

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

21 WRIT PETITION NO. 7413 OF 2016
WITH CA/9990/2017 IN WP/7413/2016

TULSHIRAM SIDRAM JADHAV
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Thigale Girish K. (Naik)
AGP for Respondents: Mr. P.S. Patil
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**CORAM : S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.**
DATE : 31.07.2017

P.C. :-

. The petitioner who is aged 62 years, says he is aggrieved by the inaction on the part of the respondents, in not completing the acquisition proceeding in respect of survey no. 98 to the extent of 76 R. The petitioner is a resident of Shukrawar Peth, Beed. He claims that his land was taken over for Beed-Mahalas-Jawala-Pimpalner Road, Beed, District Beed. However, there has been no initiation of acquisition proceedings by respondent no.4 and the sanctioning authority-respondent no.3. The result is that the petitioner is suffering, the petitioner is also suffering because adjacent land owners have been compensated for taking over of their lands. The petitioner is singled out for such a treatment. Though, the land is in possession of the

respondents and, particularly, the contesting respondents they have deliberately allowed the old law to lapse and even under the new law, namely, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (Act 30 of 2013) they have failed to take the necessary steps.

2. On such a petition, an affidavit in reply has been filed. It is clearly stated in this affidavit that the petitioner claims two reliefs and which are inconsistent with each other. Survey no. 98 to the extent of 76 R is claimed by the petitioner as belonging to him. The petitioner claims a direction to initiate and complete acquisition proceedings. Alternatively, it is prayed that the acquisition proceedings have lapsed in pursuance of Section 24 of the Act 30 of 2013. The petitioner's case is denied for the simple reason that the road over which the land of the petitioner is allegedly acquired was in possession of the Zilla Parishad up to the year 1996. It is that road which is now made over to the Public Works Department for upkeep and maintenance and that is by a Government Resolution dated 18.03.1996. The office of the Executive Engineer, Public Works Division, Beed does not have any record available and, particularly, whether the land was taken over for the alleged construction of road or not, whether the compensation has been paid to

the concerned agriculturist.

3. The petitioner relies upon such a statement in the affidavit in reply and particularly the further statement that the road has been with the Zilla Parishad and up to 18.03.1996.

4. In order to test the correctness of this and, though, the petitioner did not file any affidavit in rejoinder till the last day, we called for the original files of the Public Works Department and placed the matter today.

5. Today, the petitioner's advocate tenders an affidavit in rejoinder. He clearly says that the stand of the State Government is contrary to record, there was no road and if the road was existing from 1972, then, there was no question of it being laid and handed over in the year 1996. Then, the argument is that the petitioner had relied upon the execution proceedings for the adjacent lands and it is he, who has been singled out for a discriminatory treatment.

6. We have perused the original files of the Public Works Department in the presence of the Advocates and with the assistance of the learned A.G.P. It is common ground that the petitioner has not stated in the petition anything about the existence of the road. He relies

upon Annexure-'A' which is a letter dated 07.11.2009. He relies upon the contents of the same to submit that there was a road from Beed to Antharwan Pimpri-Nagapur-Mahalas and the petitioner's land has been acquired for the same. The petitioner in this letter very clearly says that his land has been acquired. The petition proceeds on the footing that the possession of the land is taken over but no acquisition proceedings have been initiated. Then, he says that for the same road, the lands of several persons have been acquired and an award has also been made. Therefore, the petitioner claimed compensation.

7. Then, what he relies upon is a communication from the Executive Engineer, Public Works Department, Nagar Road, Beed and says that the proposal for acquisition of this land/petitioner's land was forwarded to the Collector, District Beed. Then, on 20.11.2010, the Collector's office addresses a letter to the Executive Engineer and says that the proposal forwarded is defective. There is no administrative approval or the administrative approval order accompanying the same. There is no budgetary provision or sanction and certificate to that effect. Then, there are no consent letters of those holders of the land. There is no measurement certificate either.

8. It is in these circumstances that, the compliance should be

made only then the steps can be taken. Then, what we have on record, is according to the petitioner a letter of 06.04.2013 once again addressed by the petitioner himself to the Executive Engineer, Beed. The petitioner is aware that the Collector's office has not accepted any proposal from this Executive Engineer allegedly seeking to acquire the petitioner's land.

9. The petitioner then relies upon certain orders passed by this Court. According to the Shri Thigle, these orders were passed in cases identical to the petitioner.

10. Then, Mr. Thigle relies upon writ petition no. 7203 of 2014 filed by this very petitioner and claiming identical reliefs. A copy of this petition is at page 30 of the paper book and with identical averments and prayer.

11. All that this Court has directed, is that in the event the petitioner, pursuant to its permission, tenders a representation, then, they shall take an appropriate decision in accordance with law as per the assurance given in the affidavit in reply. After this order of 04.02.2016, the petitioner who says that there was a material in the affidavit in reply filed in the earlier petition based on which this direction was issued. Even copy of that affidavit in reply which is annexed to the paper book is

perused by us. It contains more or less identical statements. Then, we have a copy of the petitioner's representation and which relies on several orders of the other cases and the documents in relation to the acquisition of those lands. The petitioner relies upon the award, copy of which is at page 59 of the paper book. The petitioner then relies on the annexures to this award. He also relies upon the order passed on 13.06.2016 and the order of 03.06.2016 of the Collector and in which it is very clearly stated that the subject land was taken over way back in the year 1972 and from 1972 to 1996, the roads have been laid and constructed and they were handed over to the Zilla Parishad, Beed for repairs and maintenance. The Collector in his order at page 80 and 81 says that when all this was going on and the land was taken over, the petitioner never complained.

12. We have found that there has been no inconsistency in the stand of the Government. It is also supported by the affidavit throughout and the original record. It is, therefore, apparent that the road came to the Public Works Department with effect from 18.03.1996. It was a constructed road and which was handed over thereafter for repairs and maintenance. Earlier it was constructed and was being repaired and maintained by Zilla Parishad, Beed. To our mind, therefore,

the petitioner cannot complain that his land has been taken over contrary to law. There has been no deprivation of the right, title and interest in the immovable property, otherwise, then, by law. Once the petitioner has no data and has rather suppressed the fact that his land is in possession of the Government from 1972 onwards, road was always laid, made over to the Zilla Parishad for repair and maintenance till 1996 and, thereafter, with the Government/Public Works Department, that we are of the opinion that this writ petitioner does not deserve any relief.

13. We do not think any false statement has been made on oath and to single out the petitioner. The petitioner cannot rely upon other acquisition and to argue that his land should have been, therefore, notified for acquisition though taken over.

14. It is the petitioner, who has to be blamed and he must blame himself. Once he sleeps over the rights not only from 1972 to 1996 but from 1996 and thereafter till 2009, we do not think that the petitioner should be assisted. It would then encourage parties like the petitioner to come to Court seek some relief and in the garb of a representation being decided, obtain huge sums as compensation. That would be contrary to law. We cannot direct initiation of acquisition proceedings and as desired by the petitioner now.

15. The writ petition is devoid of merits and is dismissed.
16. Civil application also stands disposed of.

[MANGESH S. PATIL, J.]

[S.C. DHARMADHIKARI, J.]

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