

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8577 OF 2015

Balasaheb @ Namdeo Dattatraya Pate
and Others.

..Petitioners.

Versus

Special Land Acquisition Officer
No.13 & Others.

..Respondents.

WITH

WRIT PETITION NO. 1344 OF 2016

Nivrutti Baburao Gadge
and Others.

..Petitioners.

Versus

The Union of India & Others.

..Respondents.

WITH

WRIT PETITION NO. 11440 OF 2015

Sachin Ramdas Bankhele and Others.

..Petitioners.

Versus

Special Land Acquisition Officer
No. 13 & Others.

..Respondents.

*Mr. Uday P. Warunjikar for the Petitioner in WP No. 8577 of 2015.
Mr. V. P. Sawant ib/ Mr. Prabhakar Jadhav for the Petitioner in
WP. No.1344 of 2015.*

Mr. U. B. Nighot for the Petitioner in W.P. In 11440 of 2015.

Mr. P. P. Kakde, AGP for the State.

*Mr. Kevic Setalwad, Senior Advocate with Mr. vinay Dave, Rakesh
G. Singh, Mr. Kunal Chheda i/b M. V. Kini & Co., for Respondent –
NHAII.*

Coram : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.

Date on which Order Reserved : **June 28, 2016.**

Date on which Order Pronounced : **July 22, 2016.**

Oral Order :

1. Heard the learned Counsel appearing for the respective parties.
2. The Petitioners in Writ Petition No.8577 of 2015 are challenging acquisition of the land for construction of Narayangaon bypass on National Highway No.50 [for short "NH-50"]. The Petitioners in Writ Petition No.11440 of 2015 are challenging acquisition of the land for construction of Manchar bypass on NH-50. The Petitioners in Writ Petition No.1344 of 2016 are challenging acquisition of the land for construction of Alephata bypass on NH-50.
3. Since the issue involved in all these writ petitions is one and the same, these petitions were clubbed and heard together and are being disposed of by this common order.
4. Acquisition of the land for construction of bypasses in the said villages is challenged on various grounds. The first objection is that there is no need to construct bypasses in these villages as the existing highway passing through said villages can be widened. Secondly, the lands proposed to be acquired for the construction of bypasses are well-irrigated lands and if the said

lands are acquired, many farmers would be rendered landless and would lose livelihood. It is also contention of the Petitioners that there are various structures standing on the lands proposed to be acquired, namely, houses, pipelines, wells, bore-wells, etc. etc. Thirdly, it is the contention of the Petitioners that the construction of bypasses at the said villages is actuated by *mala fides* on the part of Respondents. The fourth ground of challenge is that no hearing regarding the alignment of road in question was given to the concerned. Fifthly, it is contended on behalf of the Petitioners that compensation is not fixed in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [for short "*the Act of 2013*"].

5. The petitions were vehemently opposed by the National Highways Authority of India [for short "*the NHAI*"]. It is submitted that final alignment of the road in question is worked out based upon the detailed study report prepared by the experts in the field. The detailed project report was called from the experts and the same was approved after studying the same from various angles and after carrying out cross-checks with regard to

the technical aspects. The Central Government thereafter having satisfied, issued the notification under section 3A of the National Highways Act, 1956 [for short "*the Act of 1956*"] declaring the intention to acquire the land in question. The farmers / persons affected by the widening of NH-50 / construction of bypasses filed objections to the acquisition of their lands and those objections were heard by the Competent Authority under section 3C of the Act of 1956. The objections came to be disallowed and the Central Government thereafter issued declaration under section 3D of the Act of 1956 notifying that the lands question should be acquired for the extension of NH-50 / construction of bypasses in question. It is also submitted that the compensation for the acquired land is determined in accordance with the provisions of the Act of 2013 read with Section 3G of the Act of 1956 and the compensation is deposited with the Competent Authority. In short, the Respondent-NHAI claims that procedure contemplated under the Act of 1956 is duly complied with and therefore road widening/construction of bypasses cannot be questioned. Regarding the objection that farmers will be rendered landless and irrigated lands are being acquired, it is

submitted that concerned agriculturists have been duly compensated by way of payment of compensation amount. It is submitted that widening of the existing stretch of NH-50 in villages Alephata, Manchar and Narayangaon is not technically feasible. So far as the allegations regarding *mala fide* is concerned, the same are strenuously denied. In this regard, it was submitted that there are very vague allegations made in the petition and that too without there being any particulars thereof. It is lastly submitted that 70% of the work of road widening of NH-50 is already over and in order to complete the said project, the Petitioners are required to hand over possession of the land in question for the public purpose of the national importance.

6. Having considered rival submissions and having gone through the petitions along with the annexures, we find no merit in the petitions.

7. Undisputedly, the projects involving construction of new highways and widening and development of the existing highways are vital for the development of infrastructure in the

country. The National Highways Act, 1956 was enacted by Parliament to provide for the declaration of certain highways as national highways and for matters connected therewith. Sections 3A to 3I of the 1956 Act contains a comprehensive scheme for the acquisition of land for the building, maintenance, management or operation of a national highway or part thereof and determination of the amount payable as compensation and other related issues.

8. Some time in the year 2010, the Government of India identified the stretch of NH-50 from Pune to Sinnar between 42/000 kms. to 177/000 kms. of the length of 137.9 kms for widening of existing two-lane carriageway to four/six lane divided carriageway configuration under NHDP Phase-IVB Group-A on design, build, finance, operate and transfer pattern on toll basis. In September 2010, a consultancy compancy M/s Consulting Engineers Group Ltd, Jaipur was awarded contract to prepare feasibility study and detailed project report for 4/6 laning from Khed to Sinner stretch of NH-50. The said consultancy company after physically verifying the entire stretch of road from Pune to Nashik section and after studying the ecology and

landscape had submitted their detailed project report in the month of April 2012. The said project report was then studied by the Expert Project Committee of NHAI, which committee cross-checked the technical aspects and has approved the said report. Thereafter proposals were invited for widening of the said road on Build, Operate and Transfer basis and after following necessary procedure, on 28th March 2013 the Letter of Acceptance was issued to Concessionaire-M/s. IL&FS Transportation Network Limited. Accordingly, a concession agreement was executed between the concessionaire and NHAI on 8th May 2013. The Concessionaire has thereafter started the work on the site and about 70% of the work has been completed so far. The work is in progress in full swing and as per the schedule, the date of completion of the project is 9th August 2016.

9. As far as acquisition of the land affected by the widening / construction of bypasses is concerned, NHAI has also followed the procedure contemplated under the Act of 1956, namely, the issuance of notification under section 3A of the said Act, the hearing of objections under section 3C of the said Act and the declaration of acquisition under section 3D of the said

Act and the determination of compensation amount under section 3G of the said Act.

10. In paragraph 4 above, we have already enumerated the nature of objections taken by the Petitioners as well as by all concerned. The challenge in the present writ petitions is on the similar types of objections. So far as the objection regarding the widening of existing highway is concerned, the same was disallowed and all concerned were informed that the existing highway cannot be widened due to technical hindrances as the geometry of existing road is not as per four lane standards coupled with problem of traffic management during construction.

11. The objection regarding the road alignment in the form of construction of bypasses also came to be overruled by pointing out that alignment of the road and road plans were studied by the experts and upon acceptance of the said road alignment, the report for acquisition of the land for road widening was submitted to the Government of India. The objections regarding the widening of the existing highway at the said villages by constructing bypasses, in our view, cannot be questioned in exercise of jurisdiction of this Court under Article

226 of the Constitution of India. As has been held by the Apex Court in Union of India vs. Kushal Shetty [(2011) 12 SCC 69] alignment once approved by the experts cannot be altered. It would be apt to reproduce the relevant observations of the Apex Court in paragraph 28 of the said judgment, which read thus :

“Here, it will be apposite to mention that NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of National Highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and maintenance of National Highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The Courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited. The Court can nullify the acquisition of land and, in the rarest of rare cases, the particular project, if it is found to be ex-facie contrary to the mandate of law or tainted due to mala fides. In the case in hand, neither has any violation of mandate of the 1956 Act been established nor has the charge of malice in fact been proved. Therefore, the order under challenge cannot be sustained”

12. So far as the objection that the fertile land is being acquired and therefore the farmers will be rendered landless is

concerned, the Petitioners/landowners are entitled for compensation. Compensation has already been determined in accordance with the provisions of the Act of 2013. If the Petitioners have any grievance with regard to the determination of compensation, they can always make an application to the Arbitrator for enhancement of compensation as provided under sub-section (5) of section 3G of the Act of 1956. In any case, the project of the national importance like the present one cannot be stalled on the basis of objections stated hereinabove.

13. This takes us to consider the objection regarding *mala fide* in acquisition of the land for construction of bypasses. The basis of these objections is that existing highway passing through the said villages can be widened and the same is not done in order to favour the encroachers on the existing road. Apart from the fact that the alignment of the road cannot be interfered with in exercise of jurisdiction under Article 226 of the Constitution of India, we have also gone through the petition to verify the nature of allegations with regard to *mala fide*. After going through the petition, we find that only vague allegations regarding *mala fide* have been made and that too without any

basis. The Petitioners have neither given particulars about the persons sought to be favoured nor placed any material to *prima facie* prove that the execution of the project of widening of NH-50 is actuated by *mala fides* and, in the absence of proper pleadings and material this Court is not expected to make a roving enquiry to fish out some material and draw a dubious conclusion that the decisions of the NAI are tainted with *mala fides*.

14. Taking totality of the facts and circumstances of the case into consideration, we find that petitions are devoid of any substance and the same deserve to be dismissed. In the result, petitions are dismissed.

15. Insofar as the prayer of the Petitioners in Writ Petition No.8577 of 2015 seeking direction for removal of encroachment on the existing NH-50 at Narayangaon is concerned, it can be seen that already the NAI has initiated action in that regard. We observe that necessary action in accordance with law shall be taken by all concerned against the encroachment on the existing NH-50.

16. Interim reliefs granted earlier in these writ petitions stand vacated.

17. In view of the disposal of main writ petitions, civil applications taken out in these writ petitions do not survive and the same are accordingly disposed of.

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]

At this stage, learned Counsel appearing for the Petitioners seek continuation of the stay. Since the project is of national importance and 70% of the work is already over. We are not inclined to extend the interim relief. Request is rejected.

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]