

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 5352 of 2026**

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DECEASED RAMKRISHNA SOMAIYA THROUGH LEGAL HEIRS & ORS.
Versus
UNION OF INDIA THROUGH MINISTRY OF ROAD TRANSPORT AND
HIGHWAYS & ANR.

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Appearance:

MR.YATIN N. OZA, SENIOR COUNSEL WITH MR MASOOM K
SHAH(6516) for the Petitioner(s) No. 1,1.1,1.2
NEHA M SHAH(9218) for the Petitioner(s) No. 1,1.1,1.2
MR.ANKIT S. SHAH FOR MR PRADIP D BHATE(1523) for the
Respondent(s) No. 1
MR.MAULIK G. NANAVATI FOR NANAVATI & CO.(7105) for the
Respondent(s) No. 2

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**CORAM:HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
SUNITA AGARWAL
and
HONOURABLE MR.JUSTICE D.N.RAY**

Date : 07/05/2026

ORAL ORDER

**(PER : HONOURABLE THE CHIEF JUSTICE
MRS. JUSTICE SUNITA AGARWAL)**

1. The present petition has been filed with the bald prayers to declare Section 3A to Section 3G of the National Highways Act' 1956 (for short, "the Act' 1956") as *ultra vires* to the Constitution of India. *Insofar* as the provisions of Section 3J of the Act' 1956. We may note, at the outset, that with regard to the acquisitions which were conducted between the years 1997 to 2014, the provisions of Section 3J of the Act' 1956 have been held to be unconstitutional in the decision of the Apex Court in **Union of India and Another v/s. Tarsem Singh and Others [(2019) 9 SCC 304]** only to the extent that the said provision cannot be allowed to stand on the statute book to discriminate between the landholders to deny solatium and interest, whose lands are acquired under different parliamentary and State enactments.

2. *Insofar* as the present petition is concerned, the petitioners herein claim ownership over the land in question through their father, who is stated to have purchased the land in question on 23.02.1989. In the year 2002, an area admeasuring 490 sq.mtrs. of the land in question has been acquired for widening of National Highway No.8 (NH-8) into a four lane highway, in exercise of powers under Sections 3A and 3D of the Act' 1956. From the statement made in the writ petition itself, it is evident that even the competent authority had determined the compensation of the acquired land in the year 2003.

3. It seems that another piece of land admeasuring 436 sq.mtrs out of survey No.79 p, block No.199, total admeasuring 4047 sq.mtrs belonging to the father of the petitioners, was further acquired in the year 2016 for widening of NH-8 into a six lane highway under the Act' 1956. For the said area as well, the award has been rendered by the competent authority determining the compensation.

4. There is a complete silence in the writ petition about the petitioners or their father having received compensation or any challenge made by them to the acquisition proceedings. It seems to us that both the acquisition proceedings have been concluded with the making of the award by the competent authority in the year 2003 and 2016 and delivery of possession of the acquired land to the NHAI and the land owners did not raise any challenge.

5. However, the only contention in the writ petition is that out of the total acquired area from the land in question, an area admeasuring 559.58 sq.mtrs. has not been utilized by the National Highways Authority of India (NHAI) as on date.

6. It is contended that in the year 2017, Ramkrishna Somaiya, whose legal heirs are impleaded as petitioner Nos. 1/1 and 1/2, i.e. the father had purchased the land on 23.02.1989, had gifted the remaining portion of the land to petitioner Nos. 1.1 and 1.2, which was subsequently sold to a third party through a registered sale deed. The person in whose favour the sale deed has been executed with regard to the remaining portion of the land in question, has not been impleaded here nor the details of the sale deed has been indicated or brought on record.

7. It is sought to be submitted that the dispute in the present petition is not about the area of the land in question sold by the petitioner Nos. 1/1 and 1/2, and the only dispute is about the acquired area, subject matter of two acquisitions completed in the year 2002 and 2016.

8. But disclosure about the sold portion of the land in question from the survey No.79p, Block No.199 (admeasuring 4047 sq.mtrs) is necessary to examine locus of the petitioners to maintain the present petition.

9. It is further pertinent to note that the only prayer made in the present petition is to de-notify an area of 559.38 sq.mtrs, allegedly having not been utilized by the NHAI so far. This prayer is being made after a period of 10 years of conclusion of the second phase of the acquisition, and more particularly on the premise of the pendency of the matter before the Apex Court.

10. *Insofar* as the provisions of Section 3J of the Act' 1956, the contention made in the writ petition is that they are to be declared as *ultra vires* for the reason that there is no provision in the National Highways Act' 1956 to return the unutilized land akin to Section 101 of The Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013.

11. However, on these submissions, the other provisions of the Act' 1956, namely Section 3A to Section 3I inserted by Amendment Act No.16 of 1997 w.e.f. 24.01.1997 cannot be permitted to be challenged at this stage for one more reason that the validity of the said provisions became subject matter of consideration before the Division Bench of the Madras High Court in the case of **T. Chakrapani v. Union of India [Writ Petition No.15699 of 2010]** decided on **04.03.2011**].

12. We may note from paragraph No. '2' of the decision of the Madras High Court in **T. Chakrapani (supra)** that the challenge therein was to the constitutional validity of the National Highways Act (Amendment Act' 1997), whereby Sections 3A to 3J were introduced in the Act' 1956.

13. The Madras High Court, while upholding other provisions of the Act' 1956 only declared the provisions of Section 3J of the Highways Act to be unconstitutional, being hit by Article 14 of the Constitution of India, being in excess of legislative competence holding that the petitioners therein be entitled to the compensation of additional market value under Section 23(1)(a), solatium under Section 23(2) and interest as provided under the Land Acquisition Act' 1894.

14. The issue with regard to the validity of Section 3J, inserted by the Amendment Act' 1997, which denied grant of solatium and interest for the lands acquired under the Act' 1956 came up for consideration before the Apex Court from a decision of the Punjab and Haryana High Court in **Tarsem Singh (supra)**.

15. We also note that the Madras High Court Judgment in **T. Chakrapani (supra)** was subjected to challenge before the Apex Court by the Union of India, in Civil Appeal No(s). 129 - 159 of

2014, however, later the appeals as also the special leave petitions have been withdrawn on the statement made by the learned Solicitor General of India appearing for the Union of India that the respondents / writ petitioners therein were paid solatium under the order of the Madras High Court.

16. It is, thus, clear that the decision of the Madras High Court in which was noted by the Apex Court in the case of **Tarsem Singh (supra)** in paragraph No.49 as under:-

“49. We were also referred to the judgment of a learned Single Judge of the Karnataka High Court, *Lalita v. Union of India* [*Lalita v. Union of India*, 2002 SCC OnLine Kar 569 : AIR 2003 Kar 165] , as well as a judgment of the Division Bench of the Madras High Court in *T. Chakrapani v. Union of India* [*T. Chakrapani v. Union of India*, WP No. 15699 of 2010, order dated 4-3-2011 (Mad)] , both of which distinguished the Requisition Act cases and relied upon *Nagpur Improvement Trust* [*Nagpur Improvement Trust v. Vithal Rao*, (1973) 1 SCC 500] in order to reach the same conclusion as the Punjab and Haryana High Court. Both these judgments are also correct.”

17. Considering the above, we do not find any reason to entertain the present writ petition to challenge the provisions of Section 3A to Section 3I of the Act' 1956, validity of which has been upheld by the Division Bench of the Madras High Court in **T. Chakrapani (supra)** and the appeal filed against which before the Supreme Court, has been withdrawn by the Union of India. These are, thus, serious issues about the maintainability of the present writ petition for the nature of reliefs sought herein.

18. At this stage, Mr.Y. N. Oza, the learned Senior Advocate appearing for the petitioners assisted by Mr.Masoom K. Shah, the learned counsel for the petitioner would submit that the matter be

adjourned for the day to enable him to go through all these aspects of the matter and take a decision either to amend the present petition or to seek withdrawal with the liberty to file a fresh petition with better particulars.

The matter is, therefore, posted on **11.06.2026**.

(SUNITA AGARWAL, CJ)

(D.N.RAY,J)

SAHIL S. RANGER