

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

WRIT PETITION NO. 801 OF 2018

**M/S A B WAGH FIRM THROUGH ITS PARTNERS ARJUN
BHATU WAGH AND ANOTHER
VERSUS
KISHOR MOHANLAL BAFNA AND OTHERS**

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Advocate for the Petitioners : Shri M. V. Salunke h/f.
Shri V. D. Salunke

Advocate for Respondent No.1 : Shri D. S. Bagul

AGP for Respondent Nos. 2 and 3 : Shri P. N. Kutti

Advocate for Respondent No.4 : Shri M. M. Jadhav h/f.
Shri S. P. Shah.

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 25th SEPTEMBER, 2018.

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PER COURT :

1. While issuing notice on 23/01/2018, this Court had noted in its order as under :-

"1. The petitioners are aggrieved by the judgment and order dated 02/05/2017, passed by the Appellate Court, there by, allowing Miscellaneous Civil Appeal No. 27/2017, filed by respondent No. 1. Consequentially, the order of the Trial Court rejecting application Exhibit 5, and refusing temporary injunction against a public project, has been reversed.

2. *Learned counsel for the petitioner points out the following observations of the Appellate Court due to which it has allowed the Miscellaneous Appeal :*

"If further construction of road is allowed on this piece of additional land, the plaintiff may lose his bargaining power for compensation and may have to run from pillar to post for getting just and adequate compensation. So this loss of bargaining power, loss of the strategic advantage of negotiations/settlement before lawful acquisition and irreversible violation of his legitimate right of just & fair compensation shall be the irreparable losses of plaintiff."

(reproduced verbatim)

3. I find that the Hon'ble Apex Court in the matter of Mahadev Savlaram Shelke and others Versus Pune Municipal Corporation and another [1995 (2) SC 504], has laid down the law that injunction for restraining execution of any public project is to be rarely granted and the courts must consider the likely impact on the public project and suitable mould relief. Similar view has been taken by the Hon'ble Apex Court in the matter of Shiv Kumar Chadha Versus Municipal Corporation of Delhi [(1993) 3 SCC 161] and Dalpat Kumar Versus Prahlad Singh [(1992) 1 SCC 719] .

4. *Issue notice before admission to the respondents, returnable on 16/02/2018. Learned AGP waives service for respondent Nos. 2 & 3. Hamdast granted for respondent Nos. 1, 4 and 5.*

5. *Parties to note that considering the peculiarity of this matter, this petition would be decided finally at admission stage. "*

2. Considering the passage of time and the controversy raised at an interlocutory stage, I find that the ends of justice would be met by expediting the suit. The learned Advocate for the petitioners submits that suit may be disposed off by the Trial Court before December 2018. The learned Advocates for the respondents are agreeable.

3. Considering the above, this petition is disposed off with a direction to the Trial Court to decide RCS No. 35/2017, as expeditiously as possible and in any case on or before 31/01/2019.

4. The litigating sides shall refrain from seeking adjournment on unreasonable or trivial grounds and the learned Trial Court would be at liberty to impose costs if such adjournments are sought.

5. In so far as the grievance of the petitioner firm that though it has completed about 99 % of the work order, the project is not complete on account of the original plaintiff's

suit, it is prayed that the respondent corporation may clear of the bills of the petitioner atleast to the extent of 80 % of the work done. The learned Advocate for the corporation submits that the corporation would deal with a representation if filed by the petitioner.

6. As such, the petitioner would be at liberty to request the corporation for clearing its payment to some extent and the corporation may consider the same in accordance with the provisions of law applicable.

(RAVINDRA V. GHUGE, J.)

shp/-