

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

WRIT PETITION NO. 12404 OF 2015

Group of Grampanchayat Ainghar .. Petitioner

versus

The Union of India & Ors. .. Respondents

Ms Eventa Gonsalves for Petitioner.

Mr. P. P. Kakade – AGP for State – Respondent Nos. 3 and 5.

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

DATE : 5 DECEMBER 2016

P.C.:

1] The Gram Panchayat of Ainghar is before us in the guise of Group of Grampanchayat alleged to be espousing the cause of six villages viz., Sukeli, Ainghar, Medavali, Tamsoli, Kansai and Balsai in the district of Raigad. Apparently, two-lane of existing national highway 17 at Panvel-Indapur section admeasuring 85 kms. was proposed to be widened into 4 x 6 lane, way back in the year 2009. The same was identified and the excavation work commenced for widening of the road in the year 2010. According to them, there is a hospital and school at village Sukeli within the jurisdiction of the petitioner and by virtue of this proposed widening of the above said National Highway, access to the school is closed.

2] The present petition is filed in the year 2014. If the excavation work and widening work had obstructed access to the hospital and school, we wonder why people of that village who are taking benefit of

the school are not before us. Apart from that, we notice from page 34 onwards, several industries situate on the said Highway were addressing representations to Project Director, National Highway Authority of India way back in 2013 indicating how the level of road adjoining the respective industries, school and hospital is going to cause difficulties and thereby access to the school and hospital is going to be obstructed. They are Maharashtra Seamless Limited, Vibhor Steel Tubes (P) Ltd., Raigarh Plastics Pvt. Ltd., Maha Fittings Private Limited, B. C. Jindal Charitable Trust Hospital, Jindal Mount Litera Zee School, etc. who have addressed letters to National Highway Authority of India. As a matter of fact, National Highway Authority of India had not only replied these letters addressed to them but a detailed affidavit in support of their case is brought on record from page 56 onwards. They have categorically opposed granting of any interim relief in the matter. As a matter of fact, no interim order of any nature was granted by this Court from 2014 onwards.

3] According to them, by implementing the provisions of Section 13 of the National Highways Authority of India Act (for short "NHA") compulsory acquisition of land for the Authority was permissible, which Act also provides for several venues to whom the objections have to be addressed especially with regard to right of access to the National Highway, since it is governed by the Control of National Highways (Land & Traffic) Act of 2002, Chapter V, Sections 28 and 29 of the said Act. Paragraph 4 clearly indicates how in a prescribed form one has to approach the Highway Administration seeking permission to have access to the National Highway. It is clearly mentioned in the affidavit that acceleration lane, deceleration lane, service road, have to be in accordance with the procedure contemplated under the Act. There cannot be access to the National Highway directly since the

movement of the vehicles at a high speed on the National Highway may pose danger to the people who intend to cross the National Highway. Therefore, after maintaining minimum distance between merging points of a service road including acceleration and deceleration lanes respectively at 100 metres and 70 metres depending upon the length of the plot, the procedure has to be followed. It is further stated that Panvel to Indapur Road was identified to be widened by developing the same into 4/6 lane facility on the design, build, finance, operate and transfer pattern on toll basis. The concession agreement was also signed on 21st January 2011. The appointed date for commencement of the work was way back on 19th December 2011. Competent Authority for acquiring land and also disbursement of compensation for village Sukeli declared an Award on 7th November 2011. It is stated that the lands were duly acquired by the Competent Authority and even the compensation due thereon was deposited with the Competent Authority for disbursement. According to them, by the time the present petition was filed, notification under Section 3D was already published on 27th July 2010 much prior to this, notification under Section 3A of the NHAI and other notifications were published indicating proposal to widen the road in question as stated above. According to them, in terms of the Act applicable, publication of notification was done right from 2009 onwards and, therefore, according to them all the persons who are concerned with the land adjacent to National Highway which was proposed to be widened were aware of the proposal for widening of the National Highway.

4] We fail to understand, the individual owners of the industries or the school or the hospital have not chosen to approach the Court directly indicating the difficulties they would be facing with the proposal of widening of the road explaining how access to their school, hospital

or industry would be obstructed. Under the guise of Group of Grampanchayat, Ainghar, the Panchayat is before us which is not owner of any of the properties referred to above. But it refers to the properties of private individuals or institutions adjacent to the existing National Highway. We are surprised to see how a Panchayat is espousing cause of private parties or institutions instead the parties themselves approach the proper forum seeking redressal. In all probability, at the relevant time when they had to question the proposed acquisition they had not done so, therefore, later they seem to have come to the Panchayat. It is needless to say that if access to any of the persons is completely closed without having alternative access, the same can be addressed or redressed through proper channel and not by way of a writ petition in this manner. The Act which is applicable for the National Highway Projects clearly indicates the procedure how one should approach the Authority for access to the school, hospital, industry, etc. They have even annexed the guidelines how they have to approach the Authority which is known as guidelines/ norms for access permission to fuel stations, private properties, rest area, complexes and such other facilities along National Highways. A sketch is also annexed along with the details as to how the proposed widening of the National Highway is undertaken and they have even indicated the distance how toll plaza, railway level crossing, hilly terrain and urban stretches have to be taken into consideration while fixing minimum and maximum distance between the National Highway and those areas.

5] In that view of the matter, we are of the opinion, that if any of the parties are aggrieved, they are at liberty to approach concerned authority with proper application indicating the difficulties or the hardships faced by them, if any. We are of the opinion that the

grievance of the third parties for whom the petitioner intends to fight in this writ petition, cannot be entertained.

6] Accordingly, writ petition is disposed of.

(M. S. SONAK, J.)

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CHIEF JUSTICE