



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION No. 15256 OF 2025

1. Bhushan Raosaheb Anbhule
Age : 50 years, Occ : Business,
R/o. 'Anubhule Bangalow', Savedi Road,
Premdan Chowk, Ahilyanagar-414001.
2. Ragini w/o. Rajesh Patil
Age : 56 years, Occ: Business,
R/o. Ashwini Hospital, Plot No.62,
Shahu Nagar Housing Society,
Jalgaon – 425001.
3. Saurabh Baburao Nadgauda
Age : 61 years, Occ: Business,
R/o. House No. 13-A 2/2 11,
Ideal Co. Opp. Housing Society,
Doctor Colony, Burudgaon Road,
Near, ITI, Ahilyanagar – 414001.
4. Kamlesh Chirangilal Gupta
Age : 56 years, Occ : Business,
R/o. Chiranjilal Gupta Lovely House,
Block No. 4, Nehru Road Near
Hotel Midland Santacruz East
Mumbai 400055.

-----PETITIONERS

VERSUS

1. The Union of India
Through the Secretary
Ministry for Road Transport and
Highways, New Delhi
2. The National Highway Authority of India
G-5 & 6, Sector 10 of Dwarka
New Delhi 110075.
Through its General Manager
(Environment and Public Grievances)
3. The Executive Engineer/Project Director

National Highway Division,
Sarasnagar Road, Behind Market Yard,
Ahmednagar.

4. The Competent Authority &
Sub-Divisional Officer
Sub Division Nagar,
Ahmednagar, Dist. Ahmednagar

-----RESPONDENTS

Mr. S. N. Gaikwad, Advocate for petitioners
Mr. Avinash Borulkar, Advocate for respondent No. 1
Mr. R. S. Wani, AGP for respondent-State

**CORAM : Smt. Vibha Kankanwadi &
Hiten S. Venegavkar, JJ.**

DATE : 05th March, 2026

JUDGMENT (PER : Hiten S. Venegavkar,J.) :-

1. This petition under Article 226 of the Constitution of India has been filed by the petitioners seeking a declaration that the action of the respondent authorities in constructing National Highway No. 222 through the properties of the petitioners situated at Survey Nos. 369/2 and 370/2 of village Kedgaon, Taluka and District Ahilyanagar is illegal, arbitrary and violative of Articles 14, 19(1)(g), 21 and 300A of the Constitution of India as well as the provisions of the National Highways Act, 1956. The petitioners have also sought directions to the respondent authorities to follow the procedure contemplated under Section 3C(2) of the National Highways Act, 1956 on the basis of the objections dated 16.08.2024 submitted by them. In the alternative, the learned advocate appearing for the petitioners has orally prayed that the respondent

authorities be directed to decide the objections and representations submitted by the petitioners in accordance with law.

2. The petitioners claim to be owners of certain non-agricultural commercial plots particularly described in the memo of petition, situated adjacent to the existing Kalyan–Ahmednagar–Nanded–Nirmal road passing through village Kedgaon. According to the petitioners, the said road was originally a two-lane road and on account of increased traffic congestion and growth in vehicular movement the authorities decided to widen the road and convert it into a four-lane national highway. The petitioners submit that their plots were not included in the initial notification published in the Official Gazette on 05.05.2016 declaring the intention of the Central Government to acquire lands for development of National Highway No. 222. According to them, subsequently the alignment of the highway project was altered at the pressure of some political persons and portions of their lands came to be affected by the acquisition proceedings.

3. The petitioners further contend that their lands had already been converted into non-agricultural plots pursuant to permission granted as far back as on 01.06.1983 and the plots were being used for commercial purposes. Petitioner Nos. 1 and 3 are stated to be medical practitioners intending to establish a trauma hospital on the said plots,

whereas petitioner Nos. 2 and 4 are stated to be contractors intending to develop the land by constructing a commercial complex. According to the petitioners, despite the non-agricultural status of their lands, the respondent authorities treated the lands as agricultural lands while initiating acquisition proceedings and proceeded to acquire only a portion of the plots.

4. It is the case of the petitioners that by acquiring only part of their plots and leaving the remaining portions unacquired, the respondent authorities have rendered the remaining land unusable and commercially non-viable. The petitioners further contend that in the vicinity of their land a flyover and a 12 metre service road have been constructed and in view of various guidelines governing construction near highways, the remaining portion of the land cannot be effectively utilized. According to the petitioners, this partial acquisition has caused severe injury and severance to their property.

5. The petitioners state that from time to time they have submitted objections before the competent authority in response to notifications issued under the National Highways Act, 1956 and that on 16.08.2024 they submitted a detailed representation requesting the authorities either to acquire the entire land or to compensate them for the injury caused to the remaining portion of their plots. The grievance

of the petitioners is that these objections and representations have not been properly considered by the authorities and that the authorities have proceeded with the construction of the highway and have determined the payment of compensation for only the acquired portion of the land.

6. When the matter was earlier heard by this Court on 27.01.2026, a specific query was raised to the learned advocate appearing for the petitioners as to how the petitioners had demonstrated that the remaining portion of their land had suffered severance or injury on account of the acquisition proceedings. The petitioners sought time to place additional material on record in support of their contentions. Accordingly an additional affidavit dated 20.02.2026 came to be filed placing on record a Government Resolution dated 14.05.2018 issued by the Public Works Department of the State of Maharashtra.

7. Having heard the learned counsel appearing for the petitioners at considerable length and having perused the pleadings and the documents placed on record, we find that the arguments advanced during the course of hearing are fundamentally different from the reliefs sought in the writ petition.

8. The principal prayer in the petition seeks a declaration that the action of the respondent authorities in constructing National Highway

No. 222 through the properties of the petitioners is illegal and arbitrary and contrary to the Constitution and the National Highways Act, 1956. However, during the course of arguments, the learned counsel for the petitioners has not clearly taken a firm stand that the petitioners have any objections to the construction of the national highway nor to the acquisition of their lands for that purpose, save and except the pleading that the lands were not part of earlier notification for acquisition. There are no pleadings as well to the effect that the petitioners have objection to the entire acquisition of lands for the construction of National Highway No. 222. The grievance mainly projected before this Court is that the authorities ought to have acquired the entire land of the petitioners instead of acquiring only a part thereof and secondly that the authorities have wrongly considered the petitioners' plots as agricultural lands when they are commercial and non-agricultural lands since 1983.

9. The case therefore, sought to be urged during arguments is entirely different from the case pleaded in the petition. The law is well settled that a party cannot plead one case in the petition and seek relief on a completely different basis during arguments. The writ court is required to adjudicate only upon the pleadings and reliefs specifically set out in the petition.

10. In ***Bharat Singh v. State of Haryana***, (1988) 4 SCC 534,

the Hon'ble Supreme Court has held that in writ proceedings the facts constituting the cause of action as well as the relief sought must be clearly pleaded and the petitioner cannot rely upon facts which are not pleaded. Similarly, in ***State of Orissa v. Mamata Mohanty***, (2011) 3 SCC 436, the Hon'ble Supreme Court reiterated that relief not founded on pleadings cannot be granted and parties cannot be permitted to raise entirely new grounds during arguments.

11. In the present case, the petitioners have challenged the construction of the national highway itself, whereas the grievance now sought to be projected is that the remaining portion of their land has become unusable due to partial acquisition. These are two entirely different causes of action. On this ground alone the petition is liable to fail.

12. Even otherwise, the petitioners have not placed on record any cogent material demonstrating that the remaining portion of their land has suffered severance or injurious affection due to the acquisition.

13. It is undoubtedly true that acquisition of a portion of land may in certain circumstances cause injury or severance to the remaining property of the landholder and that compensation for such injury is recognised in acquisition jurisprudence. When a part of the land of a

person is acquired, the owner may be entitled to compensation not only for the land acquired but also for the diminution in value of the remaining land due to severance. It is therefore recognized that compensation must include damages sustained by reason of injury caused to the remaining portion of land.

14. Thus, while determining compensation in cases of compulsory acquisition the authorities must consider the impact of acquisition upon the remaining property of the landholder. Accordingly, compensation must be determined in a just and fair manner taking into account all relevant factors affecting the value and usability of the land, under the statutory scheme compensation for severance and injurious affection to remaining land is also recognised under Section 23(1) of Land Acquisition Act, 1894.

15. However, the claim of severance or injury to remaining portion of land cannot be accepted merely on the basis of assertions or bare pleadings. The claimant must place adequate documentary and technical material demonstrating the nature and extent of the injury suffered by the remaining land.

16. In the present case, despite the opportunity granted by this Court, the petitioners have not produced any material demonstrating

that the remaining portion of their land has suffered injury or severance. The Government Resolution dated 14.05.2018 placed on record by the petitioners merely relates to constitution of a committee to study the issue of building permissions near highways and does not establish that the remaining land of the petitioners has become incapable of lawful use.

17. In the absence of such material, it would not be appropriate for this Court in exercise of writ jurisdiction to undertake an adjudication of the alleged injury to the remaining land.

18. At the same time, it is not in dispute that the petitioners have submitted representations before the competent authority raising their grievances, particularly the representation dated 16.08.2024. Though the present petition does not contain a specific substantive prayer seeking a direction for decision of the said representation, the learned counsel for the petitioners has submitted that prayer clause 'F' deals with the same. Thus, submits that if the authorities are directed to consider the representation in accordance with law the grievance of the petitioners would stand substantially addressed.

19. Having regard to the overall facts and circumstances of the case, we are of the view that while the writ petition as framed does not merit interference under Article 226 of the Constitution, the petitioners

may pursue their representation before the competent authority in accordance with law. Questions relating to compensation, severance or injury to the remaining land are essentially matters falling within the domain of the statutory authorities under the acquisition framework.

20. The Hon'ble Supreme Court in ***Competent Authority v. Barangore Jute Factory***, (2005) 13 SCC 477 has held that issues relating to compensation under the National Highways Act are matters to be determined by the competent authority in accordance with the statutory scheme.

21. For the reasons recorded above, the writ petition stands dismissed. However, it is clarified that if the petitioners pursue their representation before the competent authority seeking appropriate relief in accordance with law, the competent authority shall consider the same on its own merits and in accordance with the provisions of the National Highways Act, 1956 and the applicable legal principles.

22. Before parting with the matter, we deem it appropriate to observe that during the course of hearing a broader issue had arisen for consideration before this Court, namely as to how and on what basis a landholder can demonstrate that the remaining portion of his land, after partial acquisition, has suffered severance or injurious affection so as to

entitle him to appropriate relief or compensation. Though the present case does not warrant adjudication of that issue on merits for want of sufficient material placed on record by the petitioners, the question nevertheless assumes significance in view of the recurring nature of such disputes arising out of acquisition proceedings.

23. The jurisprudence relating to compensation for severance and injurious affection is well recognised in acquisition law. Even under the scheme of the Land Acquisition Act, 1894, Section 23 specifically recognise the right of a landowner to claim compensation not only for the land actually acquired but also for damages sustained by reason of severing the acquired land from the remaining land or by reason of injurious affection to the other property of the claimant.

24. Before a writ court exercising jurisdiction under Articles 226 or 227 of the Constitution, or before the competent authorities or any court of law. Therefore, the landowner must demonstrate, through objective material, that the acquisition of part of his holding has resulted in identifiable prejudice to the remaining land which the authority failed to consider.

25. The land owner generally establishes severance or injurious affection through documentary and technical material placed on record.

First, the claimant must show the physical configuration of the holding before and after acquisition. This is typically done by producing revenue records such as the 7/12 extract, village maps, survey maps, and a comparative layout showing how the acquired portion divides the holding or affects access. If the acquisition results in fragmentation of the parcel, landlocking, loss of frontage to a road, or irregular shapes rendering cultivation or development difficult, such facts must be demonstrated through maps, site plans, and satellite imagery. Courts often treat these materials as relevant because they objectively show the effect of severance.

26. Second, the land owner may produce valuation material demonstrating diminution in the value of the remaining land. This may include valuation reports by approved valuers, development plans, land use records, or sale instances of similarly situated plots which show that the residual parcel commands a lower market value due to reduced access, loss of frontage, or fragmentation. Evidence of development potential lost because of the acquisition can also be relevant, particularly where the remaining parcel becomes unsuitable for its previous use.

27. Third, the claimant may rely on technical reports showing practical injury to the usability of the land. For instance, agricultural evidence showing that irrigation channels, access roads, drainage, or

internal pathways have been disturbed can establish injurious affection. In urban contexts, evidence that the remaining plot has lost building potential due to setback rules, reduced plot size, or planning regulations may also demonstrate injury.

28. Fourth, the pleadings must specifically articulate the nature of damage suffered. Courts generally expect the landowner to plead and show that the remaining land has suffered one or more identifiable consequences such as loss of access to a public road, division of the holding into inconvenient fragments, substantial reduction in development potential, impairment of irrigation or drainage facilities, or measurable diminution in market value.

29. The Hon'ble Supreme Court has repeatedly held that compensation for severance or injurious affection is not automatic merely because a portion of the land is acquired; the claimant must establish the extent of the injury to the remaining property. This principle was recognised in ***Balammal v. State of Madras*** (AIR 1968 SC 1425), where the Court declined to award severance damages in the absence of proof of injury to the remaining land. Conversely, in ***Tribeni Devi v. Collector of Ranchi*** (AIR 1972 SC 1417), the Court accepted that when part of a holding is acquired and the remainder suffers diminution in value, compensation for severance may legitimately be awarded. The

conceptual distinction between severance and injurious affection was also clarified by the Supreme Court in **Walchandnagar Industries Ltd. v. State of Maharashtra** ((2022) 5 SCC 71). The Hon'ble Supreme Court held that

"28. We have carefully considered the rival contentions. As the dispute now stands confined only to three heads of claims, namely, (i) rails and sleepers; (ii) rolling stocks; and (iii) increase in transportation cost, we shall deal with them itemwise.

Law on compensation for severance and injurious affection

29. Before we consider the aforesaid three heads of claim itemwise, it may be useful to take note of the legal principles on the basis of which these claims are to be tested.

30. Sections 23 and 24 of the Land Acquisition Act, 1894 provide two lists of matters respectively, namely.

(i) matters to be considered in determining compensation; and

(ii) matters to be neglected in determining compensation.

31. Section 23(1), which alone is relevant for our present purposes, is extracted as follows:

"23, Matters to be considered in determining compensation - (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration

first, the market value of the land at the date of the publication of the notification under Section 4, sub-section (1);

secondly the damage sustained by the person interested, by reason of the taking of

- any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;*
- thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;*
- fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;*
- fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and*
- sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under Section 6 and the time of the Collector's taking possession of the land.*

32. In simple terms, the six items covered by Section 23(1), which are to be taken into consideration by the court in determining compensation, can be summarised as follows:

32.1. The market value of the land on the date of publication of notification under Section 4(1).

32.2. The damage to standing crops or trees, which are on the land at the time of the Collector taking possession.

32.3. The damage sustained by reason of severing such land

from the

32.4. *The damage sustained by reason of the acquisition injuriously affecting the other property, movable or immovable, in any other manner or the in earnings, of the person interested.*

32.5. *The reasonable expenses incurred by the person interested, in changing his residence or place of business, when he is compelled to do so in consequence of the acquisition*

32.6. *The damage bona fide resulting from diminution of the profits of the land between the time of publication of the declaration under Section 6 and the time of the Collector's taking possession.*

33. *The points arising for determination in these appeals revolve around clauses "thirdly" and "fourthly" of Section 23(1). These clauses are referred to in common parlance as clauses concerning "severance" and "injuriously affection" respectively.*

34. *But clauses "thirdly" and "fourthly" of Section 23(1) cannot be considered in isolation. They have to be read together with Section 49 which reads as follows:*

"49. Acquisition of part of house or building - (1) *The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desires that the whole of such house, manufactory or building shall be so acquired:*

Provided that the owner may, at any time before the Collector has made his award under Section 11, by notice in writing, withdraw or modify his expressed desire that the whole of such house, manufactory or building shall be so acquired:

Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court and shall not take possession of such land until after the question has been determined.

In deciding on such a reference the Court shall have

regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building.

(2) If, in the case of any claim under Section 23, sub-section (1), thirdly, by a person interested, on account of the severing of the land to be acquired from his other land, the appropriate Government is of opinion that the claim is unreasonable or excessive, it may, at any time before the Collector has made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.

(3) In the case last hereinbefore provided for, no fresh declaration or other proceedings under Sections 6 to 10 both inclusive, shall be necessary, but the Collector shall without delay furnish a copy of the order of the appropriate Government to the person interested, and shall thereafter proceed to make his award under Section 11."

35. It may be noted that clause thirdly of Section 23(1) relates only to land as it speaks only about the severance of the acquired land from the unacquired land and the damage sustained as a consequence. In contrast, clause fourthly of Section 23(1) deals with the damage sustained by the person interested, due to the injurious affection, (i) of his other movable property; (ii) of his other immovable property; and (iii) of his earnings. In other words what is injuriously affected at the time of Collector's taking possession of the land, may either be the unacquired portion of the immovable property or other movable property or even the earnings of the person interested.

36. It may also be noted that the expression used in clause fourthly is "earnings", while the expression used in clause sixthly is "profits". But clause sixthly is confined only to diminution of the profits of the land between the time of publication of the declaration under Section 6 and the time of the Collector taking possession.

37. Coming to Section 49, it deals with two contingencies. They are,

(i) cases where what is sought to be acquired is only a part of any house, manufactory or other building; and

(ii) cases where a claim for compensation under the head "severance" under clause thirdly of Section 23(1) arises.

37.1. Insofar as the first contingency is concerned there is a bar under sub-section (1) of Section 49 for the acquisition of a part only of any house, manufactory or other building, if the owner desires that the whole of such house, manufactory or building shall be so acquired.

37.2. Insofar as the second contingency is concerned, there is a choice given to the appropriate Government to order the acquisition of the whole of the land, if the appropriate Government is of the opinion that the claim for severance compensation is unreasonable or excessive.

38. The distinction between the scope of sub-section (1) and the scope of sub-section (2) of Section 49 was brought out by this Court in Harsook Das Bal Kishan Das v. LAO³ as follows: (SCC pp. 259-60, para 12)

"12. The object of Section 49(1) of the Act is to give to the owner the option whether he would like part to be acquired. The Government cannot take the other part under Section 49(1) of the Act unless the owner says so. Section 49(2) of the Act has nothing to do with Section 49(1) of the Act. Section 49(2) of the Act gives the option to the Government only where the claim under the third clause of Section 23(1) of the Act is excessive. Reference to the third clause of Section 23(1) of the Act makes it clear that the claim under the third clause of Section 23(1) is for severance. The Government in such a case of acquisition of the remaining portion of the land under Section 49(2) of the Act saves the public exchequer money which otherwise will be the subject-matter of a claim for severance."

39. In the case on hand, the provisions of Section 49(1) have no application. This is due to the fact that the appellant never desired that the whole of the manufactory shall be acquired by the Government. In fact, the total extent of land owned by the appellant was about 16,000 acres, on which a township had come up. Therefore, there was no occasion for the appellant to exercise any option invoking Section 49(1). In any case, the appellant actually requested the Government to acquire land

from other people, to divert the trolley line. Therefore, Section 49(1) has no application to the case on hand.

40. Section 49(2) also may not have any application for the reason that the appropriate Government did not think fit to seek acquisition of the whole of the land on which the remaining portion of the trolley line existed, on the ground that the claim for severance compensation was unreasonable or excessive. Therefore, it is enough for us to go back to clauses thirdly and fourthly of Section 23(1) without the constraints of sub-sections (1) or (2) of Section 49.

41. As we have indicated earlier, clause thirdly relates to the damage sustained by the person interested, by reason of severance of the acquired land from the unacquired land, at the time of Collector's taking possession of the land. In contrast, clause fourthly of Section 23(1) deals with the damage sustained by reason of the acquisition injuriously affecting, (i) the other movable property; (ii) the other immovable property; and/or (iii) the earnings of the person interested.

30. Thus, the land owner must not merely assert injury but must place credible material such as maps, revenue records, valuation reports, planning documents, and site evidence demonstrating that the acquisition has materially diminished the value or utility of the remaining land and that the statutory authority failed to consider those consequences while determining compensation.

31. Such material would enable the competent authority or the Court to objectively determine whether the acquisition has indeed resulted in severance or injurious affection and, if so, the extent of damage suffered by the remaining property.

32. It must however be clarified that the determination of severance and injury caused is essentially a fact-specific exercise depending upon the nature of the property, the purpose of acquisition, the physical configuration of the land and the regulatory framework governing its use. Therefore, while broad guiding principles may be indicated, the ultimate determination in each case must necessarily depend upon the facts and evidence placed before the competent authority.

33. In the present case, despite opportunity granted by this Court, the petitioners have not placed on record any such material demonstrating that the remaining portion of their land has suffered severance or injury caused to left out land, within the meaning of acquisition law. The Government Resolution dated 14.05.2018 relied upon by the petitioners merely indicates constitution of a committee to study the issue of building permissions near highways and does not by itself establish that the petitioners' remaining land has become incapable of lawful use.

34. In the absence of such material, this Court is unable to adjudicate the claim of severance or injurious affection in exercise of writ jurisdiction.

35. Nevertheless, as observed earlier, the petitioners have submitted representations before the competent authority raising these grievances. The dismissal of this petition shall therefore not preclude the competent authority from examining such representation as permissible under the statutory framework, and take an appropriate decision in accordance with law.

36. Accordingly, as mentioned above, writ petition stands dismissed. However in the interest of justice the aforesaid liberty to pursue the representations pending before the authorities is granted. Respondents are directed to decide the same in accordance with law within 8 weeks from today . There shall be no orders as to costs.

(Hiten S. Venegavkar, J.)

(Smt. Vibha Kankanwadi, J.)

B. S. Joshi