

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4132 OF 2007

Santosh S/o. Ratanlal Bora
and another

.. **Petitioners**

Versus

The State of Maharashtra,
Through Collector,
Aurangabad and others

.. **Respondents**

Shri P. F. Patni, Advocate for Petitioners.

Shri B. V. Virdhe, A. G. P. for Respondent / State.

Shri P. S. Pawar, Advocate for Respondent Nos. 2 and 3.

CORAM : S. V. GANGAPURWALA AND
K. K. SONAWANE, JJ.

DATE : 29TH JULY, 2016.

PER COURT :-

1. Mr. Patni, the learned counsel for the Petitioners states that, the Petitioners are owners and possessors of land gut No. 15/1 admeasuring 7 Acres situated at Jakhmatha, Taluka – Gangapur. The learned counsel submits that, the Respondents illegally and without initiating any acquisition proceedings constructed road from the land of the Petitioners which leads from Gangapur to Sidhpur. 42 R land of the Petitioners were taken by the Respondents in acquisition. The Petitioners made enquiry with the Respondent Nos. 3 and 4 as to whether any acquisition proceedings were initiated, the Respondents did not reply. The Petitioners got their land measured from the T. I. L. R. and it was noticed that 42 R land is affected in the said construction of the road. According to the learned counsel, no acquisition proceedings were initiated nor the land was taken by the

Respondents by private negotiations. The Petitioners had never given their consent. The said action deprives the Petitioners of their property without due procedure of law. The learned counsel submits that, the said construction of road was done in the year 2003 - 2004. The learned counsel submits that, Respondents be directed to take up acquisition proceedings in respect of the land of the Petitioners affected by construction of the road.

2. Mr. Patni, the learned counsel relies on the judgment of the Apex Court in a case of, **Tukaram Kana Joshi and others V/s. M. I. D. C. and others** reported in **2012 ALL SCR 2986**.

3. The learned A. G. P. states that, in fact, it was not a construction of a new road, only work of surface pressing and tar road up to 400 mtr was done by Respondent No. 4. The learned A. G. P. submits that, there was already a cart track in existence since long as per revenue survey record. The construction of road is done under the administrative sanction of District Collector, Aurangabad dated 24.09.2001. The road is constructed considering the need and the necessity of the people to have proper access. As the road was already in existence and only construction work is carried out by making metal work and bitumen therefore there is no question of initiating land acquisition proceedings and so there is no question of making payment of compensation. After administrative sanction on 24.09.2001 the work is carried out immediately thereafter. It is the case of delay and laches on the part of the Petitioners.

4. The learned A. G. P. further states that, the said work is done under the E.G.S. And there is no provision of acquisition of land for the work done under E. G. S.

5. We have considered the submissions canvassed by the learned counsel for respective parties.

6. The affidavit in reply filed by Respondent No. 4 appears to be diametrically opposite to the document filed alongwith the affidavit in reply. The document dated 24.09.2001 filed alongwith the affidavit in reply is an order issued from the office of Collector, Aurangabad whereby the work of the road detailed in the said order was sanctioned subject to terms and conditions enumerated in the said order. The work of road that is the subject matter in the present petition is also detailed in the said order. Clause Nos. 6 and 10 of the said order specifically states that prior to the commencement of the work the possession of the land should be obtained from the owner so also before start of the work consent deed and the gift deed should be got registered from the owner. The said terms and conditions are self explanatory. If, only the work of laying down bitumen and metal work was to be done on the existing road there was no necessity to incorporate such conditions in the said order. As the order specifically states that before the work of road is commenced the gift deed should be got registered from the owner so also the consent deed be obtained pre-supposes that the work of the road has to be commenced anew.

7. It is not disputed that the said work has been done may be in the year 2001 - 2002. The same is without obtaining any consent from the Petitioners and without obtaining any gift deed from the Petitioners. The Petitioners have issued notices even in the year, 2006 to the authorities.

8. It is also not a case of a inordinate delay. The work was done in the year, 2001 - 2002. The notice was issued and

thereafter the writ petition is filed in June, 2007. The Apex Court in a case of, **Tukaram Kana Joshi and others V/s. M. I. D. C. and others** referred to supra has observed as under -

“15. Depriving the appellants of their immovable properties, was a clear violation of Article 21 of the Constitution. In a welfare State, statutory authorities are bound, not only to pay adequate compensation, but there is also a legal obligation upon them to rehabilitate such persons. The non-fulfillment of their obligations would tantamount to forcing the said uprooted persons to become vagabonds or to indulge in anti-national activities as such sentiments would be born in them on account of such ill-treatment. Therefore, it is not permissible for any welfare State to uproot a person and deprive him of his fundamental/constitutional/human rights, under the garb of industrial development.”

9. It is also well said that though the right to property is not a fundamental right it still remains constitutional right and now it has been brought within the contour of human right.

10. The Petitioners had got measured the land from the T. I. L. R. to show that an area approximately 42 R is affected in the said construction of road. The construction of road as contended by the Petitioner is not disputed. It would be appropriate to first have a joint measurement and then proceed further for acquisition.

11. In light of above we pass following order -

ORDER

A] The Petitioners and the Respondents shall conduct joint measurement of the land of the Petitioners so as to arrive at the extent of the land of the Petitioners affected by the construction of the road.

B] As per the joint measurement the Respondents shall initiate the land acquisition proceedings as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 preferably within six (6) months from the date of the joint measurement and shall complete it within a period as stipulated in the Act of 2013.

C] Considering the fact that the road was constructed in 2001-2002 and the Petition is filed in the year 2007 the Petitioners would not be entitled for the statutory benefit for the period 2001-2007.

12. The Writ Petition is accordingly disposed of. No costs.

[K. K. SONAWANE, J.]

[S. V. GANGAPURWALA, J.]

sam/July.16