

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**WRIT PETITION NO. 7881 OF 2016**

ALKA W/O RAJIV GULHANE  
VERSUS  
THE STATE OF MAHARASHTRA AND OTHERS

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Mr. G.K. Thigle, Advocate for the petitioner  
Mr. D.R. Kale, A.G.P. for the respondent/State  
Mr. Murar V. Deshpande, Advocate for respondent no.7  
Mr. A.G. Talhar, Advocate for respondent no.8

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**CORAM : S.C. DHARMADHIKARI &  
MANGESH S. PATIL, JJ.  
DATE : 01-08-2017**

ORAL ORDER :

1. By this Petition under Article 226 of the Constitution of India, the petitioner says that her property bearing survey no. 56 CTS no. 3724, admeasuring 4000 square meter situated at Vajirabad, Nanded, has been taken over for construction of a sewerage treatment plant without following due process of law.

2. The petitioner has impleaded all the Authorities, which are stated to have acquired the land or taken possession of the same in the garb of such acquisition. Petitioner traces her ownership to the

property survey no. 56-B admeasuring 80 R that was purchased on 24/04/1989. It is claimed that the land admeasuring 40 R with specific boundaries is owned by the petitioner and the land admeasuring 20 R is owned by Jayshri Deshmukh whereas 20 R of land owned by Hariprasad Toshniwal (vendor of the petitioner). The petitioner relies upon revenue record and the copies of the registered sale deeds.

3. The property was purchased in 1989. In 2010, the petitioner noticed that without following any due process of law, the Corporation has started some activity in her property. She approached the Commissioner, Municipal Corporation and requested to take appropriate acquisition proceedings. Beyond writing letters dated 23/03/2010, 16/04/2010, 28/04/2010, 24/12/2010 and, thereafter, on 25/11/2011, the petitioner did nothing.

4. It is stated that the land was measured though erroneously and approximately 14 R land out of 40 R has been utilized by respondent no.7 out of 46 R excess area belonging to other survey numbers as well. The petitioner seriously disputes the measurement made by the Taluka Inspector of Land Records. The petitioner insisted

that the possession of the land is with the Authorities and they have not acquired it by a process known to law. The petitioner then alleges that she is entitled to compensation for wrongful dispossession. The petitioner states that compensation claim was pursued for more than six years.

5. It is on such pleadings, that the petitioner desires that this Court, in its limited jurisdiction, should grant relief in terms of prayer clause (B).

6. An affidavit-in-reply has been filed by the Nanded Waghala City Municipal Corporation. In the said affidavit, Mr. Kiran Tukaram Shastri, Incharge Executive Engineer maintained that no encroachment is made by the Municipal Corporation over the land of the petitioner. The petitioner is taking advantage of the entry in City survey no. 3724 (entry no. 3724). After the petitioner has purchased the land from Jeevanrao Narayan Halde Patil, then, as far as that land is concerned, in revenue record, survey no. is 3725. The petitioner, in collusion with the City Survey Authorities got her name entered in Survey no. 3724. If the old documents are perused, it would reveal that land of the petitioner was in survey no. 56/B but on the basis of

the wrong entry no. 3724, incorrect 7/12 extract was prepared and land of the petitioner is shown in Gut no. 56/1. The petitioner has suppressed this from this Court. There are several documents and collectively compiled and annexed as “Exhibit R-7B” which are relied upon. The Corporation maintains that the land on which the treatment plant erected is altogether different and it has nothing to do with the land of the petitioner. The petitioner pertinently does not aver as to when this 14R land is taken by the Municipal Corporation.

7. Despite such emphatic statements in the affidavit-in-reply, after some arguments on the last occasion, it was stated by the Advocate for the respondent no.7 – Corporation that the petitioner's land has not been acquired. The construction also has not been carried on his land. This statement was made orally.

8. This Court, therefore, insisted on a short affidavit being filed

9. In the meanwhile, the petitioner files a rejoinder and claims that the petitioner is deprived of her land as also the compensation. The petitioner has maintained her stand in the memo

of the Petition and denied whatever is contrary and inconsistent therewith. The petitioner relies upon a letter dated 17/02/2016, in which she refers to the meeting conducted on 01/06/2015 about acceptance of liability by the Corporation. Now, a novel defence is taken, according to the petitioner.

10. After perusing the Writ Petition and all the Annexures thereto, we are of the firm opinion that the petitioner's claim is not an admitted and accepted one. It is highly disputed. The petitioner wants, in our limited jurisdiction, to adjudicate whether her property as claimed by her and in terms of his sale deed with the two vendors, has been erroneously and wrongfully encroached by the Nanded Waghala City Municipal Corporation. This claim has been denied expressly and we have referred to the denials.

11. If the petitioner is deprived of her right, title and interest in the property wrongfully and contrary to law, then, the petitioner must approach a competent civil Court and assert her right, title and interest in the property. The petitioner must then pray for a declaration in that regard. The petitioner must obtain a decree of possession if at all the Corporation has wrongfully taken over the land

without compensating. Alternatively, the petitioner can claim compensation for such wrongful deprivation of the right, title and interest in the property. Once it is the petitioner's claim that the land has not been acquired under any Land Acquisition law but the petitioner's property has been encroached upon by the Municipal Corporation, then, we do not think that the doors of the Civil Court are completely shut to the petitioner.

12. Once there is a serious doubt not only about the bonafides of the petitioner's claim but her reliance on some assertion of respondent no.7, we would be better advised to dispose of this Writ Petition, leaving open to the petitioner, to take recourse to such remedies as are provided by law. The Writ Petition is disposed of with the aforesaid observations.

**[MANGESH S. PATIL]**  
**JUDGE**

**[S.C. DHARMADHIKARI]**  
**JUDGE**

arp/