

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

WRIT PETITION NO.2757 OF 2014

Omprakash Bhaguram Kutwade & another... PETITIONERS

VERSUS

The State of Maharashtra & others ... RESPONDENTS

.....
Shri A.B. Kale, Advocate for petitioners
Shri V.H. Dighe, A.G.P. for State
.....

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

DATED: 10th March, 2016.

ORAL ORDER :

1. Mr. Kale, learned counsel for the petitioners states that, the petitioners are owners and possessors of land Block No.135, totally admeasuring 3 Hectors 97 R. Out of the said land, some portion is converted for non-agricultural use. A cart road passes through the bandh of Block No.134, which is adjacent to Block No.135. The respondent authorities started

extension of the road, which flows from the field of the petitioners for village Bori. The petitioners filed Civil Suit bearing No.63/2000. The Court initially granted status quo on a temporary injunction application. The said order was subsequently vacated. The learned counsel submits that, during the pendency of the suit, the petitioners filed application for appointment of T.I.L.R. as a Court Commissioner. The same was allowed. The T.I.L.R. visited the spot, prepared panchanama and the map after giving notice to all the parties i.e. respondents. It is clear from the said map and panchanama that the land of the petitioners to the extent of 19 gunthas is acquired and encroached upon by the respondent No.3. The learned counsel submits that, the petitioners thereafter withdrew the suit as they were to file proceedings for compensation of the acquired land, which has been acquired compulsorily without following due procedure of law. The petitioners were permitted to withdraw the suit. The learned counsel submits that, the petitioners time and again requested the respondents to initiate the acquisition proceedings. However, no action is taken by the respondents. The map of the T.I.L.R. would make the position crystal clear. According to the learned counsel, the petitioners are entitled for the compensation to the extent of 19 gunthas of their land, which is illegally encroached upon by the respondents.

2. The learned A.G.P. submits that, the road which is in existence is for more than 50 years. The said existing road is constructed under the Employment Guarantee Scheme. The said existing B.T. Road is constructed before 50 years. At that time, no objection was raised by the petitioners. The road which was in existence was damaged and it was decided to construct the pakka road and accordingly, the same was done. The width of the road was never extended. The Civil Court had vacated the exparte status quo order after hearing the parties. Even the District Court dismissed the appeal filed by the petitioners.

3. We have considered the submissions. According to the respondents, the road existed for more than 50 years and no additional area has been acquired for the said road. Only the road which is damaged is being relaid.

4. The report of the T.I.L.R. was in the capacity as a Court Commissioner, which is required to be proved. The petitioner has withdrawn the civil suit also, wherein no adjudication has been made by the Civil Court. There is nothing on record to substantiate the fact that the land of the petitioners has been recently affected in road. The 7/12 extract shows the

ownership and possession of the petitioners over the area upon which they claim their ownership. There is nothing on record to even remotely suggest that the respondent/ State has laid new road upon the land of the petitioners.

5. In light of the above, the Writ Petition is disposed of.
No costs.

(A.I.S. CHEEMA, J.)

(S.V. GANGAPURWALA, J.)

fmp/wp2757.14