



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 71 OF 2024

Ashok S/o Kisan Dhabe,
Aged about 50 years, Occ.-Agriculturist,
R/o. Zodga (Bk.), Tah. Malegaon,
District Washim.

.... **PETITIONER**

// VERSUS //

- 1) The Sub-Divisional Officer and
Competent Authority,
(Acquisition-NH.161), Washim.
- 2) Vitthal Shriram Gavai,
Aged about Major, Occ.-Labour,
R/o. Zodga (Bk.),
Tah. Malegaon, Dist. Washim.

.... **RESPONDENTS**

WITH

WRIT PETITION NO. 72 OF 2024

Ashok S/o Kisan Dhabe,
Aged about 50 years, Occ.-Agriculturist,
R/o. Zodga (Bk.), Tah. Malegaon,
District Washim.

.... **PETITIONER**

// VERSUS //

- 1) The Sub-Divisional Officer and
Competent Authority,
(Acquisition-NH.161), Washim.
- 2) Madan Vitthal Gavai,
Aged about Major, Occ.-Labour,
R/o. Zodga (Bk.),
Tah. Malegaon, Dist. Washim.

.... **RESPONDENTS**

WITH

WRIT PETITION NO. 73 OF 2024

Ashok S/o Kisan Dhabe,
Aged about 50 years, Occ.-Agriculturist,
R/o. Zodga (Bk.), Tah. Malegaon,
District Washim.

.... **PETITIONER**

// VERSUS //

- 1) The Sub-Divisional Officer and
Competent Authority,
(Acquisition-NH.161), Washim.
- 2) Vishwas Devrao Thenge,
Aged about Major, Occ.-Labour,
R/o. Zodga (Bk.),
Tah. Malegaon, Dist. Washim.

.... **RESPONDENTS**

WITH

WRIT PETITION NO. 74 OF 2024

Ashok S/o Kisan Dhabe,
Aged about 50 years, Occ.-Agriculturist,
R/o. Zodga (Bk.), Tah. Malegaon,
District Washim.

.... **PETITIONER**

// VERSUS //

- 1) The Sub-Divisional Officer and
Competent Authority,
(Acquisition-NH.161), Washim.
- 2) Ravi Vijay Ambaskar,
Aged about Major, Occ.-Labour,
R/o. Zodga (Bk.),
Tah. Malegaon, Dist. Washim.

.... **RESPONDENTS**

WITH

WRIT PETITION NO. 75 OF 2024

Ashok S/o Kisan Dhabe,
Aged about 50 years, Occ.-Agriculturist,
R/o. Zodga (Bk.), Tah. Malegaon,
District Washim.

.... **PETITIONER**

// VERSUS //

- 1) The Sub-Divisional Officer and
Competent Authority,
(Acquisition-NH.161), Washim.
- 2) Wardhaman Bhikaji Gavai,
Aged about Major, Occ.-Labour,
R/o. Zodga (Bk.),
Tah. Malegaon, Dist. Washim.

.... **RESPONDENTS**

WITH

WRIT PETITION NO. 516 OF 2024

Ashok S/o Kisan Dhabe,
Aged about 50 years, Occ.-Agriculturist,
R/o. Zodga (Bk.), Tah. Malegaon,
District Washim.

.... **PETITIONER**

// VERSUS //

- 1) The Sub-Divisional Officer and
Competent Authority,
(Acquisition-NH.161), Washim.
- 2) Bhimrao Bhikaji Gavai,
Aged about Major, Occ.-Labour,
R/o. Zodga (Bk.),
Tah. Malegaon, Dist. Washim.

.... **RESPONDENTS**

WITH

WRIT PETITION NO. 517 OF 2024

Ashok S/o Kisan Dhabe,
Aged about 50 years, Occ.-Agriculturist,
R/o. Zodga (Bk.), Tah. Malegaon,
District Washim.

.... **PETITIONER**

// VERSUS //

- 1) The Sub-Divisional Officer and Competent Authority,
(Acquisition-NH.161), Washim.
- 2) Suresh Bhikaji Gavai (Dead) through
Legal representative -
Satyashila Suresh Gavai,
Aged about Major, Occ.-Labour,
R/o. Zodga (Bk.),
Tah. Malegaon, Dist. Washim.

.... **RESPONDENTS**

Mr. N. B. Kalwaghe, Advocate for the Petitioners in all Petitions.
Ms. Deepa Charlewar, Assistant Government Pleader for
Respondent No.1 in all Petitions.
Mr. S. S. Dhengale, Advocate for the Respondent No.2 in all
Petitions.

CORAM : SMT. M.S. JAWALKAR, J.

DATE ON RESERVING THE JUDGMENT : 14.02.2025.
DATE ON PRONOUNCING THE JUDGMENT : 25.03.2025.

JUDGMENT :

1. At the request and consent of the learned Counsel appearing for the parties all the petitions are taken up for final hearing at the stage of admission. **Rule.** Rule made returnable forthwith.
2. As common issue is arising in all petitions they are taken up to decide together. Writ Petition No. 71/2024 is taken as leading case for consideration of facts and other material.
3. The contention of the Petitioner is that he and his real two brothers namely Anil and Murlidhar are absolute owners of land

having Gut No.146, admeasuring 1.11 HR., situated at village Zodga (Bk.), Tahsil Malegaon, District Washim. Originally, the said land was owned by Parvatibai Dhabe (grandmother) and she executed a Gift-deed in favour of Petitioner and his two brothers, when they were minors. On the basis of the Gift-deed, the mutation entry was recorded in the Records of Right on 27.08.1988. The name of the Petitioner and his two brothers also appeared in 7/12 extract as owners of the said land. The National Highway Authorities started the procedure for acquisition of land from village Zodga (Bk.) for widening of National Highway No.161. In the year 2017, in the said process, measurement was carried out on 18.09.2017, it was shown that from the land of Petitioner in Gut No.146, out of 1.95 HR. land , 0.03 HR. land was required to be acquired for the said purpose. After completing process of acquisition, an Award came to be passed on 01.01.2019. In the said Award, the Petitioner and his brothers were shown as owners of Gut No.146. They received compensation for the said acquired land.

4. Since, the additional land was required for construction of National Highway No.166, Respondent No.1 again started the proceeding for acquisitions of lands from village Zodga (Bk.). When the Authorities started to interfere in the possession of Petitioner in said land by erecting polls, digging etc., the Petitioner made an application dated 03.08.2021 to Respondent No.1 and requested that

he is ready to give land provided his land should be measured first and compensation should be awarded to him. Accordingly, land was measured on 21.03.2022. the measurement-sheet depicts that as per the Namuna 8-A in land Gut No.146, 105 sq.mt. open land with temporary construction having property No.108A was in the name of Respondent No.2. The Respondent No.1 intending to give compensation to the Respondent No.2. Therefore, the Petitioner raised an objection regarding entitlement of Respondent No.2 to receive compensation. The Respondent No.1 recorded the objection of the Petitioner and observed that the compensation would be disbursed after verification of title documents and if dispute arises about title, the same shall be decided as per Section 3H (4) of the National Highways Act, 1956 (for short the "NH Act"). When the Petitioner learnt that the Respondent No.1 was about to disburse the amount of compensation in favour of Respondent No.2, immediately he raised an objection before the Respondent No.1 on 12.08.2018 with 7/12 extract.

5. The contention of the Petitioner is that Gram Panchayat has given a copy of Namuna-8A by illegal means and in connivance with Respondent No.2 and this was pointed out to the Authorities at the time of carrying out measurement. In the meanwhile, the Petitioner has also filed a suit bearing Reg.C.S. No.196/2022 before the learned Civil Judge, Senior Division, Washim for permanent injunction against the

Respondents along with an application for grant of temporary injunction. The Respondent No.1 – S.D.O. passed an order dated 16.11.2023 and rejected the objection raised by the Petitioner as to the payment of land acquisition compensation to the Respondent No.2. It is held that as per Namuna 8, house is shown in the name of Respondent No.2. It is the contention of the Petitioner that though there was a dispute about the entitlement of compensation on the basis of title, the Competent Authority, in view of Section 3H(4) of the NH Act, is duty bound to refer the dispute to the decision before the Principal Civil Court. For the sake of convenience, Section 3H(4) of the N.H. Act is reproduced as under :-

“3H. Deposit and payment of amount.—

(1)

(2)

(3)

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated. ”

6. The order is passed without following the provision of NH Act. The learned Counsel for the Petitioner has relied on ***Vinod Kumar and Others Vs. District Magistrate, Mau and others***, reported in ***2023 OnLine SC 787***.

7. As against this, the learned Counsel for the Respondent No.1 submitted that earlier also Award came to be passed however, the Petitioner has not raised any objection. It is submission of Respondent No.1 that disputed land is a part of Gaothan and various persons have constructed their houses on it and at the time of measurement of disputed land, which was found in the possession of Respondent No.2. As such, the order came to be passed on 16.11.2023.

8. Learned Counsel for Respondent No.2 submitted that the land Gut No.164, House No.256, admeasuring 0.0025 HR. belonging to Wardhaman Bhikaji Gavai. In the suit filed by the Petitioner, an application for grant of temporary injunction came to be rejected on 15.12.2023. It is further contention of Respondent No.2 that there was a Consent-deed dated 25.09.2019, executed by the present Petitioner and his brother in favour of the persons who are residing upon Gut No.144 and 146 and accordingly compensation was deposited in the account of the said persons. Learned Counsel for Respondent No.2 prayed that the order passed by the learned S.D.O. on 16.11.2023 needs no interference and needs to be confirmed.

9. Heard both the parties. Perused the impugned order, considered the documents on record and citations relied on by the parties.

10. Learned Counsel for the Petitioner placed reliance on **Vinod Kumar** (supra), wherein the Hon'ble Apex Court held in para 34 as under :

“34. Our final conclusion is as under :- If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, then, the competent authority shall refer the dispute to the decision of the Principal Civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated. The competent authority possesses certain powers of the Civil Court, but in the event of a dispute of the above nature, the summary power, vesting in the competent authority of rendering an opinion in terms of sub-section (3) of Section 3H, will not serve the purpose. The dispute being of the nature triable by the Civil Court that the law steps in to provide for that to be referred to the decision of the Principal Civil Court of original jurisdiction. The dispute regarding apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, would then have to be decided by that Court.”

11. On perusal of the consent terms, it appears that it is dated 25.09.2019, however, it appears that there was again acquisition for additional land which was required for construction of National Highway No.166. The Petitioner has filed an application dated 03.08.2021 raising objection as compensation was given by the Petitioner in the earlier acquisition. The consent term which was produced by the Respondent No.2, *prima facie* create the doubt

whether such any consent terms are executed by the Petitioner. Moreover, the said consent term dated 25.09.2019 cannot be considered for subsequent acquisition for additional requirement.

12. The Sub-Divisional Officer, Washim vide order dated 16.11.2023 rejected the objection raised by the Petitioner. The Petitioner's main contention was that without there being any document of title, the Respondent No.2 is not entitled for any compensation. It is also brought to the notice of the learned Competent Authority that Reg.C.S. No.196/2022 is already filed for temporary and permanent injunction. As against this, the contention was that the acquired land is Gaothan since many years and there are concrete houses having entries in the Gram Panchayat Office. When such objections are received by the Authority, it was incumbent on Authority to refer the said dispute in view of Section 3H (4) of the NH Act to the Principal Civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated. Instead of referring the matter, the Competent Authority, on its own, decided the objection and rejected the same. As such, the order passed by the Competent Authority is patently without jurisdiction and liable to be set aside. In view of the said provision, the Competent Authority cannot be decided the question of title on the basis of which the Petitioner or the Respondent claiming compensation.

13. As such, the impugned order dated 16.11.2023 challenged in Writ Petition Nos.71/2024, 72/2024, 73/2024, 74/2024 and 75/2024 and impugned order dated 26.12.2023 challenged in Writ Petition Nos.516/2024 and 517/2024 by the Respondent No.1 – Sub-Divisional Officer/Competent Authority (Acquisition-NH.161), Washim are hereby quashed and set aside. The learned Sub-Divisional Officer/Competent Authority (Acquisition-NH.161), Washim to refer the dispute to the learned Civil Court of original jurisdiction for apportionment/entitlement within a period of two weeks.

14. The Status-quo order dated 04.01.2024 passed in Writ Petition Nos.71/2024, 72/2024, 73/2024, 74/2024 and 75/2024 and dated 23.01.2024 passed in Writ Petition Nos.516/2024 and 517/2024 by this Court, which is continued during the pendency of these writ petitions shall continue for further period of two weeks. The parties to appears before the learned Sub-Divisional Officer/Competent Authority (Acquisition-NH.161), Washim on **03.04.2025**.

The Writ Petitions stand disposed of in the above terms. No order as to costs.

(SMT. M.S. JAWALKAR, J.)