

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4530 OF 2011

Shobha Subhashlal Shingavi .. Petitioner
Versus
The State of Maharashtra & ors .. Respondents

WITH

WRIT PETITION NO.4471 OF 2011

Vijay Laxman Nikam .. Petitioner
Versus
The State of Maharashtra & ors .. Respondents

WITH

WRIT PETITION NO.4472 OF 2011

Chandrasen Vithalrao Shitole
and others .. Petitioners
Versus
The State of Maharashtra & ors .. Respondents

WITH

WRIT PETITION NO.4469 OF 2011

Mukund Gangadhar Deshmukh .. Petitioner
Versus
The State of Maharashtra & ors .. Respondents

WITH

WRIT PETITION NO.4794 OF 2011

Pushpa Suresh Ubhe .. Petitioner
Versus
The State of Maharashtra & ors .. Respondents...

Mr.Uday Warunjikar, Advocate for the petitioners.
Mr.A.P. Vanarse, AGP for the State.
Mr.Deepak More, Advocate for respondent no.4.

**CORAM: DR. MANJULA CHELLUR, CJ. &
N.M. JAMDAR, J.**

DATED: 17th JULY, 2017

P.C.:-

1 These five petitions are filed challenging the acquisition proceedings contending that there are malafides in the discharge of duties by the authorities while preparing the alignment of the road in question whereby intentionally lands of some people who own 'Honda' showroom is excluded, and whereas the land of the petitioners is included in the acquisition proceedings. In other words, according to the petitioners, the alignment of the road while widening the existing road intentionally came to be changed by approving the alignment in terms of page 65 plan only to extend benefit to some influential people by taking away the land of the petitioners. Therefore, he has come to Court contending that the lands of the petitioners which were not initially intended to be acquired for the widening of the road are wrongly being in the process of acquisition, and hence, he has sought intervention of the Court which initially

came to be granted as an interim order wherein the Division Bench said petitioners need not be dispossessed from their lands till the next date of hearing. The said interim order came to be extended till date.

2 We have gone through the relevant papers which were brought to our notice during the course of arguments addressed by learned counsel for the petitioners as well as learned counsel representing the respondent – corporation as well as the State i.e. the Land Acquisition Officer. The acquisition of lands occurred on account of decision of the Corporation which is *Pimpri Chinchwad Municipal Corporation* deciding to widen the existing road known as *Dange chowk to Wakad Kala Khadak*. The total acquisition of lands for this purpose seems to be 45 metres of the land i.e. 45 metres of all through from both the sides. This is one of the important district road which is busy. The very fact that several showrooms and other industrial establishments are in existence either of the road indicate that this road is busy since commercial activity also occurs on this road.

3 It is not in dispute that Regional Town Planning Authority did reserve the area in question as a public road in its

development plan. However, at the time of widening the road, the lands of the petitioners or some of the lands were not situated within the limits of Corporation of Pimpri-Chinchwad. Therefore, they required acquisition of lands through the Revenue Department of the District so that the Corporation could widen the road which was necessary on account of activity happening on the said road.

4 By relying upon pages 90, 91 and 95, correspondence and some information secured by the petitioners under Right to Information Act, he contends that the correspondence between respondent corporation and Town Planning Authority clearly indicate that the proposed alignment of the road for the purpose of widening the above said road, the alignment indicated by the Corporation was different from the Regional Town Planning Development plan. Therefore, petitioners contend that alignment of the road was changed excluding certain lands belonging to influential and powerful people by changing the alignment so as to acquire the lands of the petitioners. This is categorically denied by the respondent corporation as well as the State contending that ultimately the plan approved at page 65 clearly indicate that equal portion of the land was acquired on either side of the existing road

while widening the road and depending upon the approval of the Regional Town Planning Authority only, the said road was widened after acquisition of the land except for the land of the petitioners since there was an interim order of stay.

5 Learned counsel for the petitioners also fairly submit apart from the road in front of the petitioners, other portions of the road is already widened, and he also fairly submits that except the material at pages 90, 91 and 95, there is no other material to indicate that there was mischief behind the scene to assist certain influential people. On understanding of the correspondence at the relevant pages which was explained to me by one of the Judges who is part of the Bench who knows Marathi says that the plan showing the alignment of the road proposed after widening submitted by the Corporation was not in consonance with the road alignment shown in the development plan of the Regional Town Planning Authority. Beyond that, the correspondence does not even refer to any particular land whether the proposed alignment by the Corporation would indicate that the land of the influential people was proposed to be excluded, and the land of the petitioners came to be included. This road which came to be widened is not a small road. Several lands were acquired on

either side of the road. It is well settled that the alignment of the road has to be the policy decision of the authority concerned since they would approve a particular alignment after taking into consideration all the relevant facts, especially the safety of the user of the road. How a road should be, a deviation should be, where a curve should be are all matters to be decided by the experts, who knows the subject how to form the road. It is well settled that Court cannot sit over the judgment of the experts who are in-charge of the subject, and in this case, it is the Town Planning Authority who is the expert and this expert has approved the road in question at page 65 of the papers. Even otherwise, the correspondence referred to or any other paper placed before us, do not indicate that in terms of earlier plan of the Regional Town Planning, the lands of the petitioners were excluded so far as road is concerned. In the absence of such material and in the absence of any information forthcoming that the plan now approved is different from the plan shown in the Regional Development Plan, we are of the opinion that one cannot appreciate the contention of the petitioners that there is intentional change in the alignment of the road while widening the road in question.

6 By way of amendment, petitioners were permitted to amend the petitions to include Section 24A of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 replacing the earlier Land Acquisition Act of 1894. On perusal of the factual situation, we notice that the award came to be passed on 18th August 2011 subsequent to the filing of the Writ Petition. We also notice that by interim order of this Court, it restrained respondents taking possession of the lands, but not other proceedings of the Land Acquisition. Reading of Section 24 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 clearly indicate that if the award is passed subsequent to coming into force of New Act i.e. 1st January 2014, then quantum of compensation has to be computed in terms of the procedure in the New Act. Sub-section (2) of Section 24 says that if the award is 5 years or older than 5 years as on 1st January 2014, if possession is not taken over, or if compensation is not paid to the owner, in either of the situations, acquisition of proceedings lapses. Apparently, award came to be passed prior to 1st January 2014. Therefore, sub-section (a) of Section 24 is not applicable. Similarly, sub-section (2) of Section 24 is also not applicable since

award is not 5 years old or older as on 1st January 2014. In that view of the matter, none of the provisions of 2013 Act are applicable to the facts of the present case. Payment of compensation and other proceedings will have to take place in accordance with the procedure applicable. If petitioners are entitled for the benefit of claiming TDR, or other benefit etc, the same also can be extended provided they are entitled for such benefits in terms of the procedure contemplated.

7 With these observations, petitions are disposed of.

8 Learned counsel for the petitioners seek for stay of the order. Stay is rejected.

(N.M. JAMDAR, J)

(CHIEF JUSTICE)