

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 3099 of 2023

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NATIONAL HIGHWAY AUTHORITY OF INDIA

Versus

COMPETENT AUTHORITY NATIONAL HIGHWAYS

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Appearance:

MR MAULIK NANAVATI, ADVOCATE FOR NANAVATI & CO.(7105) for the

Petitioner(s) No. 1

for the Respondent(s) No. 1,2

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CORAM:HONOURABLE MR. JUSTICE BIREN VAISHNAV

Date : 23/02/2023

ORAL ORDER

1. Heard Mr. Maulik Nanavati, learned advocate for the petitioner.

2. The prayer in this petition is that there is an inaction on the part of the competent authority appointed by the Central Government for performing functions under the provisions of the National Highways Act, 1956 to obtain possession of the acquired land on the ground that proceedings under Section 73AA of the Bombay Land Revenue Code are pending.

3. Mr. Nanavati, learned advocate for the petitioner would rely on an oral judgement passed in Special Civil Application No. 14727 of 2013 on 07.07.2014 which interalia records the finding that once a notification under section 3D of the National Highways Act, 1956 is issued, the Central Government becomes the owner of the land. Paras 14 to 16 read as under:

“14. If the Hon'ble Supreme Court accepts the Special Leave Petitions and holds that the respondents therein who did not own agricultural lands within the State of Gujarat, could not have purchased the agricultural land in the State of Gujarat and their purchase shall be hit by the above referred provisions of the Act, the State would become entitled to claim compensation for the stretch of land acquired for national highways No.8A(extension), otherwise the private respondents would remain entitled to claim such compensation. But, in either case , the right of the petitioner to get possession under the Act is not affected, especially when the acquisition has become final under the Act till the stage of deposit of compensation by the petitioner.

15. In above view of the matter, the respondent No.1 cannot remain nonfunctional

and is to act as mandated by Section 3E of the Act, which reads as under:-

"3E. Power to take possession.- (1)

Where any land has vested in the Central Government under sub-section (2) of section 3D, and the amount determined by the competent authority under section 3G with respect to such land has been deposited under sub-section (1) of section 3H, with the competent authority by the Central Government, the competent authority may by notice in writing direct the owner as well as any other person who may be in possession of such land to surrender or deliver possession thereof to the competent authority or any person duly authorized by it in this behalf within sixty days of the service of the notice.

(2) If any person refuses or fails to comply with any direction made under sub-section (1), the competent authority shall apply-

(a) in the case of any land situated in any area falling within the metropolitan area, to the Commissioner of Police;

(b) in case of any land situated in any area other than the area referred to in clause (a), to the Collector of a District,

and such commissioner or Collector, as the case may be, shall enforce the surrender of the land, to the competent authority or to the person duly authorized by it."

16. When the lands are acquired under the Act for the work of public importance and if for a non availability of a particular stretch of land, the whole project of public importance gets stalled, the very purpose of acquisition of the lands gets frustrated. Therefore, once there is no challenge to the acquisition proceedings by any of the parties interested in the lands under acquisition, it is not open to the competent authority not to take further action contemplated under Section 3E of the Act. The respondent No.1 is therefore required to be directed to take immediate steps as contemplated under Section 3E of the Act for the purpose of obtaining possession of the stretch of land in question and for delivery of the same to the petitioner to enable the petitioner to complete the work of widening/four lanning/six lanning/maintaining, management and operation of National Highway No.8A(Extension), District:Kutch in the State of Gujarat."

4. Notice returnable on 16.03.2023. The respondent to show cause as to why possession of the land should not

be immediately handed over to the petitioner in light of the aforesaid position of law. Direct service is permitted.

DIVYA

(BIREN VAISHNAV, J)