

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

WRIT PETITION NO.3592 OF 2016

1. Ashok Bapu Pathade,
Age : 43 years, Occ. Agri.,
r/o. Midsangavi, Tq. Pathardi,
Dist. Ahmednagar
 2. Bhimraj Laxman Ghongade,
Age : 70 years, Occ. Agri.,
r/o. Midsangavi, Tq. Pathardi,
Dist. Ahmednagar
- ..Petitioners

Vs.

The Union of India,
Through Secretary,
Ministry of Road Transport
and Highways,
New Delhi
and others

..Respondents

--

Mr.D.R.Jethliya, Advocate for petitioners

Mr.S.B.Deshpande, A.S.G.I. for respondent no.1

Mr.S.B.Joshi, AGP for respondent no.2

--

**CORAM : T.V. NALAWADE AND
SANGITRAO S. PATIL, JJ.
DATE : FEBRUARY 28, 2017**

ORDER :

This petition is filed for quashing and
setting aside the notification published on

17.06.2015 for acquisition of land for widening of National Highway No.222 from km.228/000 to Km.303/100. The petitioners also seek direction to respondent no.3 to give hearing to them as contemplated under Section 3-C(2) of the National Highway Act, 1956.

2. Heard both sides.

3. The petitioners filed objections on 19.08.2015 against acquisition of his land. Admittedly, show-cause notice was issued to the petitioners. By the communication dated 13.10.2015, it is informed that the objections of the petitioners were considered and on the spot, during enquiry, explanation with regard to the purpose of project and the reasons for acquisition of the land were told. In the said communication, information was also given about entitlement of the petitioners to get compensation in respect of everything which they are loosing.

4. The learned Counsel for the petitioners submits that hearing was not given to the petitioners as contemplated under the provisions of the aforesaid Act. In rebuttal of the said contention, an affidavit-in-reply is filed by respondent nos.1 and 4 and along with the affidavit, a report of the Expert dated 14.02.2015 was annexed. Even the map produced by the petitioners shows that to avoid curves, which were on the existing road, acquisition of the lands of the present petitioners is being done. This Court has carefully gone through the map. The map does not appear to be *mala fide*. It does not show that any other person will be benefited due to such change in the alignment of the existing road. The relevant portion of the Expert's report is as follows :-

"b. The Possibilities have been explored for improvement of the S-Curve at Mid Sangvi Village from km 299+400 to km 299+800. But the existing highway at the

above location do not meet the Geometric Design of the Project Highway as per Section -2 of IRC:SP:73-2007.

- . As the existing Highway at this location has S-Curve with a curve radius of 82.354 meter and other with radius of 114.445 meter. The copy of drawing showing the existing Highway with Curves is attached herewith as annexure "a".
- . Whereas the Horizontal radius should be 230 meter Desirable Minimum (Ruling)/155 meter Absolute Minimum in case of Rolling Terrian with Design Speed of 80 kmph Ruling/65 kmph Minimum respectively.
- . Secondly for Vertical Profile Improvement is also needed being under valley with difference of about 6.00–7.00 meter deep & to achieve the required gradient. The same can be seen from the Drawing of Plan & Profile as annexure "b".

- . Being S-Curve in short stretch and length of existing highway curves are 80.542 meter and other 131.434 & without any transition length, it is more prone accident.

c. In view of the above, the site warrants the Curve improvement & is must. Based on the existing alignment Highway, the proposal for curve improvement on LHS side is correct in our opinion & the same has correctly been proposed by DPR Consultant also."

5. The aforesaid report shows that possibility of change of alignment, which is proposed in the map produced by the petitioners, was considered and the Experts found that change is necessary as curves on the said road need to be removed. This Court is not expected to go into the merits of that opinion.

6. The petitioners' objections are that (i) they will be loosing their residential places, (ii)

they will become landless, and (iii) There is possibility that due to political pressure, such change of the alignment in the existing road is made.

7. The third objection is already addressed. Nothing can be done with regard to the first and second objections raised by the petitioners because, when acquisition takes place, somebody suffers and attempt is made by the legislation that such person gets compensation.

8. The learned A.S.G.I. for respondent no.1 relies on the observations made by the Division Bench of this Court, Principal Seat at Bombay, in **Writ Petition No.8703 of 2016 (Dr. Vilas Laxman Borhade and ors. Vs. National Highways Authority of India and ors.) decided on 22.12.2016**. In the said case, this Court has discussed the scope of enquiry which can be done in Writ Petition and it is observed that this Court is not expected to go

into the merits of the technical advise given to the Authority implementing such project.

9. In view of the above, this Court holds that it is not possible to interfere with the impugned notification.

10. In the result, the Writ Petition stands dismissed.

[SANGITRAO S. PATIL, J.]

[T.V. NALAWADE, J.]

kbp