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

WRIT PETITION NO. 5388 OF 2017

**KUNDLIK RAMBHAU WANKHARE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

**Advocate for Petitioners : Shinde Chandrakant K.
AGP for Respondent/State: Mr. A.R. Kale**

**CORAM : S.C.DHARMADHIKARI &
MANGESH S. PATIL,JJ.**

DATE : 28/06/2017

PER COURT :-

1] By this petition under Article 226 of the Constitution of India the petitioners are projecting the claim, which in our opinion, is highly questionable and doubtful. In writ jurisdiction we are called upon to decide the issue of right, title and interest in the immovable property. That issue is squarely raised from the pleadings in the petition itself but the relief sought by the petitioner vide prayer clauses B and C is to say the least misleading. Prayer clauses B and C read as under.

“(B) By issue of writ of mandamus or any other appropriate writ, the respondents No. 2 to 4 may kindly be directed to initiate land acquisition proceedings in respect of the lands bearing Gut Nos. 301,307,311,368,10,11,40,48,59,66 and 85 of village Adgaon (Kh.), Tq. and Dist. Aurangabad, belonging to the petitioners and pass award under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act,2013 and pay the compensation, within stipulated period.

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(C) By issue of writ of mandamus or any other appropriate writ, the respondents may kindly be directed to pay rental compensation to the petitioners in accordance with the Government Policy."

2] The petitioners claim to be agriculturists and residing in Adgaon (Kh) Tq. and Dist. Aurangabad. The respondents are the State of Maharashtra, through the Department of Public Works and the Collector, District Aurangabad.

Paras 2 and 3 of the writ petition read as under.

"2] The petitioners state that, the petitioners were lawful owners of the agriculture lands situated at village Adgaon (Kh) Tq. & Dist. Aurangabad. The petitioners state that, the agriculture lands bearing Gat Nos. 301,307,311,368,10,11,40,48,59,66 and 85 of village Adgaon (Kh) are owned and possessed by the petitioners. The petitioners are the absolute owners of these lands and there are entries in the revenue record about the ownership and possession of the petitioners. It is pertinent to note that, a new road is constructed sometimes in the year 1969-70 from village Pimpri (Raja) to Kaudgaon during scarcity, without initiating the land acquisition proceedings which has divided the above said lands into two parts, however, neither revenue record of the concerned lands has been effected in respect of the said road nor the area which has been taken out from these lands for the purposes of construction of the said road, is reduced from the total holding of the concerned land owners. The revenue record of village Adgaon (Kh) has not undergone any change after the construction of the said road in the year, 1969-70 and as could be seen from the 7/12 extracts, no entry of whatsoever has been made in the other rights column of the 7/12 extracts. The true copies of 7/12 extracts of the lands referred above are

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enclosed herewith and marked as Exhibit-'A' collectively.

3] The petitioners state that, there is an old Pimpri (Raja) to Kaudgaon road which is also as on today existing. The new road constructed in the year 1969-70 runs parallel to some extent to the old road. It is not out of place to mention that, the old road proceeding from village Pimpri to village Adgaon (Kh) is a cart way passing through the land Gut Nos. 301,307 and 311 from their southern side until it reaches to village Adgaon (Kh). This old road is passing through deep nalas situated in these three lands, as a result, in rainy, the villagers were facing serious hardship and inconvenience. Therefore, the respondents instead of making improvement in the said cart-way, such as widening, layering and making it as a tar road, decided to provide a substitute road from village Pimpri to village Adgaon and to proceed it further to village Kaudgaon, it is how a new road came to be constructed and the said work was undertaken during scarcity period as stated hereinabove."

3] Lest we may be held guilty of not recording the submissions of the petitioners' counsel correctly, we set them out seriatim. The petitioners counsel relying upon the pleadings in the petition concedes that the petitioners lands have been taken over for laying the aforesaid Pimpri (Raja) to Kaudgaon road. The petitioners counsel submits that the objection of the petitioners is to the expansion of the existing road as that would entail taking over of further portions of the petitioners lands. It is their case that these lands or portions thereof were never notified for acquisition. The width of the road is not more than 30 ft. The road has divided the lands into two pieces. The existing/old road is located at the extreme southern boundary of the land Gut Nos. 301,307 and 311 and there is a small strip of land falling between these two roads and which is rendered uncultivable. The petitioners have suffered a loss to a great

extent. They are already out of pocket. Neither the portion falling in the road nor small piece of the land falling between the two roads which is not capable of cultivation has been acquired or the petitioners compensated. Therefore, it is this part of the claim which the counsel would submit can be agitated in writ jurisdiction and we should call upon the State to furnish an explanation on affidavit.

4] We are unable to agree and for more than one reason. Firstly, relying upon the revenue entries and which have been prepared and obtained in 2017 the petitioners cannot raise a claim and which is exfacie disputed by their own pleadings. This claim is not an admitted one. There is not a single document by which either of the respondents have admitted the position as set out in paragraphs 2 to 5 of the petition. Barring the revenue entries, there are thus no records. On the own showing of the petitioners, they have lost right, title and interest in the lands or substantial portion thereof way back in 1969-70. On their own showing the revenue records of these lands, when they were taken over are not available. The lands are not demarcated or separated on the extracts when they were taken over.

5] Their silence and for decades together therefore can not be brushed aside and by relying on the judgment of the Hon'ble Supreme Court cited before us. In the cited case **(2013) 1 SCC 353 (Tukaram Kana Joshi through Power of Attorney holder & Ors. Vs. Maharashtra Industrial Development Corporation and others)**, the facts were glaring. The appellant's before the Hon'ble Supreme Court challenged the judgment of this Court rejecting their claim for compensation. The claim was laid on the footing that the lands were taken over by the authorities without resorting to any procedure prescribed by law. The facts have been noted in

paragraphs 2 and 3. Unlike the present petitioners against them there were indeed proceedings initiated under the Land Acquisition Act, 1894. The proceedings were not taken to their logical end and lapsed. Still the petitioners before the Hon'ble Supreme Court handed over their lands and physical possession thereof was taken over by the State authorities. Lateron these lands were transferred to the Maharashtra Industrial Corporation in the year 1964. All this was done without paying compensation and therefore the authorities realizing that injustice has been done, took recourse to the Land Acquisition Act, 1894. The notification under Section 4 of that Act dated 14/05/1981 was issued but post a declaration under Section 6 of the Act, that process was also not taken to its logical conclusion. Thus no lawful efforts were made to redress the grievance of the petitioners/appellants before the Hon'ble Supreme Court. They were also deprived of the beneficial schemes of the MIDC or the CIDCO. All these were undisputed and admitted facts. It is in that back drop that while rejecting the argument of the State on delay and latches, the Hon'ble Supreme Court reminded them of their Constitutional obligation. However the Hon'ble Supreme Court has clarified in para 10 itself that the matter would have been different had the State pleaded in that case that the appellants have lost their right, title and interest for said land. It conceded that the appellants/ petitioners still had right, title and interest in the lands.

6] Before us the case is not on par at all. The petitioners representations are eloquent enough though they are in Marathi what we have noticed from a reading thereof is that the petitioners before us woke up only after the road was sought to be widened. The claim for compensation was placed on 27/03/2017 but by admitting that the road was already constructed in 1969-70. The objection was only to its widening. It is in these circumstances, in the garb of seeking

compensation for the road widening, taking over of the lands in 1969-70 was the issue raised and that the petitioners sought to receive a old, stale and dead claim. It is in such light that even further representation to the Executive Engineer, copy of which is at page 41 would proceed. We do not see any reason for the State to take cognizance and note of such representation for no right of the petitioners is in issue. They have already been deprived of the right, title and interest in the lands way back in 1969-70. Thereafter the road was laid and constructed. That because of increasing traffic and population so also the rising number of vehicles, the road had to be widened does not mean that the State has to compensate for its acts and which the petitioners claim as illegal. The State has not even belatedly admitted much less in writing that the Petitioners are still the owners of these lands. The Revenue entries are not the evidence of title. The Petitioners would have to first establish, by appropriate proceedings before appropriate forum, and prove their right, title and interest in these lands.

7] In these circumstances, that we do not think that any writ or command of this Court can go to the authorities. There should be a pre-existing legal right which can be enforced by a writ of mandamus. By a writ or process like this, no rights can be allowed to be created. It is in these circumstances that we are not satisfied with the arguments of the petitioners counsel nor the pleadings. The Writ Petition is therefore misconceived and dismissed. No costs.

(MANGESH S. PATIL,J.)

(S.C.DHARMADHIKARI,J.)

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