

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

WRIT PETITION NO. 7235 OF 2004

Mohamad Lulfulla s/o Mohd. Ali
Age : 70 years, occu.: business
R/o Ganimpura, Nanded,
Taluka and District Nanded.

Petitioner.

Versus

- 1 The State of Maharashtra
 Through The Secretary,
 Public Works Department,
 Mantralaya, Mumbai.
- 2 The Public Works Department,
 Through Executive Engineer,
 Nanded.
- 3 Nanded-Waghala Municipal Corporation
 Through the Commissioner,
 District Nanded.
- 4 The Collector, Nanded
 District Nanded.
- 5 The Maharashtra State Road
 Development Corporation, Mumbai.
 Through the Secretary/Engineer.

Respondents.

Mr. P.V. Mandlik, Advocate for the petitioner.

Smt. V.S. Chaudhary, A.G.P. for respondent Nos.1,2,4 and 5.

Mr. M.D. Narwadkar, Advocate holding for

Mr. M.V. Deshpande, Advocate for respondent No.3.

CORAM : RAVINDRA V. GHUGE
AND
SUNIL K. KOTWAL, JJ.

Dated : 10-11-2017.

ORAL JUDGMENT (PER RAVINDRA V. GHUGE) :-

1. By this petition, the petitioner has put-forth prayer clauses 13-B (I), (II) and 13-C, which read as under :-

13-B (I) Appropriate writ/directions may be issued against the respondents prohibiting them from demolishing the construction of the petitioner and from taking the possession of the petitioner's land by interfering in the land of petitioner i.e. land CTS No. 10447 admeasuring 37464.4 sq. Mtrs. situated at Nanded without following due process of law, without making acquisition of the land, without paying compensation of the land and constructed portion as per market price to the petitioner.

(II) The respondents may be directed that, if they require the land for widening of the road, they may initiate the land acquisition proceedings, and pay the necessary compensation as per the market price to the petitioner in respect of his land and thereafter they proceed further (without prejudice to the rights of the petitioner to, challenge the same).

13-C Pending hearing and final disposal of this writ petition the respondents may be directed not to take possession of the petitioner's land from CTS No. 10447 admeasuring 37464.4 Sq. Mtrs. situated at Nanded and not to disturb his construction and possession over the above said property of the petitioner.

2. We have considered the submissions of the learned Counsel for the petitioner, the learned A.G.P. and the learned Counsel

for respondent No.3.

3. The contention of the petitioner is that the Corporation is intending to resort to a road widening activity and the said road widening is likely to deprive the petitioner of a portion of his land in C.T.S. No. 10447. It is, therefore, contended that the road widening programme would result in taking away a portion of the land of the petitioner and hence it would amount to acquiring a portion of his land without following the procedure laid down in the Land Acquisition Act, 1894.

4. The learned Counsel for the Corporation has relied on the affidavit-in-reply dated 18.02.2005. He specifically points out from paragraph No.5 that the Corporation has not resorted to any development plan and hence there is no question of acquiring the land of the petitioner. The road on which the Corporation has undertaken an activity, has been a 30 metres wide road. In paragraph No.6 of the affidavit, it is stated that the portion of the road going from Nanded City to Hingoli District near the Rana Pratap Square, is 30 metres (100 ft.) wide road. As per the Government Resolution dated 09.03.2001, buildings are not permitted to be erected in an area of 20 metres from the centre of the road or 4.5 metres from the boundaries of the road. Whoever erects a structure in violation of the said Government Resolution, can be said to have

caused encroachment and hence the Corporation is merely clearing the road of such encroachment.

5. Learned Counsel for the petitioner submits that the contentions of the Corporation have been refuted by the petitioner by filing an affidavit in re-joinder dated 08.03.2005.

6. We are informed that the petitioner has preferred a Regular Civil Suit No. 147/2004 before the learned Civil Judge, Senior Division, Nanded. The Executive Engineer of the Public Works Department-respondent No.2 herein and the Municipal Corporation as well as the Collector, Nanded who are respondent Nos.3 and 4 respectively in this Petition, have been arrayed as defendants. The suit is filed for seeking injunction against the respondents.

7. Considering the above, we find that disputed issues have been raised in this Petition in the light of the Corporation contending that there is no project undertaken by the Corporation requiring acquisition of land. Per contra, the petitioner contends that without acquiring the land, the Corporation is in fact grabbing the land of the petitioner without following the due procedure.

9. Such disputed questions cannot be gone into in the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The Civil Suit preferred by the petitioner is for

claiming a title over the suit property, and therefore, trying to establish that the Corporation is acquiring his land. The above disputed questions can be gone into in such civil litigation.

10. Considering the above, we do not find that this Petition can be entertained under Article 226 of the Constitution of India and the same is, therefore, dismissed. Rule is discharged.

11. It is made clear that the contentions raised by the litigating sides in this Petition can be gone into by the Competent Court dealing with Regular Civil Suit No. 147/2004 or in such litigation originating from the said suit.

(SUNIL K. KOTWAL)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE