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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 498 OF 2015

IN

WRIT PETITION NO. 9778 OF 2015

Bapu Vitthal Bagal & Ors.

.. Petitioners

Vs.

The State of Maharashtra & anr.

.. Respondents

(Res.Nos.2 to 6 are Contemnors)

.....

Mr. R.V. Bansode for the petitioners.

Mr. P.P. Kakade, AGP for respondent No.1 – State.

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**CORAM : NARESH H. PATIL, CJ. &
M.S. KARNIK, J.**

DATE : 21st NOVEMBER, 2018

ORDER (PER M.S.KARNIK, J.) :-

Alleging breach of the order dated 8/10/2015 passed by the Division Bench of this Court in Writ Petition No. 9778 of 2015, the petitioners have approached this Court for initiating action under

Contempt of Courts Act, 1971 and also under Article 215 of the Constitution of India against the respondent Nos. 2 to 6 – Contemnors.

2. Briefly stated, Writ Petition No. 9778 of 2015 is filed by the petitioners seeking directions against the respondents restraining them from dispossessing and/or from encroaching upon agricultural field of the petitioners which is situated adjacent to the State Highway viz. Ahmadnagar-Karmala-Tembhurni State Highway No. 141. According to the petitioners, the said road which is having width of only 12 meters of which 7 meters is a Tar Road. According to the petitioners forcible possession of more than the existing road is sought to be taken without following due process of law for acquisition of agricultural land/field as contemplated by the provisions of 'The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013'.

3. The petitioners' grievance in the Writ Petition was as regards inviting of tenders by the respondent No.1 – State for four laning/expansion and extension of the existing road. It is the contention of the petitioners that for extension and expansion of the

existing road the Notification is published under Section 4 of the said Act. The lands belonging to the petitioners are sought to be acquired without following the due process of law. In short, the submission of the petitioners in the Petition is that Section 4 Notification has been issued without following mandatory provisions of the said Act.

4. The petitioners had approached this Court earlier by filing Writ Petition No. 10953 of 2013. The same came to be disposed of in terms of the following order :-

“P.C.

Heard the learned counsel for the petitioners. Even according to the case of the petitioners, a notification under section 6 of the Land Acquisition Act, 1894 has not been issued yet. The petition is based on an apprehension that there will be no proper enquiry held under section 5A of the said Act. The petition is premature. The State is bound to follow Section 5A of the said Act.

2. The other grievance is that the petitioners' land is likely to be utilized for the alleged public purpose without completion of acquisition. We find that Section 17 of the said Act has not been invoked. Therefore, as of today, unless there is a private agreement between the petitioners and the State, the petitioners cannot be dispossessed.”

5. Learned Counsel for the petitioners submits that though the initial proceeding for acquisition of land has already lapsed on 11/9/2015, without submitting a fresh proposal the concerned respondents granted permission to the respondent No.6 – Company

for extension/four laning of existing road. Learned Counsel for the petitioners, therefore, would submit that the action on the part of the respondents to proceed ahead with the acquisition is not only contrary to the provisions of the law but against the spirit of the order dated 13/2/2014 passed by this Court in Writ Petition No. 10953 of 2013 filed by some of the petitioners. The petitioners therefore again approached this Court by filing Writ Petition No. 9778 of 2015.

6. The Writ Petition No. 9778 of 2015 came up for admission before this Court on 8th October, 2015. The relevant portion of the order of which breach is alleged in this Contempt Petition reads thus :

“2. It is obvious that the work on the existing road can continue without touching any private property. Only a limited ad-interim relief is granted restraining the Respondents from carrying out the work of construction of road on the land which is not acquired or which is not a part of existing road. Place the Petition on 17th November, 2015. Issue notice to rest of the Respondents who are not represented today.”

7. Learned Counsel for the petitioners submits that despite specific ad-interim relief granted in their favour restraining the

respondents from carrying out the work of construction of road on the land which is not acquired or which is not part of existing road, the respondents proceeded with the four laning on that part of the petitioners' property which is the petitioners' private property without acquiring the same. Learned Counsel relied upon certain photographs in support of his contention that the work is being carried out on the portion adjacent to the existing road which is part of the petitioners' agricultural field. Learned Counsel therefore prays that appropriate action be initiated for the breach of the order passed by this Court.

8. Learned AGP on the other hand invited our attention firstly to an order dated 14th June, 2017 passed by this Court in Writ Petition No. 10818 of 2015 and Writ Petition No. 9778 of 2015 which reads thus :

“ **P.C.** :

Subsequent to filing of the writ petitions, when the learned counsel for the petitioners was directed to submit with regard to the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, he refers to several provisions of the new Act which were not pleaded in the writ petitions. The petitions are filed mainly raising grounds under the Land Acquisition Act, 1894. In that view of the matter, we permit the petitioners to withdraw the writ petitions reserving liberty to file fresh petition within eight weeks.

2. For the next eight weeks, parties shall maintain status quo in all respect.

9. Learned AGP also invited our attention to the affidavit-in-reply filed on behalf of the respondent Nos.4 and 5 viz. the District Superintendent of Police, Solapur and the Police Inspector of Karmala Police Station and also the affidavit dated 27th November, 2015 filed on behalf of the respondent No.2 viz. Executive Engineer, Public Works Department, Division No.2, District – Solapur.

10. Learned AGP also invited our attention to the affidavit-in-reply of the respondent No. 3 - Assistant Engineer, Class – 1, Public Works Department, Sub Division, Karmala, District Solapur, to support his contention that there is no breach of the order passed by this Court as alleged.

11. We notice that even the respondent No.6 - M/s. Supreme A.K.T. Tollways Pvt. Ltd. have filed their affidavit-in-reply denying the contention of the petitioners that there is any willful disobedience of the order passed by this Court as alleged.

12. We have heard learned Counsel for the parties. It is the case of the petitioners that there is deliberate and willful disobedience of the order dated 8th October, 2015 passed by this Court. Undoubtedly, this Court granted limited ad-interim relief

restraining the respondents from carrying out the work of construction of road on the land which is not acquired or which is not part of existing road. By an order dated 14th June, 2017 Writ Petition No. 9778 of 2015 came to be disposed of by granting liberty to the petitioners to file a fresh Petition within 8 weeks. Parties were directed to maintain status quo in all respect for the next week from 14th June, 2017.

13. For deciding the present controversy it would be material to refer to the affidavit-in-reply dated 27th November, 2015 filed by the respondent No.2. It is the stand of the respondent No.2 that pursuant to the order dated 8th October, 2015 passed by this Court, the work was carried out within the road width of 25 meters existing road upto 19/10/2015. It is stated that the work was stopped due to some personal difficulty of the contractor company. It is however the categorical stand of the respondent No.2 that the said work is carried out within the existing road only and that the respondent has not taken any steps of widening the road beyond 25 meters of existing road. The respondent No.2 has denied that any work of whatsoever nature has been carried out on the private land of anybody else.

14. On reading of paragraph 6 of the affidavit-in-reply of the respondent No.2, we find that the work which is carried out is on the basis of the width of the existing road being 25 meters as reported by the Taluka Inspector of Land Records, Karmala. It is specific stand of the respondents that in so far as width of 45 meter road, proposal dated 28/5/2015 has been submitted before the Collector, Solapur and after the approval and after completion of acquisition, further steps will be taken in accordance with law for remaining construction work of the road.

15. It is pointed out that a fresh proposal dated 28/5/2015 had to be submitted as earlier proposal for acquisition of land for road widening from 25 meters existing road to 45 meters moved by Government lapsed on 19/12/2014. It is the specific stand of the respondents that 25 meter road is existing much prior to the ad-interim order passed by this Court and as such the work was commenced only in respect of the 25 meters existing road line.

16. We may also refer to the Additional Affidavit dated 21st February, 2018 filed by the respondent No.3. After reiterating the stand taken earlier, it is pointed out that now the road is declared as

National Highway No. 516A and the acquisition for National Highway is in progress by National Highway Authority under National Highway Act, 1956. The respondent No.3 placed reliance on the G.R. dated 3/1/2017 to indicate that the road is declared as National Highway.

17. Except for some photographs placed on record and the contention that the construction of the road is done on the private property of the petitioners, no other material is relied upon by the petitioners to substantiate this contention. At this juncture it would be pertinent to refer to the relevant portion of the order dated 23rd March, 2017 passed by this Court in the present Contempt Petition which reads thus :-

“P.C.:-

1 We have gone through the direction of the Court which is alleged to be defied by the respondent authorities. In categorical terms, the Division Bench has observed that no road should be formed on any part of the private property which is not the subject matter of acquisition.

2. According to the respondents, no piece of land is used other than the land which is acquired for the formation of the road. On perusal of the averments in the petition, except saying that the photographs etc. would indicate encroachment, there is no further material indicating that the land which is not the subject matter of acquisition, is being used for the formation of road.

3 We direct the petitioners to substantiate their contention by better particulars.

4. Stand over to two weeks. “

We find that no such particulars are placed on record pursuant to the passing of this order.

18. Learned Counsel for the petitioners though made an attempt to rely upon the RTI reply that the existing road is 12 meters width including 7 meters Tar road, however, in the survey carried out by the TILR, the report of which was submitted on 23rd April, 2013, width of the existing road is shown as 25 meters.

19. The pleadings of the parties would show that there is no intention to flout the order much less a contemptuous violation of the order dated 8th October, 2015. There is a serious dispute as regards the dimension of the existing road. This dispute is a substantive dispute. In the present proceeding this dispute cannot be resolved.

20. In any case, now the said road is declared as National Highway No.516A and the acquisition is in progress under the National Highway Act, 1956. We find that there has been no willful breach or disobedience by the respondents of the order passed by this Court. The Contempt Petition is therefore dismissed.

(M.S. KARNIK, J.)

(CHIEF JUSTICE)