IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT Petition NO. 6927 OF 2023
WITH
CIVIL APPLICATION NO. 9287 OF 2023

1. Govind Poslya Gavit

2 Vilas Vijaysing Valvi, : **Petitioners**

VERSUS

1. The Competent Authority and or
Special Land Acquisition Officer,
(Highway No.6)/
The Assistant Collector,
Nandurbar, Tq. & Dist. Nandurbar.

2. The National Highway Authority of India, : **Respondents.**
Through its Project Director,
NHAIPUI, Dhule

Mr. D.S. Bagul, Advocate for the Petitioners,
Mr. V. M. Kagne, AGP for the State
Mr. R.B. Bhosale, Advocate for respondent No.1
Mr. D.S. Manorkar, Advocate for respondent No.2

CORAM : RAVINDRA V. GHUGE &
Y. G. KHOBRAGADE, JJ.

DATE : 3rd August, 2023

JUDGMENT: (Per *Ravindra V. Ghuge, J.*)

1. **Rule.** Rule made returnable forthwith and heard finally by consent of the parties.

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HIGH COURT OF JUDICATURE AT BOMBAY

2. This matter was heard extensively on 1st August, 2023 and on 2nd August, 2023. Since the hearing concluded in the late hours, we have posted the matter today for dictating the order in open Court.

3. The Petitioners have put forth prayer clauses (B) and (C) as under:

> "(B) By way of appropriate Writ order or directions in the like nature, the impugned 3A notification dated 03.02.2023 as well as 3D Notification dated 01.06.2023 published by respondent authorities and the order rejecting objection dated 02.06.2023 passed by the Respondents may kindly be quashed and set aside and the respondent authorities be directed to renotify the said notifications by giving correct descriptions of the lands.
>
> (C) Pending the hearing and final disposal of the present Writ Petition, the respondent authorities be restrained from taking any further steps including steps u/s 3E, 3F and 3G of the National Highways Act, 1956."

4. During the pendency of this Petition, the competent Authority delivered an Award on 05.07.2023. In order to challenge the award dated 05.07.2023, which, according to the Petitioners, was passed in undue haste, the Petitioners filed a Civil Application for amending the Petition by setting forth prayer clauses (B-1) and (C-1), as under :-

> (B-1) By way of appropriate writ, order or directions in the like nature, the impugned award dated 05.07.2023 passed by the

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HIGH COURT OF JUDICATURE AT BOMBAY

competent authority under the provisions of National Highways Act, 1956 may kindly be quashed and set aside.

(C-1) Pending the hearing and final disposal of the present Petition, the impugned award dated 05.07.2023, passed by the competent authority under the provisions of National Highways Act, 1956 may kindly be stayed and suspended.

5. We permitted the learned Advocates to address the Court for final disposal of the Writ Petition as well as the Civil Application, by indicating that the Civil Application seeking amendment is being allowed. Accordingly, the Civil Application is allowed. The amendment be carried out.

6. The learned Advocates representing the Competent Authority and National Highway Authorities of India (NHAI), have strenuously contended that this Court should not exercise it's extraordinary jurisdiction under Article 226 of the Constitution of India to entertain the prayers for quashing of the award, since the said Award can be assailed under Section 3G of the National Highways Act, 1956. This Court should not entertain the Petition as against the award dated 5th July, 2023 since there is an alternative statutory remedy available, which, according to the Respondents, is efficacious and expeditious. This being one of the contentions of the Respondents, that we have permitted the parties to address us on the issue of entertaining this

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HIGH COURT OF JUDICATURE AT BOMBAY

Petition as well on the merits, in the light of the prayers put forth by the Petitioners in the Petition and in the Civil Application.

7. It would be apposite to reproduce section 3D and 3G of the Act,1956 as under:

> **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.

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HIGH COURT OF JUDICATURE AT BOMBAY

3G. Determination of amount payable as compensation.-

(1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent, of the amount determined under sub-section (1), for that land.

(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-

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HIGH COURT OF JUDICATURE AT BOMBAY

> section (5), as the case may be, shall take into consideration—
>
> (a) the market value of the land on the date of publication of the notification under section 3A;
>
> (b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;
>
> (c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;
>
> (d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.

8. The learned Advocate for the Petitioners has vehemently contended that the main thrust of the Petitioners in the Petition is that their lands were admittedly, as per the records, Non-Agricultural lands and there was no order passed quashing the NA order or reversing it. The first respondent should have dealt with the lands by accepting their NA status. As this was not done and the lands were treated as agricultural /Jirayat lands, a paltry amount has been granted as compensation. Under section 3G(5) of the Act, the Arbitrator/ Collector would not have the authority to entertain the grievance as regards the nature of the land and, therefore, there is no statutory remedy available to decide the status of their lands.

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HIGH COURT OF JUDICATURE AT BOMBAY

9. Assuming that the contention of the Respondents is correct, that the arbitrator can consider the dispute relating to whether the lands could be termed as NA or agricultural lands, the legal issue raised by the Respondents is, as to whether this Court could exercise it's discretion and entertain the Petition or relegate the Petitioners to the statutory remedy which is available as an alternative.

10. The Petitioners are admittedly tribals who are the owners of the lands at issue, bearing Gat Nos. 45/3/8, 45/4/A, 35/4/B and 45/4/C. On 20.03.2017. The Petitioners acquired permission from the concerned competent authority to purchase the said property. The District Collector, Nandurbar carried out an enquiry and vide order dated 17.04.2017, accepted 50% Nazrana amount and granted permission for sale. The Petitioners deposited 50% Nazrana amount and purchased the property vide registered sale deeds. Mutation entries bearing Nos. 343, 344, 334 and 333, were recorded in the revenue records.

11. Vide orders dated 20.03.2017 and 17.04.2017, the land was granted Industrial NA permission. Vide application dated 08.07.2018, the Petitioners prayed for change of the nature of the land from Industrial NA to Commercial NA. The Tahsildar, after conducting an enquiry, passed an order dated 15.05.2019 and granted the necessary permission for change of user from Industrial NA to Commercial NA

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HIGH COURT OF JUDICATURE AT BOMBAY

and the Petitioners were directed to pay further Nazrana amount towards NA charges. The amounts viz. Rs.95,200/-, Rs. 28,000/-, Rs.71,400/-, Rs.72,100/- and Rs.1,11,650/-, were deposited. By order dated 10.02.2023, the Assistant Director, Town Planning Nandurbar granted necessary sanction to the lay out.

12. As the process of seeking Commercial N.A. was in progress, Respondent No.2 began expansion of the road. However, without initiating any land acquisition proceedings and without paying any compensation, as alleged by the Petitioners, the process of road widening commenced. It is the contention of the Petitioners that the Respondents failed to issue Section 3A Notification. Hence, the Petitioners approached this Court in Writ Petition No. 7490 of 2020 and by order dated 29.07.2021, the Petition was disposed off by taking the chart, marked as Annexure 'X' collectively, that was tendered by Respondent No.2 and it was directed in paragraph Nos. 9 and 10 of the order, as under:

> "9. In the event of any measurement of lands being required to be done, the District Collector, Nandurbar shall monitor such measurement. If any of the Petitioners are aggrieved by any portion of heir land, over and above the lands mentioned in X-1, being affected, they would be at liberty to raise a dispute before a CALA. The measurement of lands, if required, shall be undertaken by the District Collector and in presence of all the litigating parties/title

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HIGH COURT OF JUDICATURE AT BOMBAY

holders/persons having interests in the property, preferably within a period of 30 days.

10. Needless to state, any land over and above the details set out in X-1 is to be acquired, the procedure laid down in Law shall be followed."

13. In pursuance to the above order, a measurement was carried out by the NHAI in the presence of the District Collector. However, the District Collector and the NHAI are alleged to have acted highhandedly and without initiating any land acquisition process, had forcibly entered in the lands of the Petitioners by holding out a threat that the construction activity for expansion of National Highway is being commenced.

14. The Petitioners again approached this Court vide Writ Petition No. 5077 of 2022. Photographs were placed on record indicating the presence of a large contingent of Police and the Assistant District Collector (Ms Minal Karanwal, IAS) herself was present on the site (photos are placed on record). By judgment dated 05.05.2022, this Court concluded in paragraph Nos. 32 to 36 as under:

"32. We have perused the joint measurement produced by the learned counsel for the petitioner carried out on 12.11.2021 forming part of the compilation tendered by him. We are of the clear opinion that the lands of the Petitioners are affected by the project undertaken by the respondent

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HIGH COURT OF JUDICATURE AT BOMBAY

no.2 and not included in the award of 2013 or any other award.

33. If the respondent no.2 seeks to acquire the land of the petitioner and to seek possession thereof, the respondent no.2 is at liberty to follow the procedure prescribed under the provisions as prescribed under the said Act of 1956.

34. Insofar as Judgment of Supreme Court in case of Mahadeo (supra) relied upon by the learned senior counsel for the respondent no.2 is concerned, the said judgment has considered the prayer for perpetual injunction in a suit. The said judgment would not advance the case of the respondent no.2 on facts. No person can dispossess the occupier of the land without following the due process of law under the pretext of carrying out public project. Even at this stage, the respondent no.2 has not intended to acquire the lands of the Petitioners and pay compensation in accordance with law.

35. Writ Petition is allowed in terms of prayer clause 'D'. The Respondents shall not carry out any construction on the plots of the Petitioners for the purpose of National Highway till all the stage of issuance of declaration under Section 3-D of the National Highways Act, 1956 are completed and after complying with the mandatory provisions prescribed under Section 3-A to 3-C of the Act.

36. Writ Petition is allowed in aforesaid terms. Rule is made absolute accordingly. No order as to costs."

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HIGH COURT OF JUDICATURE AT BOMBAY

15. The NHAI then preferred Review Petition No 207 of 2022. Since the learned Senior Member of the Bench that delivered the Judgment dated 05.05.2022, had assumed the office of the Honorable Chief Justice of the Bombay High Court and subsequently, demitted office 30.05.2023, the review Petition was taken up by a specially constituted bench. By an order dated 12th August, 2022, the review Petition filed by NHAI was dismissed.

16. It is, thus, obvious that the judgment dated 05.05.2022, mandated the competent authority to follow the procedure under sections 3-A to 3-C and issue a declaration under section 3D and thereafter, an award could be delivered under section 3G.

17. On 31.05.2021, the Assistant Collector, Nandurbar (same officer) directed the Sub-divisional Officer, Nandurbar to initiate suo moto revision proceedings against the order passed by the Tahsildar, Navapur dated 15.05.2019, in respect of the conversion of land from Industrial NA to Commercial NA. It is the contention of the Petitioners that as the SDO was under severe pressure from the said Assistant District Collector, the order dated 15.05.2019 was cancelled vide order dated 22.12.2021, thereby reverting the user/nature of the land from Commercial NA to Industrial NA. The Petitioners preferred two independent appeals which were dismissed by the same Assistant

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HIGH COURT OF JUDICATURE AT BOMBAY

Collector Nandurbar (same officer), vide order dated 17.05.2023. The Petitioners started paying Commercial taxes from 03.02.2023.

18. The Respondent competent authority then published Section 3A notification on 03.02.2023 and, according to the Petitioners, deliberately inserted a note indicating that the said four survey Numbers are agricultural lands. Subsequently, the competent authority issued Section 3D notification dated 01.06.2023 and published it in the newspaper on 08.06.2023 showing the lands of the Petitioners as agricultural lands.

19. The Petitioners apprehended adverse and prejudicial steps by the Respondents and approached this Court by preferring this Petition on 14.06.2023. By the first order dated 27.06.2023, this court issued notice to the Respondents, after taking into account the chequered history of litigation and directed the Respondents not to take the physical possession of the lands of the Petitioners.

20. The Petitioners, raised their written objections on 21.06.2023, along-with the record, to indicate that, at best, their lands could be termed as Industrial NA, but surely not agricultural lands. On 28.06.2023, the same Assistant Collector issued a notice of hearing in pursuance to section 3D notification and posted the hearing at 11.00 a.m. on 30.06.2023. The Petitioners appeared in the office of the

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HIGH COURT OF JUDICATURE AT BOMBAY

Assistant Collector on 30.06.2023 at 11 am and they were informed that the Assistant Collector is on an official tour in view of the visit of the Guardian Minister. Thereafter, the award was delivered under section 3G on 05.07.2023, without any opportunity of hearing to the Petitioners.

21. The learned Advocate representing Respondent No.1, has placed on record a compilation of 12 pages which contain letters/orders as well as the Roznama of the proceedings under Section 3D of the Act. All these documents are collectively marked as **'X-1'** for identification. He points out from the Roznamas dated-NIL--- with the timing 5.50 PM bearing the signature of the same Assistant Collector (same officer). The said Roznamas read as under:

सक्षम प्राधिकारी (भूसंपादन) राष्ट्रिय महामार्ग क्र.6 तथा उपविभागिय अधिकारी,
नंदुरबार भाग, नंदुरबार यांचे समोरील कामकाज
राष्ट्रिय महामार्ग अधिनियम, 1956 चे कलम 3 (C)2 अन्वये सुनावणी
हरकती अर्ज क्र. 1/2023
हरकती अर्ज दिनिांक 19/06/2023

हरकतदाराचे नावः (1) श्री मनिष ओमप्रकाश अग्रवाल
(2) श्री निरंजन ओमप्रकाश अग्रवाल
(3) श्री गाविंद पोसल्या गावित
(4) श्री विलास विजयसिंग वळवी
सर्व राहणार नानजीपाडा ता. नवापुर जि. नंदुरबार
चिंचपाडा ता. नवापुर जि. नंदुरबार

विषयः दै. सकार या वृत्तपत्रात दिनांक 08/06/2023 रोजी प्रसिध्द झालेल्या 3D अधिसुचनेनुसार मौजे गंगापुर ता. नवापुर येथील गट क्र.45 बाबत हरकती अर्ज.

रोजनामा

सुनावणीची तारीख	कामकाजाचा तपशिल	पक्षकार हजर असले बाबत सही/आंगठा

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HIGH COURT OF JUDICATURE AT BOMBAY
सत्यमेव जयते

	Applicant was called out twice. He is not present. 1) First 2 applicants have no locus standi as their names are nowhere present in the Satbara as owners. their applition was rejected by the Hon'ble Revenue Minister. 2) N.A. notes can't be disbursed as use of land for last 5 years is not NA. Application rejected. Order to be issued. sd/-30/06	
5:50PM	पुकारा केले आहे. सहि/– तेजस अरुण वाडीले– शिपाही	

सक्षम प्राधिकारी (भूसंपादन) राष्ट्रिय महामार्ग क्र.6 तथा उपविभागिय अधिकारी,
नंदुरबार भाग, नंदुरबार यांचे समोरील कामकाज
राष्ट्रिय महामार्ग अधिनियम, 1956 चे कलम 3 (C)2 अन्वये सुनावणी
हरकती अर्ज क्र. 2/2023
हरकती अर्ज दिनिांक 21/06/2023

हरकतदाराचे नावः श्री मनिष ओमप्रकाश अग्रवाल
श्री निरंजन ओमप्रकाश अग्रवाल
श्री विलास विजयसिंग वळवी सर्व राहणार चिंचपाडा ता. नवापुर
श्री गाविंद पोसल्या गावित
राहणार नानजीपाडा ता. नवापुर जि. नंदुरबार

विषयः दै. सकार या वृत्तपत्रात दिनांक 08/06/2023 रोजी प्रसिध्द झालेल्या 3D अधिसुचनेनुसार मौजे गंगापुर ता. नवापुर येथील गट क्र.45 बाबत हरकती अर्ज.

रोजनामा

सुनावणीची तारीख	कामकाजाचा तपशिल	पक्षकार हजर असले बाबत सही/आंगठा
	Applicant was not present after being called out twice. Applicant has submitted written say. He cites that S.36 and 36A of MLRC is not applicable in NA lands. This Court doesn't find supporting proof for the same. Application is rejected. Order to be issued.sd/-30/06	
5:50PM	पुकारा केले आहे. सहि/– तेजस अरुण वाडीले– शिपाही	

सक्षम प्राधिकारी (भूसंपादन) राष्ट्रिय महामार्ग क्र.6 तथा उपविभागिय अधिकारी,
नंदुरबार भाग, नंदुरबार यांचे समोरील कामकाज

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HIGH COURT OF JUDICATURE AT BOMBAY
सत्यमेव जयते

राष्ट्रिय महामार्ग अधिनियम, 1956 चे कलम 3 (C)2 अन्वये सुनावणी

हरकती अर्ज क्र. 3/2023
हरकती अर्ज दिनिांक 21/06/2023

हरकतदाराचे नावः श्री गाविंद पोसल्या गावित

राहणार नानजीपाडा ता. नवापुर जि. नंदुरबार

विषयः दै. सकार या वृत्तपत्रात दिनांक 08/06/2023 रोजी प्रसिध्द झालेल्या 3D अधिसुचनेनुसार मौजे गंगापुर ता. नवापुर येथील गट क्र.45 बाबत हरकती अर्ज.

रोजनामा

सुनावणीची तारीख	कामकाजाचा तपशिल	पक्षकार हजर असले बाबत सही/आंगठा
	Applicant was not present after being called out twice. 1) N.A. rates can't be disbursed as use of land for last 5 years is not NA. Hence, concerned application is rejected. Order to be issued. sd/-30/06	
5:50PM	पुकारा केले आहे. सहि/– तेजस अरुण वाडीले– शिपाही	

सक्षम प्राधिकारी (भूसंपादन) राष्ट्रिय महामार्ग क्र.6 तथा उपविभागिय अधिकारी,
नंदुरबार भाग, नंदुरबार यांचे समोरील कामकाज
राष्ट्रिय महामार्ग अधिनियम, 1956 चे कलम 3 (C)2 अन्वये सुनावणी

हरकती अर्ज क्र. 4/2023
हरकती अर्ज दिनिांक 21/06/2023

हरकतदाराचे नावः श्री विलास विजयसिंग वळवी राहणार चिंचपाडा ता. नवापुर जि. नंदुरबार

विषयः दै. सकार या वृत्तपत्रात दिनांक 08/06/2023 रोजी प्रसिध्द झालेल्या 3D अधिसुचनेनुसार मौजे गंगापुर ता. नवापुर येथील गट क्र.45 बाबत हरकती अर्ज.

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सुनावणीची तारीख	कामकाजाचा तपशिल	पक्षकार हजर असले बाबत सही/आंगठा
	Applicant was called out twice. He is not present. 1) There is no locus standi of the applicant to take objection on nature of land as previous panchanama show no NA use for > 5 years. Application is rejected. Order to be issued. sd/-30/06	
5:50PM	पुकारा केले आहे. सहि/– तेजस अरुण वाडीले– शिपाही	

22. The learned Advocate representing Respondent No. 1, further submits that it was the bounden duty of the Petitioners to sit in the office of the Assistant Collector till she returned from her tour, until the end of office hours. It is contended that the office hours in Maharashtra's revenue department are from 11. 00 a.m. to 06.15 p.m. He, therefore, submits that the Petitioners should not have left the office until the concerned Assistant Collector came back. She has passed the above orders at 5.50 p.m. The learned Advocate for the Petitioners submits that the Roznama is apparently prepared subsequently and it is a manufactured Roznama since the order dated 04.07.2023 passed by the said authority does not contain any mention that the hearing was scheduled on 30.06.2023 and as the Petitioners did not remain present, the authority had proceeded to close the matters for passing an order.

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HIGH COURT OF JUDICATURE AT BOMBAY

23. It is obvious, in view of it being an admitted position, that the competent authority had posted the hearing in the matter on 30.6.2023 at 11.00 a.m. and the competent authority was not present in the office on account of the visit of the Guardian Minister. It is also an admitted position that no hearing took place on the said date. It is far-fetched for the competent authority to expect that the Petitioners should be sitting in the office from 11.00 am, waiting for her return from the Guardian Minister's tour, until 5.50 p.m., a duration of 6 hours and 50 minutes.

24. We do not approve of this conduct on the part of the competent authority in expecting the Petitioners to sit in the office and wait till her return on the pretext that the office timing is up to 6.15 p.m. A pragmatic approach should have been adopted by the concerned officer by simply adjourning the matter and the adjourned date for hearing should have been notified to the Petitioners who could have remained present on the said date and time. It is apparent that the principles of natural justice having not been followed. Considering the developments/events of 30.6.2023, we are circumspect about the authenticity of the said Roznama. We, however, are of the view that the issue to the extent of the Roznama could be given a quietus, in the light of the view being taken by us in this matter.

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HIGH COURT OF JUDICATURE AT BOMBAY

25. The Petitioners had tendered an application dated 27.06.2023 to the competent authority, on 30.6.2023, stating therein that these Petitioners have preferred the present writ Petition and notice has been issued by the High Court with an interim protection granted to the Petitioners. It was, therefore, requested that further hearing should be deferred. The inward stamp of the office of the competent authority indicates that this communication was received on 30.06.2023. While tendering this communication, the Petitioners were informed on 30.06.2023, when they had reached the office for the scheduled hearing at 11. am, that the concerned Assistant collector was out of office since she was accompanying the Guardian Minister. Copy of the said communication is taken on record and marked **'X-2'** for identification. It is in these peculiar circumstances that the award has been delivered, apparently in undue haste.

26. The issue before us, therefore, is as to whether, we should entertain this Petition, looking at the rigours of the litigation already suffered by the Petitioners and in the backdrop of the highhandedness of the competent authority, or further add to the rigours being suffered by them by disposing off this Petition on the ground that the Petitioners should approach the appropriate authority, which is the arbitrator, being a statutory remedy.

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HIGH COURT OF JUDICATURE AT BOMBAY

27. In **Virudhunagar Hindu Nadargal Dharma Paribalana Sabai vs. Tuticorin Educational Society, (2019) 9 SCC 538,** the Honourable Supreme Court has concluded that an available statutory remedy, would be a "near total bar" for entertaining a writ Petition.

28. In **Kanaiyalal Lalchand Sachdev and others Vs. The State of Maharashtra and others (2011) 2 SCC 782**, the Hon'ble Supreme Court concluded that the High Court rightly dismissed the Petition on the ground that an efficacious remedy was available to the appellants u/s 17 of the Act. It was further held that, ordinarily, relief under Articles 226 and 227 of the Constitution is not available if an efficacious alternate remedy is available to any aggrieved person. Reliance was placed on **Sadhana Lodh Versus National Insurance Co.Ltd., (2003) 3 SCC 524**, **Surya Dev Rai Versus Ram Chander Rai (2003) 6 SCC 675** and **SBI Versus Allied Chemical Laboratories (2006) 9 SCC 252**.

29. In **City and Industrial Development Corporation Versus Dosu Aardeshir Bhiwandiwala (2009) 1 SCC 168**, the Hon'ble Supreme Court held in paragraph No.30 as under :

> *"30. The Court while exercising its jurisdiction under Article 226 is duty bound to consider whether :-*
> *[a] adjudication of the writ Petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved ;*

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HIGH COURT OF JUDICATURE AT BOMBAY

[b] the Petition reveals all material facts ;

[c] the petitioner has any alternative or effective remedy for the resolution of the dispute ;

[d] the person invoking the jurisdiction is guilty of unexplained delay and laches ;

[e] ex facie barred by any laws of limitation ;

[f] grant of relief is against public policy or barred by any valid law ; and host of other factors."

30. In **Harbanslal Sahnia and another Vs. Indian Oil Corporation Ltd., and others (2003) 2 SCC 107,** the Hon'ble Supreme Court concluded that when an alternative remedy is available, the rule of exclusion of a Writ jurisdiction is of discretion and not one of compulsion. If there are such compelling contingencies in which the High Court could exercise it's jurisdiction inspite of the availability of the alternative remedy, it can do so.

31. In **Commissioner of Income Tax and Others Vs. Chhabil Dass Agrawal (2014) 1 SCC 603,** the Hon'ble Supreme Court held in paragraph Nos.11 to 15 as under :-

"11. Before discussing the fact proposition, we would notice the principle of law as laid down by this Court. It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High

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HIGH COURT OF JUDICATURE AT BOMBAY

Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226. (See: State of U.P. vs. Mohammad Nooh, AIR 1958 SC 86; Titaghur Paper Mills Co. Ltd. vs. State of Orissa, (1983) 2 SCC 433; Harbanslal Sahnia vs. Indian Oil Corpn. Ltd., (2003) 2 SCC 107; State of H.P. vs. Gujarat Ambuja Cement Ltd., (2005) 6 SCC 499).

12. The Constitution Benches of this Court in K.S. Rashid and Sons vs. Income Tax Investigation Commission, AIR 1954 SC 207; Sangram Singh vs. Election Tribunal, Kotah, AIR 1955 SC 425; Union of India vs. T.R. Varma, AIR 1957 SC 882; State of U.P. vs. Mohd. Nooh, AIR 1958 SC 86 and K.S. Venkataraman and Co. (P) Ltd. vs. State of Madras, AIR 1966 SC 1089 have held that though Article 226 confers a very wide powers in the matter of issuing writs on the High Court, the remedy of writ absolutely discretionary in character. If the High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.
(See: N.T. Veluswami Thevar vs. G. Raja Nainar, AIR 1959 SC 422; Municipal Council, Khurai vs. Kamal Kumar, (1965) 2 SCR 653; Siliguri Municipality vs. Amalendu Das, (1984) 2 SCC 436; S.T. Muthusami vs. K. Natarajan, (1988) 1 SCC 572; Rajasthan SRTC vs. Krishna Kant, (1995) 5 SCC 75; Kerala SEB vs. Kurien

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HIGH COURT OF JUDICATURE AT BOMBAY

E. Kalathil, (2000) 6 SCC 293; A. Venkatasubbiah Naidu vs. S. Chellappan, (2000) 7 SCC 695; L.L. Sudhakar Reddy vs. State of A.P., (2001) 6 SCC 634; Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha vs. State of Maharashtra, (2001) 8 SCC 509; Pratap Singh vs. State of Haryana, (2002) 7 SCC 484 and GKN Driveshafts (India) Ltd. vs. ITO, (2003) 1 SCC 72).

13. In Nivedita Sharma vs. Cellular Operators Assn. of India, (2011) 14 SCC 337, this Court has held that where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedies before resorting to writ jurisdiction for relief and observed as follows:

> *"12. In Thansingh Nathmal v. Supdt. of Taxes, AIR 1964 SC 1419 this Court adverted to the rule of self-imposed restraint that the writ Petition will not be entertained if an effective remedy is available to the aggrieved person and observed: (AIR p. 1423, para 7).*
>
> > *"7. … The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a Petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."*

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HIGH COURT OF JUDICATURE AT BOMBAY

13. In Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 this Court observed: (SCC pp. 440-41, para 11) "11. … It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in Wolverhampton New Waterworks Co. v. Hawkesford, 141 ER 486 in the following passage: (ER p. 495) '… There are three classes of cases in which a liability may be established founded upon a statute. … But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. … The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.'

The rule laid down in this passage was approved by the House of Lords in Neville v. London Express Newspapers Ltd., 1919 AC 368 and has been reaffirmed by the Privy Council in Attorney General of Trinidad and Tobago v. Gordon Grant and Co. Ltd., 1935 AC 532 (PC) and Secy. of State v. Mask and Co., AIR 1940 PC 105 It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine."

14. In Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536 B.P. Jeevan Reddy, J. (speaking for the majority of the larger Bench) observed: (SCC p. 607, para 77)

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HIGH COURT OF JUDICATURE AT BOMBAY

> *"77. … So far as the jurisdiction of the High Court under Article 226—or for that matter, the jurisdiction of this Court under Article 32—is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment."(See: G. Veerappa Pillai v. Raman & Raman Ltd., AIR 1952 SC 192; CCE v. Dunlop India Ltd., (1985) 1 SCC 260; Ramendra Kishore Biswas v. State of Tripura, (1999) 1 SCC 472; Shivgonda Anna Patil v. State of Maharashtra, (1999) 3 SCC 5; C.A. Abraham v. ITO, (1961) 2 SCR 765; Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433; H.B. Gandhi v. Gopi Nath and Sons, 1992 Supp (2) SCC 312; Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1; Tin Plate Co. of India Ltd. v. State of Bihar, (1998) 8 SCC 272; Sheela Devi v. Jaspal Singh, (1999) 1 SCC 209 and Punjab National Bank v. O.C. Krishnan, (2001) 6 SCC 569)*

14. In Union of India vs. Guwahati Carbon Ltd., (2012) 11 SCC 651, this Court has reiterated the aforesaid principle and observed:

> *"8. Before we discuss the correctness of the impugned order, we intend to remind ourselves the observations made by this Court in Munshi Ram v. Municipal Committee, Chheharta,(1979) 3 SCC 83. In the said decision, this Court was pleased to observe that: (SCC p. 88, para 23).*
>
> *"23. … when a revenue statute provides for a person aggrieved by an assessment thereunder, a*

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HIGH COURT OF JUDICATURE AT BOMBAY

> *particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all the other forums and modes of seeking [remedy] are excluded."*
>
> *15. Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titagarh Paper Mills case and other similar judgments that the High Court will not entertain a Petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ Petition should not be entertained ignoring the statutory dispensation."*

32. In **Magadh Sugar and Energy Ltd., Vs. The State of Bihar and Others, 2021 SCC OnLine SC 801,** the Hon'ble Supreme Court (3 Judges Bench) held that while the High Court normally would not exercise it's writ jurisdiction under Article 226 of the Constitution if an effective and efficacious alternate remedy is available, the existence of an alternate remedy does not by itself bar the High Court from exercising it's jurisdiction in certain contingencies.

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HIGH COURT OF JUDICATURE AT BOMBAY

33. In **Radha Krishan Industries Versus State of Himachal Pradesh and others (2021) 6 SCC 771**, the Hon'ble Supreme Court summarized the principles governing exercise of writ jurisdiction by the High Court, despite availability of an alternate remedy, in paragraph No.28 as under :-

> *(i) The power under Article, 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;*
>
> *(ii) The High Court has the discretion not to entertain a writ Petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;*
>
> *(iii) Exceptions to the rule of alternate remedy arise where (a) the writ Petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c)* ***the order or proceedings are wholly without jurisdiction****; or (d) the vires of a legislation is challenged;*
>
> *(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ Petition should not be entertained when an efficacious alternate remedy is provided by law;*
>
> *(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and*

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HIGH COURT OF JUDICATURE AT BOMBAY

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ Petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

(emphasis supplied)

The principle of alternate remedies and its exceptions was also reiterated recently in the decision in Assistant Commissioner of State Tax v. M/s Commercial Steel Limited 22. In State of HP v. Gujarat Ambuja Cement Ltd. MANU/SC/ 0421/2005:(2005) 6 SCC 499, this Court has held that a writ Petition is maintainable before the High Court if the taxing authorities have acted beyond the scope of their jurisdiction. This Court observed:

"23. Where under a statute there is an allegation of infringement of fundamental rights or when on the undisputed facts the taxing authorities are shown to have assumed jurisdiction which they do not possess can be the grounds on which the writ petitions can be entertained. But normally, the High Court should not entertain writ petitions unless it is shown that there is something more in a case, something going to the root of the jurisdiction of the officer, something which would show that it would be a case of palpable injustice to the writ petitioner to force him to adopt the remedies provided by the statute. It was noted by this Court in L. Hirday Narain Vs. ITO [(1970) 2 SCC 355: AIR 1971 SC 33] that if the High Court had entertained a Petition despite availability of alternative remedy and heard the parties on merits it would be ordinarily unjustifiable for the High Court to dismiss the same on the ground of non-exhaustion of statutory remedies; unless the High Court finds that factual disputes are involved and it would not be desirable to deal with them in a writ Petition."

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HIGH COURT OF JUDICATURE AT BOMBAY

34. In ***State of M.P. and another Vs. Commercial Engineers and Body Building Company Limited [2022 SCC Online SC 1425]****, the Hon'ble Supreme Court held in paragraph Nos.4 and 5 as under :-*

> *" 4. Having heard learned Counsel for the respective parties at length on the entertainability of the writ Petition Under Article 226 of the Constitution of India by the High Court against the Assessment Order and the reasoning given by the High Court while entertaining the writ Petition against the Assessment Order despite the statutory remedy by way of an appeal available, we are of the opinion that the High Court ought not to have entertained the writ Petition Under Article 226 of the Constitution of India challenging the Assessment Order denying the Input rebate against which a statutory appeal would be available Under Section 46(1) of the MP VAT Act, 2002.*
>
> *5. While entertaining the writ Petition Under Article 226 of the Constitution of India challenging the Assessment Order denying the Input rebate, the High Court has observed that there are no disputed question of facts arise and it is a question to be decided on admitted facts for which no dispute or enquiry into factual aspects of the matter is called for. The aforesaid can hardly be a good/valid ground to entertain the writ Petition Under Article 226 of the Constitution of India challenging the Assessment Order denying the Input rebate against which a statutory remedy of appeal was available. "*

35. In **M/s Godrej Sara Lee Ltd., Vs. Excise and Taxation Officer-cum-Assessing Authority and others [AIR 2023 SC 781]**, the Hon'ble Supreme Court held that,

> *'Ground of availability of alternative remedy cannot mechanically be construed as a ground for dismissal of a*

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HIGH COURT OF JUDICATURE AT BOMBAY

writ Petition filed under Article 226 of the Constitution of India. It is axiomatic that the High Courts have discretion whether to entertain writ Petition or not. The power to issue prerogative writs under Article 226 is plenary in nature. Article 226 does not, in terms, impose any limitation or restrain on the exercise of power to issue writs. While it is true that the exercise of writ powers despite the availability of a remedy under the very statute, which has been invoked and has given rise to the action impugned in the writ Petition, ought not to be made in a routine manner. The mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under Article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ Petition "not maintainable". Availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ Petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of Law. The "entertainability" and "maintainability" of a writ Petition are distinct concepts. The objection as to "maintainability" goes to the root of the matter and if such an objection were found to be of substance, the Courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of the discretion of the High Courts, writ remedy being discretionary. A writ Petition despite being maintainable may not be entertained by a High Court for

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HIGH COURT OF JUDICATURE AT BOMBAY

very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest."

36. It is, thus, crystallized that 'entertainability' and 'maintainability' of a writ Petition are distinct concepts. The objection as to 'maintainability' goes to the root of the matter and if such an objection is found to be having substance, the Courts would be rendered incapable of entertaining or receiving the lis for adjudication. On the other hand, the question of 'entertainability' is entirely within the realm of the discretion of the High Courts and a writ remedy would be discretionary. If the Court concludes in the peculiar facts of a case that it would be appropriate to entertain a Writ Petition though a statutory remedy is available, for justified reasons, the Petition can be entertained.

37. In the present case, the sequence of events clearly indicates that the competent authority had actually rushed through the proceedings with electric speed and orders were being passed by the same competent authority (officer incharge), in quick succession. At each stage, this Court has intervened and the elaborate judgment dated 05.05.2022 speaks volumes about the manner in which the authorities were proceeding to take possession of the lands of the Petitioners without adherence to the procedure of acquisition.

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HIGH COURT OF JUDICATURE AT BOMBAY

38. In **Vidya Devi Vs. State of Himachal Pradesh (2020) 2 SCC 569**, the Honorable Supreme Court entertained a Petition with regard to land acquired in 1967 without following the due procedure laid down in law, by invoking Article 300-A of the Constitution of India, concluding that the passage of five decades would not legalize or legitimize the conversion of land which practically amounted to grabbing the land of a title holder without compliance of law. It was ruled that the passage of time will not legalize an illegal act.

39. We could have adopted a strict view with regard to the concerned Assistant District Collector, considering the peculiar facts of this case. She has been the competent authority all through out. The litigation in this Court at the behest of the Petitioners is known to her, the orders passed by this Court are know to her, the views expressed by this Court that the law should not only be followed, but should also appear to have been followed and complied with, are also known to her. The Petitioners were given a notice on 28th June, 2023 and the hearing was posted at 11.00 a.m. on 30th June, 2023 with an intervening holiday on 29th June. Admittedly, she was not in office at 11.00 a.m. which was the scheduled time for the hearing. To make things worse for the Petitioners, as contended by the learned Advocate for Respondent No.1 on instructions, she came back to office at 5.50 p.m. and as the

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HIGH COURT OF JUDICATURE AT BOMBAY

Petitioners were not waiting for her in her office, she has passed orders recording that the Petitioners were called out twice and as they were not present, the file was closed. The impugned award, therefore, is passed without hearing the Petitioners.

40. Bureaucrats cannot act highhandedly. They owe a duty towards the public at large. The procedural laws are not ornamental when they deal with the substantial rights of the citizens of the Country, more so, in relation to the right of holding a property which cannot be taken away in view of Article 300-A of the Constitution of India. Any attempt to do so is not only an illegal act, but, would display an intention of overbearing the rule of law.

41. Whether in such circumstances, this Court should blink and put forth technicalities in the face of the legal rights of a person, and decline to entertain a Writ Petition ? The Hon'ble Supreme Court, in **Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and others [(1987) 2 SCC 107],** has observed as under:

> *"3. The legislature has conferred the power ....*
>
> *1. ....*
>
> *4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have*

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HIGH COURT OF JUDICATURE AT BOMBAY

> *vested right in injustice being done because of a non-deliberate delay.*
> *5. ……..*
> *6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.....*

42. Considering the above and in view of the specific conclusion drawn by the Hon'ble Supreme Court in **M/s Godrej Sara Lee Ltd. (Supra),** we are of the view that we can exercise our writ jurisdiction in the peculiar facts of this case since the power to issue a prerogative Writ under Article 226, is plenary in nature. Availability of a statutory remedy in the peculiar facts of this case and despite noticing the highhanded behaviour and conduct of the competent authority, rendering the Petitioners to an alternate remedy, would actually amount to rubbing salt on the injuries already suffered by them. In our view, doing so is likely to result in a travesty of justice.

43. We do not find from the record, any order passed by the revenue authority cancelling the Industrial NA permission granted to the Petitioners which are dated 20th March, 2017 and 17th April, 2017. The same competent authority suo moto had dealt with the 'NA Commercial' permission granted by the Tahsildar dated 15.05.2019. By order dated 22.02.2021, she cancelled the Commercial NA permission granted to the petitioner. As the order dated 15.05.2019 is set aside, the

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HIGH COURT OF JUDICATURE AT BOMBAY

Petitioners land would continue to assume the nature of 'Industrial N.A.' The Petitioners, thereafter, have been paying the taxes leviable on an Industrial NA land.

44. Further, we find it advantageous to refer to a recent order passed by this Court dated 29.03.2023 at the Principal Seat in **Writ Petition No. 3973 of 2023 filed by Devidas Anandrao Pingale Vs. Agricultural Produce Market Committee, Nashik**, wherein, this Court concluded that a notice for hearing to be issued by the State or State instrumentalities or the revenue authorities, should give at least five days period for preparation to the party who is to respond to the notice. The Principal Secretary of Law and Judiciary Department was directed to circulate this order to all the departments. Consequentially, the Chief Secretary was informed of this order, as well as the learned Advocate General of the State of Maharashtra. As a result, the Law and Judiciary Department issued a Circular dated 14.07.2023 mandating all the departments to grant 5 days notice to the parties for hearing.

45. The Petitioners have not filed any appeal challenging said order, as yet. They intend to file an appeal for challenging the said order before the Divisional Commissioner, Nashik Division, Nashik. If the appeals are allowed, the Commercial NA Permission would be restored. If not, the industrial NA permission would stand. Until this happens, the competent authority cannot wait as a public project is to be completed.

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HIGH COURT OF JUDICATURE AT BOMBAY

46. The Learned Advocate representing the NHAI submits on instructions and the affidavit in reply, that merely because 7/12 extract shows the status as Industrial NA would not mean that NHAI admitted the status of the land. We do not find that this contention is well placed, simply for the reason that the NHAI is not an authority which can itself decide the status of the land when the 7/12 extracts indicate the land to be carrying a particular status. If the Industrial NA status is visible from the revenue record, the NHAI cannot sit over these records and take a different view as if it is an Appellate Authority. In **Shrikant R. Sankanwar And Ors. vs Krishna Balu Naukudkar, 2003 (2) Mh.LJ 276,** this court has concluded that the revenue entries are meant for fiscal purposes and the taxes to be paid would depend upon such revenue entries. The Petitioners have been paying the taxes for Industrial land status ever since 2017. It is too much to say that these lands are agricultural lands.

47. In view of the above, **this Petition is partly allowed** in terms of prayer cause (B-1).

48. Since the appeals of the Petitioners are yet to be filed before the Additional Divisional Commissioner and since a public project is at issue, the Petitioners would appear before the newly appointed Competent Authority, Nandurbar on 21st August, 2023 at 11.00 a.m. Written notes of submissions are permitted. After the hearing is over

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HIGH COURT OF JUDICATURE AT BOMBAY

the competent authority would deliver it's order treating the lands of the Petitioners as being Industrial NA. Needless to state, reasons will have to be assigned since it is an award under section 3G. Thereafter the litigating parties are at liberty to avail of their remedies, as may be permissible in law.

49. The Learned Advocate representing the NHAI submits on instructions that after the award is passed by the Competent Authority and if the quantum of compensation is admissible to the NHAI, it would deposit the amount set out in the Award. After the amount is deposited as per the award, the injunction on NHAI by order dated 05.05.2022, be vacated. The learned Advocate for the Petitioners submits that the above statement could be accepted only if the amount deposited is disbursed forthwith to the Petitioners. The NHAI is agreeable. In view of these statements, after the withdrawal of amounts, the injunction will stand vacated.

50. Rule is made partly absolute. No order as to costs.

(Y. G. KHOBRAGADE, J.) **(RAVINDRA V. GHUGE, J.)**

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