

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1653 OF 2014

Shri Dhruv P. Gokhale	...	Petitioner
V/s.		
The Sarpanch, Group Grampanchayat & others	...	Respondents

Mr. A.B. Kulkarni i/b. Mr. A.P. Shinde for the petitioner.

Mr. H.V. Bhadbhade for respondent no.1.

Mr. Vikas Mali, AGP for respondents 2 to 4.

**CORAM : NARESH H. PATIL AND
S.B. SHUKRE, JJ.**

ORDER RESERVED ON: 21st JULY, 2015.

ORDER PRONOUNCED ON: 19th August, 2015.

P.C. (PER N.H. PATIL, J)

The petitioner contends that he is owner and possessor of land bearing Gat No. 159/1/2 situated at Mouje Velneshwar, Tal. Guhagar, Dist. Ratnagiri. He has cultivated 35 mango trees. A complaint was made under Section 133 of the Criminal Procedure Code by the residents of Kharviwadi. It was the case of the residents that there was road passing through the land of the petitioner having access from Velneshwar Electricity D.P. to Kharvivadi. It was alleged that in the year 2005 the petitioner blocked the said road with stones. Thereafter, an alternative road was created to enable the residents to travel to their village

Kharvivadi. However, said road also got closed. The residents were facing problems in respect of connectivity as they were unable to use a proper road. Complaint to that effect was filed and the proceedings were contested by the petitioner. The said proceedings are still pending according to petitioner before the Sessions Court, Khed.

2. A proposal to acquire the land of the petitioner was made. He was informed to remain present on 16th August, 2012 for joint measurement of the land. The acquisition was to be made for the purpose of laying down road.

3. A notification dated 11th February, 2013 under Section 4 of the Land Acquisition Act, 1984 was published in newspaper Ratnagiri Express on 29th March, 2013 in respect of land bearing Gat No. 159/1/2.

4. A notification for filing objection under Section 5 A of the said Act was issued. The petitioner filed objections. It is submitted that thereafter respondent no.2 forwarded the aforesaid objections to respondent no.1 for its opinion on 29th May, 2013 and directed the respondent no.1 to give its parawise remark. Respondent no.1 without applying mind and without considering objections and ignoring the objections forwarded a letter dated 30th September, 2013 to the respondent no.2. Reference of Grampanchayat meeting held on 22nd July, 2013 was made. The petitioner's grievance is that he was not provided with opportunity of personal hearing under Section 5A. The said requirement is mandatory in nature. The respondent filed affidavit-in-reply. In paras 6, 7, 18 and 20 it is contended by respondent-deponent as under:

“6. I state that the petitioner was given an opportunity of being personally heard, but he has not made any oral submissions, and relied on his written objections. It is therefore incorrect to say that no personal hearing was given to the petitioner.

7. I state that on the objections raised by the petitioner and other land owner, the remarks were submitted by the Grampanchayat; before the Sub Divisional Officer, Chiplun. Thereafter, the Sub Divisional Officer, Chiplun, submitted a 5A enquiry report, alongwith his remarks and submitted the same to the Additional Commissioner, Kokan Division for further action alongwith entire record. “Annexure-3” is the true and correct copy of the Report of 5A enquiry submitted by the Sub Divisional Officer, Chiplun to the Additional Commissioner, Kokan Division. Thereafter examining the said record, and 5A enquiry report the Additional Commissioner, Kokan Division. Thereafter, examining the said record, and 5A enquiry report the Additional Commissioner, Kokan Division was pleased to issue the declaration under section 6 of the Land Acquisition Act, which is impugned in the present petition.

18. With reference to Para No.13 of the petition, I say that due process as stipulated under Land Acquisition Act has been followed notices under section 4(1), under section 9(3)(4) had been served on petitioner on 6.5.2013. The petitioner was also present for enquiring under section 5 A, dated 28.5.2013 and he was given due opportunity for his objections to be heard. Objection received have been duly considered and matter was

decided by following due process. Hereto annexed and marked as "Annexure-5(colly)" are the copies of notices and receipt thereof have been attached herewith.

20. With reference to Ground A of the petition, I say that in respect of land acquisition the steps are taken as per provisions of Land Acquisition Act and as per the direction issued by the government from time to time. Hence, there is no substance in the say of the petitioner. Due process as stipulated under Land Acquisition Act has been followed notice under Section 4(1) under section under section 9(3)(4) had been served on petitioner on 6.5.2013. The petitioner was also present for enquiring under section 5A, dated 28.5.2013 and he was given due opportunity for which objections to be heard. Objection received have been duly considered and matter was decided by following due process."

5. The learned Counsel appearing for the petitioner submits that it is a settled position in law that opportunity of personal hearing is mandatory in law. The petitioner was not provided with any personal hearing in respect of objections submitted by the petitioners. The petitioner had demanded such a hearing. On merits learned Counsel submits that there is already a road which is used by the residents of the village as an approach road or access which provides a proper connectivity. The petitioner is cultivating mangoes and in the facts there was no need to acquire petitioner's land for the purposes of constructing a road. Learned Counsel placed reliance on two judgments in the case of ***Jnanedaya Yogam & anr. v/s. K.K. Pankajakshy & ors. {(1999) 9 Supreme Court Cases 492}***, ***Khushalrao Tulshiramji Pandao & ors. v/s. State of***

Maharashtra & others {2001(4) Mh.L.J.}.

6. Learned AGP submits that consequent to the notice issued, the petitioner was present on 28th May, 2013. The authority provided him an opportunity of hearing. The objections were heard and were duly considered. It is submitted that acquisition is for public purposes i.e. for constructing the road from Kharviwadi to Velneshwar which was essential and necessary for the larger benefits of the villagers. Such a proposal was supported by the acquiring body. The Gram Sabha was called for the said purposes wherein the petitioner was present. There was no alternate land for construction of a road. According to learned AGP the length of the road is hardly 200 meters and near about half acre of the land of the petitioners would be subjected to acquisition. The authority had also called for the remarks of the local body/Grampanchayat. It was at the instance of the local body that the acquisition proceedings was initiated.

7. We have perused the record placed before us and considered the submissions advanced. The Grampanchayat of the Nirmal Group had taken a decision. The road was beneficial for persons who were involved in fishing business and accordingly a resolution was taken. It was decided in the Gram Sabha that subject land is required to be acquired. The said special meeting of Gram Sabha was held on 29th July, 2007. We have perused the Photostat copy of the register maintained in respect of the hearing given to the land owners under Section 5A of the Land Acquisition Act. Date of hearing was 28th May, 2013. The petitioner signed the said document. The decision of the authority concerned is

reflected which is at page-87. Said decision was taken after hearing the petitioner. The authorities were satisfied and convinced that land is required for public purpose and the alternate way pointed out was not a suitable one, which was going through a graveyard.

8. From the record placed before us, we find that there is no alternate road available in the surrounding area for constructing a road. Considering the topography of the village, the authorities had no other option than to acquire this small portion of the land of the petitioner for constructing road. After perusing the record and reply filed, we are of the view that petitioner was accorded appropriate opportunity of hearing. He attended to such hearing and submitted his objections. Even otherwise on merits, we find that road was required in larger public interest. It was beneficial to the villagers and particularly the persons who were involved in fishing.

9. In this view of the matter, no interference is warranted. Petition is dismissed.

10. After pronouncement of order, learned Counsel for the petitioner prayed for continuation of ad-interim relief. In the facts, we are not convinced to continue the ad-interim relief. The request is rejected.

(S.B. SHUKRE, J.)

(NARESH H. PATIL, J.)

L.S. Panjwani, P.S.