

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

WRIT PETITION NO. 4926 OF 2006

Bharat Ganpat Kadam .. Petitioner

Versus

The State of Maharashtra and Others .. Respondents

Smt. Madhaveshwari D. Thube-Mhase, Advocate for the
Petitioner

Shri S. G. Sangle, A. G. P. for the Respondent Nos. 1 to 5

**CORAM : S. V. GANGAPURWALA AND
A. I. S. CHEEMA, JJ.**

DATE : 24TH MARCH, 2015.

PER COURT :

1) Mrs. Thube-Mhase the learned counsel for the petitioner submits that, the respondents have constructed a road from the land of the petitioner. The petitioner owns 80 R. land in Gut No. 3 situated at village Mathpimpri. According to the learned counsel the work order was issued by the respondents to the contractor on 08.04.2004. The petitioner made representation on 24.11.2004, 04.04.2005 asking the authorities to take up acquisition proceedings under the Land Acquisition Act. The respondent authority communicated that, the petitioner should submit the map of land Gut No. 3. The

authorities further communicated on 20th December, 2005 that as the work is being done under the EGS, acquisition proceedings are not required to be taken up. The learned counsel further submits that, even the Executive Engineer vide letter dated 25.01.2005 had communicated to the Deputy Engineer, B & C to give the proposal for acquisition of land. All these facts would unequivocally show that the land Gut No. 3 was under construction of road, however, no acquisition proceedings are undertaken. A citizen can not be deprived of his property in such a manner. The learned counsel submits that at no material point of time the cart road existed from Gut No. 3. There is no entry of cart road in any revenue record. The respondents be directed to take acquisition proceedings in respect of land of the petitioner affected in construction of road and be directed to pay compensation.

2) Mr. Sangle the learned A. G. P. states that, the village map shows that the cart road is in existence in Gut No. 3. The same is of the year, 1974. According to the learned counsel for the petitioner no survey is made after 1923. According to the learned A. G. P. as no new road has been laid down, question of payment of compensation does not arise nor proceedings for land acquisition are to be initiated. All the villagers have consented

for laying down the said road on the cart road. Even Gram Panchayat had passed resolution to that effect.

3) We have considered the submissions canvassed by the learned counsel for the respective parties. There can not be any dispute with the proposition that a person can not be deprived of his right to property without due process of law.

4) The dispute is about the cart-road in existence earlier and on the said alleged cart-road, new road laid down.

5) The holding of the petitioner is 80 Ares as per the 7/12 extract filed by the petitioner along with writ petition. The same is issued on 27.02.2006. The petitioner prior to the execution of the work is shown to be owner and possessor of 80 Ares land. The 7/12 extract of the year 2013 is placed on record by the A. G. P. which also shows that petitioner is owner and occupier of 80 Ares land from Gut No. 3. In case the land of the petitioner would have been affected the holding of the petitioner ought to have been reduced. There is nothing to show that the holding of the petitioner is reduced and land of the petitioner is affected in the said work of road. The whole Gut No. 3 admeasures 4 Hectares and 22 Ares that is more than 10 Acres

and the petitioner is owner of 2 Acres. There is nothing to conclude that the land of the petitioner is affected in road widening as per the documents on record.

6) In light of the above, the case of the petitioner can not be considered. As such the writ petition is disposed of. Rule discharged. No costs.

[A. I. S. CHEEMA, J.]

[S. V. GANGAPURWALA, J.]

sam/March. 15