

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 8703 OF 2016**

Dr. Vilas Laxman Borhade & Ors. .. Petitioners
versus
National Highways Authority of India & Ors. .. Respondents

Mr. V. A. Thorat, Senior Advocate with Mr. Rameshwar Gite for Petitioner.

Dr. Abhinav Chandrachud with Mr. Rakesh Singh, Mr. Kunal Chheda i/b. M/s. M. V. Kini & Co. for Respondent No. 1.

Ms S. S. Bhende – AGP for State.

Mr. S. H. Halwasia with M. S. Lagu for Respondent No. 5.

**CORAM: DR. MANJULA CHELLUR, C. J. AND
M. S. SONAK, J.**

DATE : 22 DECEMBER 2016

P.C.:

1] The petitioners are the villagers of Shinde Village in District of Nashik. The stretch of Pune – Nashik Road National Highway No. 50 from 194 to / 200 to 195/200 passes through Shinde Village, which measures about 32 Meters on an average. According to the petitioners, several residential and commercial constructions are on the right side of the said road and the majority of the road on the left side belongs to the Government along with certain constructions, therefore, for the widening purpose, the Authorities have used the Government land and removed the Government buildings so as to protect the buildings and the structures belonging to the petitioners. According to them, a portion of the land which is meant for Gaathan will also be destroyed with the proposed widening of the road from 2 to

4 lanes. According to them even if the alignment of the road has to be as it is proposed, if a flyover is constructed neither the buildings need to be destroyed nor there will be any need of spending huge public money for the widening purpose. According to them by putting up the flyover, even there would be possibility of easing out the traffic. The other contentions of the petitioners is that Village Shinde is commercially well developed and there is a special industrial zone also where small factories are already in establishment, therefore, there is primarily / parallel demand for residential zone in the lands proposed to be acquired. According to them this development of industries would create more employment and economically the residents would be benefited not only from the Village of Shinde but also the surrounding villages. In short, according to the petitioners, if the alignment of the road is shifted as indicated it was even suggested and approved by the Executive Engineer, National Highway Division No. 9, Nashik, nine months after passing of the awards, there would not be any hardship or inconvenience whatsoever to the respondent authorities and on the other hand the public at large would be benefited.

2] With these averments, the petitioners after referring to various representations given to various representatives of the people are seeking following reliefs :

“a) This Honourable Court by way of writ of mandamus or any other writ in the nature of writ of mandamus be pleased to direct the Respondents to shift the alignment of the proposed widening for 4 lane of National Highway No. 50 towards west or to the left side of the existing National Highway No. 50 of the Village Shinde located at KM 194 / 700.

b) In the alternative this Honourable Court by way of appropriate writ of mandamus or any other writ in the nature of writ of mandamus be pleased to direct the Respondents herein to make construction of flyover so as to avoid the existing Gaonthan of Village Shinde.

c) Pending the hearing and final disposal of this writ petition this Honourable Court by way of appropriate writ of mandamus or any other writ in the nature of writ of mandamus be pleased to restrain the Respondents herein from carrying out any demolition from the Gaonthan of Shinde Village for the widening of 4 lane of National Highway No. 50.

d) Any other and further relief which this Hon'ble Court may deem fit and proper be passed."

3] A detailed affidavit-in-reply is brought on record by National Highway Authorities, explaining how the project of improvement and 4 laning of km. 177/0 to 201/350 of NH-50, Near Nashik City including Sinnar By-Pass of total length of 25.31. km. was brought about for the benefit of the public at large. So far as declaration of the proposal to widen the road, calling for objections and followed by notification in the Gazette, there is no challenge with regard to the procedure contemplated under the National Highway Authorities Act. Now, the award is also passed in terms of the Act and much after the Award based on the recommendation or detailed note of the Executive Engineer, the approach of the petitioners is seriously objected to by the respondent authorities. They also contend that after taking into consideration the objections raised from various quarters, the entire procedure as contemplated in the Act right from section 3A till award came to be passed after final notice under section 3G, authorities were conscious of what they were doing and entire road alignment was studied after a detailed survey and only upon acceptance and approval

by the experts, details of the land to be acquired were decided and then proceedings for acquisition commenced. They also referred to the case of *Dr. Kushal Shetty & Ors. (AIR 2011 SC 3210)*, wherein the Supreme Court has clearly held that on the opinion of the experts, even the Courts cannot sit over the judgment and say why such a alignment should not be modified or deviated.

4] Even otherwise, the National Highway Authority is statutory body constituted under a statute managed by experts and professionals who have experience in the field of development and maintenance of National Highways. The objections raised by the petitioners must have come to the notice of the authorities in many more such matters while the establishment of National Highway or widening and developing the existing National Highways. The present National Highway 50 was already in existence. On account of the demand of widening because of heavy traffic on the said road, the experts again at the instance of the public at large recommended for widening the road and after a detailed study by the experts, the formation of the road i.e. alignment and how the same has to be developed was visualized and implemented, which ultimately resulted in the award.

5] It is pertinent to mention that similar issue came up with regard to the stretch of National Highway on the different Village Narayangaon by-pass, was subject-matter in writ petition no. 8577 of 2015, where similar issues were raised contending that the proposed widening and development on by-pass especially the alignment could be deviated so as to protect the constructions and structures which were already in existence. This judgment was pronounced on 22nd July 2016. In the said judgment, the Bench at paragraph 8 observed

that 70% of the work has been completed and the concessionaire has progressed the work in full swing. As a matter of fact, date of completion of the project was 9th August 2016 and the concessionaire could not complete the same on account of pendency of this writ petition. Since the petitioners were also heard and after considering their objections only awards were passed, we are of the opinion, no *mala fide* of any kind is seen in the process so far as lands of the petitioners is concerned.

6] In all probability the note given by the Executive Engineer must have given fresh scope for the petitioners that too after passing of the award to approach this Court contending that there is possibility of deviating the alignment and if alignment is deviated, the constructions and structures belonging to them could be saved. The detailed objection statement filed by the National Highway Authority clearly indicates especially at paragraph 55 that in the month of February 2016 at the request of the petitioners and other public, representatives visited the site once again and personally inspected the same whether there is possibility of change in the alignment . After a detailed study by the expert, the grievance of the petitioners was considered and it was found that no change in the alignment of the Highway is possible. It is also brought on record that NH 50 is the only direct link for all sough bound traffic from the State of Gujarat, Madhya Pradesh and other northern states to reach to Kolhapur, Belgaum, Dharwad and other southern states. NH-50 connects two cities i.e. Nashik and Pune. Therefore, all the traffic from northern states are connected to this NH-50 at Nashik which passes through Pune towards southern states. Similarly, it is vice-versa from southern states to northern states which passes through NH-50 to reach Nashik city and other northern states therefore the traffic of NH-50 especially between the stretch of

Pune and Nashik seems to be heavy and it reaches Thane / Mumbai and the entire NH-50 is about 208 kms originating at Pune and terminating at Nashik. It also connects to other National Highways at both the ends. In that view of the matter, there is bound to be heavy traffic on this NH-50 between Nashik and Pune which includes the Village Shinde in question, therefore, the widening and developing 2 lane to 4 lane is for the benefit of the larger public. Apart from the vehicular traffic on this stretch of road so far as commercial and industrial activity in the light of Nashik being a temple city and the same road leads to famous Shirdi, there bound to be other traffic as well so far as pilgrimage. In that view of the matter for larger group of persons are going to be benefited with the alignment proposed definitely the interest of the petitioners must yield to the larger interest.

7] In the light of above reasoning and discussion, we are of the opinion, that no relief as prayed for can be granted in favour of the petitioners. Accordingly, the petition is dismissed.

8] Since some commercial activity and residential structures are found on the land in question near Shinde Village, we direct the respondent authorities to give time to the petitioners till 31 January 2017 to vacate and hand over vacant possession of the lands.

CHIEF JUSTICE

(M. S. SONAK, J.)