

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6276 OF 2012

Arvind S/o Shahuraj Jadhav,
Age : 55 years, Occu. Agri.,
R/o. Naichakur, Tq. Omerga,
Dist. Osmanabad

.. Petitioner

Versus

1] The State of Maharashtra
Through Secretary,
Revenue and Forest Department,
Government of Maharashtra,
Mantralaya, Mumbai - 400 032

2] The Collector, Osmanabad
Tq. & Dist. Osmanabad

3] The Tahsildar, Omerga,
Tahasil Office, Omerga
Tq. Omerga, Dist. Osmanabad

4] Deputy Superintendent,
Land Record, Omerga,
Tq. Omerga, Dist. Osmanabad

.. Respondents

...

Mr. Prashant K. Deshmukh, Advocate for petitioner
Mr. S.J. Salgare, AGP for respondent - State

...

CORAM : SUNIL P. DESHMUKH &
P. R. BORA, JJ.

DATE : 22-01-2018

ORAL JUDGMENT (PER - SUNIL P. DESHMUKH, J.) :

1. Rule. Rule made returnable forthwith. Heard learned
counsel for the parties finally, by consent.

2. Learned counsel Mr. Deshmukh for the petitioner submits that he is owner of land admeasuring 2 Hectare, 48 Are portion of survey no. 61/1 since 1997, having purchased the same from its erstwhile owner under a registered deed of sale. From the said land, a portion of 20 Are had been acquired by the State Government for Sarvadi project and owner of land had received a paltry compensation and balance of compensation had not been paid.

3. According to learned counsel, on one hand, aforesaid is the position and on the other, under garb of a policy of removal of encroachment by the agriculturists, a road has been constructed in June, 2011, however, the action is not proper and is illegal. He submits that in the process, his 10 standing trees and water course over his land have been damaged and he is thus suffering losses. The road has been constructed without measurement, illegally and the State Government is liable to pay compensation. He refers to that in the notice he has claimed compensation to the tune of Rs.1,50,000/-. He submits that since the land has already been encroached upon, claim had been made for direction to initiate land acquisition proceedings and to pay compensation under this writ petition.

4. He submits that subsequent developments are also pointer to that the road width is of 22 feet and it passes through his land. He, for some time, purported to contend that for the road purposes, other surrounding agriculturists' land have been acquired and compensation has also been paid to them. He, thus, urges this Court to allow the writ petition and direct the State Government to initiate land acquisition proceedings.

5. Resisting aforesaid submission, learned Assistant Government Pleader Mr. Salgare submits that from village Sarwadi to Naichakur, there has been a cart way existing since times immemorial and the same passes through survey nos. 65, 61, 50, 57, 55 and 90 of village Naichakur. Since the cart way had been encroached by some agriculturists and had been in a bad condition, the same had been strengthened by mud work with public participation in which all the villagers have co-operated.

6. He further refers to affidavit-in-reply filed stating that part of cart way passes adjacent to the petitioner's land. He further points out that save petitioner, none of the villagers had objected to construction of cart way. He submits that while the panchanama had been prepared, petitioner was present and he was advised to have his land measured, in order to find out as to whether really

there has been any encroachment, however, the petitioner has not proceeded further. He further submits that the petition raises several disputed questions of facts.

7. Having heard learned counsel for parties as aforesaid, in the first place, the petitioner does not substantiate claims by placing any material worth consideration. Save the notice issued at instance of petitioner to the authorities, there is nothing produced on record to show that there were existing 10 trees or water course or for that matter, any material showing that the strengthening of road has caused encroachment over his land.

8. In the face of such situation, while it appears that there had been already subsisting road which is claimed to have been strengthened, in absence of any material on record, it is difficult to accede to request made under the writ petition and, thus, the writ petition is dismissed. Rule stands discharged.

[P. R. BORA]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

arp/