Defendant on 12.01.2020 Plaintiff's name was deleted from the revenue record of the suit property and name of NHAI was mutated therein. Defendant has placed possession receipt dated 19.04.2010 on record wherein name of the Plaintiff is not reflected. Defendant has relied upon letter dated 21.04.2010 issued by Collector to Plaintiff notifying the above fact. Statutory Award under Section 11 of the said Land Acquisition Act, 1894 was declared

on 02.12.2010 since procedure for acquisition under the Land Acquisition Act is followed. On 07.02.2011 letter was issued by NHAI to Tahsildar, Igatpuri intimating deposit of compensation amount of R. 1.10 crore (approximately) under the Award in respect of acquisition of the suit property as also other land. The tenure of the lease agreement was from 24.12.2008 to 23.11.2011. After acquisition took place, Petitioner and other land owners filed several Writ Petitions in this Court seeking solatium and interest as per law. By common order dated 08.04.2025 the Petitions were disposed of giving directions to NHAI to pay solatium and interest to the Claimants / Owners in accordance with law. Thus acquisition is completed which is clearly gathered from the above order. According to Plaintiff tenure of lease as per the lease agreement ended on 23.11.2012 and he issued notice to Defendant to handover physical possession back to Plaintiff. Defendant did not comply but addressed letter dated 22.12.2011 to Plaintiff seeking two months extension of time for handing over possession and committed to pay Rs. 50,000/- per month to Plaintiff as compensation for those two months at that time. After receiving compensation for two months, Defendant did not handover the possession, hence on 12.03.2012 Plaintiff issued second legal notice to Defendant seeking possession of suit property. Defendant did not oblige leading to Plaintiff filing suit proceeding i.e. RCS No. 172/2012

in the Court of Civil Judge (Junior Division), Igatpuri seeking possession and injunction against the Defendant. Plaintiff himself deposed whereas on behalf of Defendant two witnesses deposed, viz. Mr. Ramanamurti - employee of Defendant and Mr. Sanjay Paithankar - employee of NHAI. By judgment dated 21.11.2014, Suit was dismissed. Being aggrieved, Plaintiff filed RCA No. 53/2015 which was allowed by virtue of the impugned judgment dated 16.02.2015. Appellate Court set aside judgment of Trial Court and decreed the Suit in favour of Plaintiff and Defendant was directed to handover possession of suit property to Plaintiff on or before 16.03.2018 and Plaintiff was entitled to recover compensation @ Rs. 50,000/- per month from 23.02.2012 till date of actual return of possession of the suit property from Defendant. Defendant being aggrieved with the judgment in Appeal has filed Second Appeal.

4. Mr. Chamboowala, learned Advocate for Defendant would submit that once Notification of declaration of acquisition under Section 3-D of the said Act is published which has been so done in the present case on 12.01.2010, all rights of original owner i.e. Plaintiff in the suit property stood extinguished on the premise that the acquired land / property vested in the Central Government. He would draw my attention to the provisions of Section 3-D of the said Act and more specifically sub-clause (2) thereof to contend that on publication of

declaration under sub-section (1), the acquired land mandatorily vests absolutely in the Central Government free from all encumbrances. Thus he would submit that once this is the position in law and admittedly when on 12.01.2010 Notification of declaration of acquisition under Section 3-D is published *qua* the suit property, the suit property vests in the Central Government on and from that date. He would submit that as a consequence thereof any right that may be accrue to Plaintiff by virtue of his ownership in the suit property or by virtue of the lease agreement would automatically stand terminated on 12.01.2010. He would submit that once the owner's right no longer subsists in the acquired land on publication of Notification under Section 3-D, the owner / Plaintiff in the facts and circumstances of the present case cannot assert his right in respect of the suit property for seeking possession of the same from the Defendant under the lease deed.

4.1. He would vehemently argue that vesting of acquired property under the aforesaid provision is free from all encumbrances and in the present case it would mean that the subsisting lease between Plaintiff and Defendant, the tenure of which preceded and succeeded the date of declaration under Section 3-D would automatically come to an end on 12.11.2010 as agreed by the terms of the lease. He would submit that merely because Defendant agreed to pay enhanced rental

compensation of Rs. 50,000/- for two months after the tenure of the lease ended on 23.11.2011 for the next two months extension period does not give any legal right to the Plaintiff to seek enhanced compensation either at that rate or any other rate because ownership right of Plaintiff has come to an end in the suit property and there cannot be any estoppel against the Defendant for having agreed to pay Rs. 50,000/- as compensation per month for two months after the lease period ended.

4.2. As regard to issue of possession he would submit that possession receipt dated 19.04.2010 has been placed on record. He would candidly in his usual fairness agree that name of the Plaintiff is not reflected in the possession receipt. However he would submit that in view of the legal and binding effect of the provisions of Section 3-D applicable to the suit property, the admission of Defendant to pay enhanced rental compensation of Rs. 50,000/- per month for seeking extension of two months cannot be held valid as it is against the legal provisions. He would invite my attention to the operative part of the impugned judgment and submit that direction given to the Defendant to handover possession of the suit property which has already been acquired to the Plaintiff in the facts of the present case is incorrect and illegal and has no force in law. He is particularly aggrieved with the directions contained in operative clause (5) of the impugned

judgment which entitles Plaintiff to recover compensation @ Rs. 50,000/- per month from Defendant from 23.02.2012 till the date of actual recovery of possession since Plaintiff cannot be entitled to the same as he has already received compensation against acquisition of the Suit property. He would submit that such a direction cannot be given since all rights of Plaintiff in the suit property stood extinguished in view of the admission by Plaintiff about not only being aware of passing of the Award but no other material being placed on record to show that the acquisition was stayed by any competent Court. Rather he would submit that the acquisition is completed. Hence he would persuade the Court to interfere with the findings of the First Appellate Court on the basis of interpretation of Section 3-D of the said Act and its application to the suit property in the present case.

5. ***PER CONTRA***, Mr. Deshmukh, learned Advocate for Plaintiff who is the Respondent in the present Appeal would however contend to the contrary. He would submit that Plaintiff has not received possession pursuant to determination of the lease either after the tenure of three years got over on 23.11.2011 and even after extension period having expired on 23.01.2011. He would submit that insofar as the lease is concerned there is privity of contract with Defendant only and once the lease period is determined including the extension period of two months thereafter, Defendant has no right whatsoever in law to

hold on to the suit property. He would submit that learned Appellate Court has therefore correctly decreed that Defendant is required to handover possession of the suit property to Plaintiff and has no right whatsoever to continue holding of the suit property and it has declared Defendant to be a tenant holding over and therefore liable for payment of compensation @ Rs. 50,000/- per month for possession of the suit property till date. He would therefore persuade the Court to uphold the impugned order and dismiss the Second Appeal filed by Defendant.

5.1. He would submit that the lease agreement came to an end on 23.12.2011 by efflux of time. Hence all the rights, title and interest of the lessee i.e Defendant came to an end. He would submit that the lease agreement now does not subsist. Hence Clause (6) thereof will not govern the rights of the parties. He would submit that after determination of the lease deed and its tenure the lessee i.e. Defendant is a 'tenant at sufferance' and he ought to have delivered possession to the Plaintiff after determination of the lease deed. He would submit that therefore Plaintiff filed suit for recovery of compensation and possession. He would submit that hence the substantial question of law is required to be decided in favour of the Defendant and the *lis* before the Court is not whether Defendant is entitled to recover the lease amount as per Clause (6) of the lease

agreement but for recovery of compensation and possession of suit property. He would submit that condition No.6 reads as under, "*The lessor further declares that he/she will not claim any lease rent from the date he/she receives the compensation from the National Highways Authority of India or any other concerned authorities*". He would invite my attention to the 7/12 extract (at Page Nos.39) in which it is mentioned that an area of 100 square meters only is acquired for NHAI however the area leased out is 1200 square meters. He would invite my attention on (Page No.21 Compilation) to the Mutation at Serial No.5, of Survey No.217/ 1 and the acquired area being only 100 square meters. He would submit that in the written statement (at Page No.55) in para 16, it is specifically admitted that the entire area of the land is 1200 sq meters and the possession receipt and 7/12 extract, mutation record etc shows that acquired land for NHAI is only 100 sq meters.

5.2. He would submit that the entire leased Suit property has not been acquired and as per the lease condition compensation is not accepted by the Plaintiff till date. He would submit that if acquisition is of only 100 square meters for NHAI out of leased 1200 square meters then the Plaintiff landowner cannot be deprived of his right and enjoyment. He would submit that Defendant is a commercial company which has made profit out of its commercial activities and is

utilizing the suit property and the Plaintiff is entitled for compensation as well as possession in such facts. He has placed reliance on the decision of the Supreme Court in the case of *Sheela Nagori v. Kantial Baldota*¹ wherein it is observed that the landlord can seek possession of the property from the tenant even after acquisition of the land. He would submit that Plaintiff has not handed over possession of acquired land to NHAI. Further he would submit that possession of other lands notified in the notification of NHAI has also not been taken over by NHAI and all other land owner are using their properties.

5.3. He would submit that the Lessee cannot take the defense for not returning possession on the ground of acquisition of the suit property. He would submit that the witness of the National Highway Authority himself has admitted and accepted that possession is not taken from Plaintiff and compensation is not paid to Plaintiff. He would submit that Defendant has not come with the case that NHAI has taken possession from Plaintiff or leasehold rights are attorned in favour of NHAI. He would submit that learned Appellate Court has taken into consideration deposition of DW-1 and DW-2 and rightly come to the conclusion in paragraph No. 20 and 21 holding that from the evidence it is not clear whether the NHAI has got possession and admittedly the Plaintiff has not accepted and received the compensation amount.

1 (2014) 11 SCC 376

6. I have heard Mr. Chamboowala, learned Advocate for Applicant and Ms. Deshmukh, learned Advocate for Defendant and perused the record of the case with their able assistance. Submissions made by both Advocates at the bar have received due consideration of the Court.

7. In the present case the controversy revolves around the issue of vesting of possession of the suit land pursuant to its acquisition during the interim period of the lease agreement. Second 3-D of the said Act reads thus:-

"3D. Declaration of acquisition.--(1) Where no objection under sub-section (1) of section 3C has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objection under sub-section (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes mentioned in sub-section (1) of section 3A.

(2) On the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, a notification has been published under sub-section (1) of section 3A for its acquisition but no declaration under sub-section (1) has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect:

Provided that in computing the said period of one year, the period or periods during which any action or proceedings to be taken in pursuance of the notification issued under sub-section (1) of section 3A is stayed by an order of a court shall be excluded.

(4) A declaration made by the Central Government under sub-section (1) shall not be called in question in any court or by any other authority.

7.1. The scheme of the Act regarding acquisition of land under National Highways Authority of India Act, 1988 is as follows:-

7.2. Under Section 3-A(1) Central Government has to declare by Notification in Official Gazette the purposes for which land is acquired under the said Act thereafter land owners can raise their objections before the Competent Authority within the stipulated period which are required to be heard and decided by Competent Authority. If the objections are disallowed by the Competent Authority then under Section 3-C(2), the Competent Authority has to submit a Report to the Central Government regarding acquisition and on receipt of such Report the Central Government by Notification declares that the land should be acquired under Section 3-D(1) of the said Act. The Caveat is that if Notification of declaration of acquisition under Section 3-D(1) is not published within one year of the preliminary Notification under Section 3-A(1) then Section 3-D(1) Notification will cease to have any effect. Such is not the case herein. Consequence of 3-D(1) Notification is that on its publication the acquired land vests absolutely in Central Government free from all encumbrance. Further under Section 3-D(4) it is stipulated that Section 3-D(1) Notification shall not be called in question in any Court or by any other Authority. In the facts of the present case Plaintiff is indirectly seeking to call in question the Section 3-D(1) Notification in the Civil Court when Plaintiff has

already invoked the extraordinary jurisdiction of this Court unsuccessfully and without obtaining any stay Order on acquisition of the said Suit property. Rather the order dated 08.04.2025 passed by the Division Bench of this Court primarily reveals that Plaintiff as the land owner has already received the compensation for acquisition and by virtue of this order directions are issued for payment of solatium and interest to all land owners including the Plaintiff. Hence contention raised by Mr. Deshmukh about non-receipt of compensation is on the face of record false. Otherwise Plaintiff would not have filed Petition in 2011 seeking solatium and interest under the Land Acquisition Act.

8. It is argued by Defendant - Appellant before me that once the Notification under 3-D is declared *ipso facto* the acquired land vests absolutely in the Central Government free from all encumbrances and the lease agreement between the parties in the present case would come to an end. Though support is derived from clause (6) of the lease agreement by Appellant which states that Plaintiff will not claim any lease rent from the date he receives the compensation from NHAI, what is important for the Defendant to prove is whether Plaintiff is paid the compensation under the Award which was declared.

9. *Prima facie* in the present case it is seen that Defendant led the evidence of Mr. Sanjay Paithankar - an employee of the NHAI. What is

relied upon by the NHAI is possession receipt dated 19.04.2010 below Exh. 35 which admittedly does not reflect the name of Plaintiff therein. This is because the issue of declaration of Notification and vesting of land absolutely in the Central Government cannot be read in isolation. Plaintiff and Defendant in the present case have categorically agreed in the lease agreement that only after Plaintiff receives the compensation from NHAI, Defendant will not be liable to pay the further lease rentals. What is crucial is the power to take possession envisaged under Section 3-E of the said Act. Section 3-E envisages steps to be taken for taking over possession of the acquired land. In sub-section (1) it categorically states that amount determined under Section 3-G with respect to the acquired land needs to be deposited with the Competent Authority by the Central Government and thereafter the Competent Authority may by notice in writing direct the owner of another person who may be in possession of the sand land to surrender or deliver possession thereof to the Competent Authority.

10. In the present case it is clear that compensation has been deposited and the Competent Authority has therefore addressed letter to the Defendant and has taken over possession of the said land from Defendant. The order dated 08.04.2025 passed by the Division Bench *prima facie* confirms this position as Petition is filed for

solatium and interest under the Land Acquisition Act, 1894 in view of acquisition being under the said Act. Writ Petition No 5725/2011 was filed by Plaintiff in this Court which is disposed of. Though the plea has been taken by Plaintiff to challenge the Award and acquisition of the suit property the same has failed.

11. The evidence of Plaintiff recorded below Exh. 17 is crucial in the present case. Plaintiff himself has admitted in his cross-examination that after receiving the Notification regarding acquisition he filed his written objection before the Competent Authority. Thereafter it is seen that the Notification is issued under Section 3-D of the said Act. Plaintiff has further admitted in his cross-examination that he was fully aware about the Award dated 02.12.2010 as also the costs of land having been fixed at Rs. 1,10,42,000/-. He has however stated in his cross-examination that he denied to accept the compensation from the NHAI and filed Writ Petition in 2011 in this Court to challenge the same. However he failed to place on record any order of the Court and merely because he denied to accept the compensation and challenge the acquisition proceedings cannot be a ground for the Plaintiff to contend that he has not accepted the Award or compensation or the acquisition proceedings. Therefore on and from the declaration of the Section 3-D Notification in the present case, suit property would vest absolutely in the Central Government free from

all encumbrances and the Plaintiff would not be entitled to receive any compensation thereof. The mutation of the property was effected in April 2010 itself. Challenge by Plaintiff under Sections 3(3) and 3(4) to the acquisition has failed and direction is given by the Division Bench to pay solatium and interest to Plaintiff.

12. In the facts of the present case, it is seen that tenure of lease agreement executed between the parties went beyond the date of declaration of acquisition. It is also an agreed fact that both the parties were fully aware about the intended declaration of acquisition by the Central Government and therefore contents of clause (6) clearly state that on and from the date of acquisition and receipt of compensation, Plaintiff will not be entitled to receive any compensation from Defendant. It is seen that by virtue of the Award dated 02.12.2010, compensation in respect of the suit property was fixed @ Rs. 1,10,42,000/-. Though Plaintiff and owner of the suit property may not be happy either with the said compensation or acquisition but without any competent Court having stayed the acquisition proceedings or having passed interim relief in favour of the Plaintiff, the case of the Plaintiff that acquisition needs to be arrested in the present case cannot be acceptable. Plaintiff cannot in the wake of Notification under Section 3-D contend that possession was not taken from Plaintiff being owner of the land neither can he contend that

compensation was not paid over to him. On all these grounds, Plaintiff has no case and he fails.

13. Insofar as issue of discrepancy of area leased under the lease is concerned *prima facie* 12R of land was leased and which has been acquired, contention of Plaintiff that only 100 sq.mtrs. namely 1R is acquired is therefore not sustainable because this was never an issue in the *lis* before the trial Court or First Appellate Court. That apart there is no independent material placed in evidence or placed on record by Plaintiff to justify this entitlement.

14. Insofar as the issue of possession is concerned, when the Notification under Section 3-D of the said Act was published possession was never with the Plaintiff and on publication of the said Notification, the acquired land i.e. suit property vested absolutely in the Central Government free from all encumbrances. Therefore Plaintiff cannot claim any equity in this regard. This is so because on the aspect of compensation, it is seen that compensation of Rs. 1,10,42,000/- declared under the Award dated 02.12.2010 was deposited by NHAI with the Collector / Competent Authority and mutation of the name was carried out in the revenue record. Once that is the position it cannot lie in the mouth of the Plaintiff / owner to seek possession of the suit property from Defendant or for that matter compensation of any kind. All rights of Plaintiff stand extinguished.

Award dated 02.12.2010 has fructified the acquisition proceedings in respect of the suit property which are completed. Plaintiff and other land owners have filed Writ Petitions to challenge the acquisition, but there are no orders passed therein and they now stand disposed of. All rights of Plaintiff in the suit property stand completely extinguished. Any direction in the aforesaid facts and circumstances of returning possession of the suit property to the Plaintiff would not only be contrary to well settled principles of law but would indirectly set the entire acquisition process to nullity. The impugned judgment passed by the First Appellate Authority is therefore clearly unsustainable in law. Equally unsustainable is the fact that there is direction given to Defendant to handover possession of the suit property to the Plaintiff and the Plaintiff is given an imprimatur to recover compensation @ Rs. 50,000/- per month till the date of actual recovery of possession which directions are wholly unsustainable and are required to be not only interfered with but quashed and set aside. Learned Appellate Court has given an erroneous finding that no eventuality has been stipulated between the parties about non-handing over possession of the suit property on the expiry of the lease. This finding is incorrect in view of the agreement between the parties in the lease agreement. What is crucial is that before the tenure of lease agreement expired, acquisition was completed and the suit property

stood acquired under the said Act. Both the parties had clearly agreed to this situation which is in fact is documented in clause (6) of the lease agreement. Therefore once the parties were fully aware about the consequences of acquisition and had agreed to the fact that on acquisition of the suit property, Plaintiff will not be entitled to any lease rental from the Defendant, the directions contained in clause (4) and (5) of the operative part of the impugned judgment are not sustainable in law and deserve to be quashed and set aside.

15. In view of my above observations and findings and the position in law with respect to application of the provisions of Section 3-D of the said Act to the facts and circumstances of the present case as alluded to herein above, the principal question of law framed in the present Second Appeal is answered as under:-

Principal Question of Law	Findings
Whether on the publication of the declaration / notification dated 12.01.2010 (Exh. 36) in the said Suit, the Suit Land absolutely vested in the Central Government free from all encumbrances, and therefore the Respondent / Original Plaintiff ceased to have any right, title or interest therein, and as such was not entitled to any relief in the said Suit?	In the Affirmative

16. In view of the above, judgment dated 16.02.2018 passed in Appeal is quashed and set aside. Judgment of the Trial Court dated 21.11.2014 is upheld and confirmed.

17. Second Appeal is disposed in the above terms. Interim Application No. 13480 of 2025 is also disposed.

Amberkar

[MILIND N. JADHAV, J.]

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