

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7693 OF 2017

Ravindra Atmaram Patil .. Petitioner
Versus
M/S. J.S.W. Ispat Steel Ltd. And Ors. .. Respondents

**WITH
WRIT PETITION NO. 7397 OF 2017**

Nandkishore Narayan More .. Petitioner
Versus
M/S. J.S.W. Ispat Steel Ltd. And Ors. .. Respondents

**WITH
WRIT PETITION NO. 7398 OF 2017**

Ruchir Narayan More .. Petitioner
Versus
M/S. J.S.W. Ispat Steel Ltd. And Ors. .. Respondents

**WITH
WRIT PETITION NO. 7697 OF 2017**

Vaibhav Anant Patil .. Petitioner
Versus
M/S. J.S.W. Ispat Steel Ltd. And Ors. .. Respondents

**WITH
WRIT PETITION NO. 7726 OF 2017**

Anil Kisan Kale .. Petitioner
Versus
M/S. J.S.W. Ispat Steel Ltd. And Ors. .. Respondents

**WITH
WRIT PETITION NO. 7928 OF 2017**

Yashwant Motiram Mhatre .. Petitioner
Versus
M/S. J.S.W. Ispat Steel Ltd. And Ors. .. Respondents

**WITH
WRIT PETITION NO. 10899 OF 2017**

Dr. Raghavendra Rajbahadur Sharma	.. Petitioner
Versus	
M/S. J.S.W. Ispat Steel Ltd.	
Through its Managing Director And Ors.	.. Respondents

**WITH
WRIT PETITION NO. 11858 OF 2017**

Attabuddin Buniyad Ali Khan	.. Petitioner
Versus	
M/S. J.S.W. Ispat Steel Ltd.	
Through its Managing Director And Ors.	.. Respondents

**WITH
WRIT PETITION NO. 11876 OF 2017**

Maruti Dashrath Thombre (Through P.A. Holder) Anil Maruti Thombre	.. Petitioner
Versus	
The State of Maharashtra & Ors.	.. Respondents

**WITH
WRIT PETITION NO. 13358 OF 2016**

Shri. Madhukar Kisal Kale	.. Petitioner
Versus	
M/S. J.S.W. Ispat Steel Ltd. And Ors.	.. Respondents

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Mr. Prathamesh B. Bhargude for Petitioner in WP Nos. 7693 of 2017, 7697 of 2017, 7928 of 2017, 13358 of 2016 and CAW No. 2763 of 2017.

Mr. Sachin R. Pawar for Petitioner in WP Nos. 7397 of 2017, 7398 of 2017, 7726 of 2017, 11876 of 2017.

Mr. V.R. Tripathi for the Petitioner in WP No.11858 of 2017.

Mr. Rakesh Singh I/b M/s. M.V. Kini & Co. for Respondent No.6 in WP Nos. 7726 of 2017, and 13358 of 2016.

Mr. Girish Godbole a/w Ms. Aseem Naphade a/w Mr. Ashish Mehta a/w Mr. Kaustubh Gupte I/b Mr. Ashish Mehta for Respondent Nos.

1 and 2 in WP No.7693 of 2017.

Ms. P.N. Diwan, AGP for State in all Petitions.

Dr. Raghavendra Rajbahadur Sharma appearing in person in WP No. 10899 of 2017.

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**CORAM : A.A. SAYED &
K.K. SONAWANE, JJ.**

DATE : 09 OCTOBER 2018.

P.C.:

. In all the above Writ Petitions filed under Article 226 of the Constitution, the Petitioners have sought directions to set aside the Award dated 12 October 2011 (as amended by corrigendum dated 28 April 2016)/ Award dated 22 June 2012 and the Licence Agreement dated 3 September 2013 between Respondent No.6-National Highway Authority of India ('NHAI' for short) and Respondent No.1-Company. According to the Petitioners, two underground water pipelines are being laid in that portion of their property which has not been acquired. The Petitioners have consequently prayed for directions not to lay any pipelines in their property which has not been acquired.

2. The Petitioners are the owners of lands situated at village Kharcherbi, Taluka-Pen, Distric-Raigad. On 29.10.2009 the Respondent No.6-NHAI issued a Notification under Section 3A of

the National Highway Act, 1956 (hereinafter referred to as 'the said Act') declaring its intention to acquire several lands including portions of lands belonging to the Petitioners for the widening of Panvel-Indapur National Highway No.17 and expansion of Mumbai-Goa Highway. On 27.07.2010, Respondent No.6-NHAI issued a declaration for acquisition under the provisions of Section 3D of the said Act. On 12.10.2011 and 22.06.2012, Respondent No.5-Competent Authority made the Awards. On 03.09.2013, an Agreement came to be executed between the Respondent No.6-NHAI and the Respondent Nos.1-Company for laying water supply pipelines along the National Highway. On 28.04.2016 a corrigendum was issued amending the Award dated 12.10.2011.

3. So far as the contention of the Petitioners that the pipelines are being laid down in that portion of their property which has not been acquired, it is not possible for this Court in the exercise of its writ jurisdiction to adjudicate upon this disputed question of fact. Respondent No.6-NHAI has specifically averred in its Affidavit-in-Reply that the lands acquired have been duly demarcated by it and the State Revenue Department and that the maps also clearly show the demarcation. Be that as it may, we

record the statement of learned Counsel for the Respondent No.6-NHAI, on instructions, that no pipelines will be laid in the property of the Petitioners which has not been acquired. It is noticed that on similar grounds in relation to the laying of pipelines in one of the properties acquired under the same Notification, a Writ Petition being WP No. 1062 of 2015 (**Ramakant Sitaram Raokar & Anr. Vs. Union of India**) was filed in this Court. The Division Bench of this Court (Coram : A.S.Oka & A.K.Menon, JJ) disposed of the said Writ Petition on 02.02.2015 by passing the following order :

- “1. Not on board. Taken on board.
2. Heard learned counsel appearing for the petitioners and learned counsel appearing for the respondent No.9. Learned counsel appearing for the respondent No.9 on instructions from Shri Uman Jaju, Dy. Manager for the respondent No.9 states that the work of laying down the pipelines is being carried out by the 9th respondent as per the agreement Exhibit-F only the lands which are acquired by the second respondent-National Highways Authority of India. The contention of the petitioner is that the 9th respondent is carrying out the work of laying down the pipeline on the lands described in paragraph 1 of the petition which have not been acquired. In view of the aforesaid statement made by the learned counsel appearing for the respondent No.9 on instructions, it is not necessary to entertain this petition and the same is accordingly disposed of by accepting the statement.”

4. We do not find any merit in the contention on behalf of the Petitioners that acquisition is a colourable exercise of power by the Central Government and amounts to fraud and that the acquisition is not for public purposes but for the benefit of Respondent No.1-Company to lay water pipelines for the purposes of its plant of extracting iron ore at Mouje Dolvi for which there is requirement of water. It is not in dispute that apart from the 1100 mm diameter water pipeline for the plant of Respondent No.1-Company, there is another pipeline of 400 mm diameter being laid which would supply drinking water to 45 villages. It is an admitted position that there is an existing old pipeline of 600 mm which was laid in the year 1995 which is presently supplying drinking water to the said 45 villages apart from supplying water to the plant of Respondent No.1-Company. The said old pipeline which is stated to be on the other side of the road is required to be dismantled on account of the expansion of the National Highway. If the said old pipeline is dismantled without laying new pipeline, the said 45 villages would be deprived of water supply as the old pipeline is stated to be the only source of drinking water for the said 45 villages. It is pointed out that the Petitioners themselves would be beneficiaries of the project. Reference may be made to letter dated

31.03.2011 addressed by Respondent No.6-NHAI to the Respondent No.1-Company which is extracted hereunder :

“ With reference to subject referred above, it is to inform that National Highways Authority of India has taken up the project of Widening of existing 2 land roads to 4/6 land divided carriageway configuration for Panvel-Indapur (km. 0.00 to Km. 84.00) section of NH17 in the State of Maharashtra under BOT. The Concessionaire for the subjected stretch is finalised & work is likely to start in very short period of time.

However, it has been observed that the 600 mm diameter pipeline belonging to ISPAT is laying within ROW of NH-17 & will cause obstruction to 4 laning of this Road.

As the existing road is accident prone & lot of accident are taking place, there is tremendous public pressure to widen the road at the earliest.

In view of above, you are requested to make an arrangement to shift the water pipe line belonging to ISPAT falling in this length of NH-17 at your own cost & outside the ROW (Right of way).”

[emphasis supplied]

5. From the above letter, it would be evident that it is at the instance of the Respondent No.6-NHAI that the Respondent No.1-Company was required to shift the old pipeline. The Notification under Section 3A of the the said Act was issued as far back as on 29.10.2009 and the letter extracted above is dated

31.03.2011 and the License Agreement between Respondent No.6-NHAI and Respondent No.1-Company was executed on 03.09.2013. There is nothing on record to suggest that the acquisition was at the behest of the Respondent No.1-Company or that the acquisition is only to benefit the Respondent No.1-Company. In the Affidavit-in-Reply of the Respondent No.6-NHAI it is specifically averred that the Respondent No.6-NHAI has absolute power to enter into license, to construct, install, shift, repair, alter or carry any poles, pillars, advertisement towers, transformers, cable wire, pipe, drain, sewer, canal, railway line, tramway, telephone boxes, repeater station, street, path or passage under or over any Highway. Nothing is shown to us on behalf of the Petitioners that places any embargo upon the Respondent No.6-NHAI from entering into any Licence Agreement for the purposes of laying the water pipelines in the utility corridor of the National Highway.

6. In view of Section 3D(2) of the said Act, upon the publication of the declaration dated 27.07.2010, the subject lands have vested absolutely in the Central Government free from all encumbrances and transferred to Respondent No.6-NHAI. It is pertinent to note that there are no prayers in the Petitions

challenging the acquisition. The Awards were made on 12 October 2011 and 22 June 2012 (Award dated 12 October 2011 was subsequently amended on 28 April 2016). The Court is informed that most of the Petitioners have accepted the compensation and Reference proceedings filed by them for enhancement of compensation is pending before the District Collector. The Writ Petitions have been filed belatedly only in the year 2017 after having accepted the compensation under the Awards. As pointed out in the Affidavit-in-Reply of the Respondent No.1-Company the work of laying down new pipelines has commenced from the year 2013 and has been going on for the last 4½ years and it has spent about Rs. 100 Crores and Respondent No.6-NHAI has spent several hundred Crores for the purposes of widening the NH17. In **Royal Orchid Hotels Limited and Anr. Vs. Jayarama Reddy and Ors., (2011) 10 SCC 608**, relied upon by the learned Counsel for the Petitioners, the Supreme Court noted that the High Court had arrived at a finding that there was a fraudulent exercise of power of eminent domain by the State for depriving the landowners of their constitutional right to property with a view to favour private persons. Such is not the case here, as discussed in the earlier part of this judgment. The judgment of the Division Bench of this Court in **Bashir Ahmed**

Chand Shaikh Vs. State Of Maharashtra And Anr., 2010 (1) Mh.L.J. 500, relied upon by the learned Counsel for the Petitioners also has no application in the present case as there is no fraud in the present case as alleged by the Petitioners. We do not feel it necessary to burden this judgment by dealing with the judgments relied upon on behalf of the Respondent No.1-Company. However, for the purposes of completion of record we may mention that the learned Counsel for the Respondent No.1-Company has relied upon the following judgments :

- (i) **Municipal Council, Ahmednagar & Anr. Vs. Shah Hyder Beig & Ors., (2000) 2 SCC 48.**
- (ii) **Mr. Felton Fernandes & Ors. Vs. Union of India & Ors., Bombay High Court WP No. 2925 of 2015.**
- (iii) **Mithi Mukherjee Vs. State of West Bengal & Ors., (2014) 1 High Court Cases (Cal) 240.**
- (iv) **Swaika Properties (P) Ltd. Vs. State of Rajasthan, (2008) 4 SCC 695.**
- (v) **A.P. Industrial Infrastructure Corpn. Ltd. Vs. Chinthamaneni NarshimhaRao, (2012) 12 SCC 797.**
- (vi) **Pratibha Nema & Ors. Vs. State of M.P. & Ors., (2003) 10 SCC 626.**
- (vii) **Sooraram Pratap Reddy & Ors. Vs. Distt. Collector,**

(2008) 9 SCC 552.

(viii) Arnold Rodricks & Anr. Vs. State of Maharashtra and Ors., (1966) 3 SCR 88.

(ix) Amarnath Ashram Trust Society and Anr. Vs. Governor of U.P. and Ors., (1998) 1 SCC 591.

(x) Nand Kishore Gupta & Ors. Vs. State of U.P. & Ors., (2010) 10 SCC 282.

(xi) State of Madhya Pradesh vs. Bhailal Bhai & ors., AIR 1964 SC 1006.

(xii) State of Orissa vs. Dhobei Sethi & anr., (1995) 5 SCC 583.

(xiii) Indian Bank vs. Godhara Nagrik Cooperative Credit Society Ltd. & anr., (2008) 12 SCC 541.

(xiv) Shamshad Ahmad and ors. Vs. Tilak Raj Bajaj & ors., (2008) 9 SCC 1.

(xv) Food Corporation of India and anr. Vs. Pala Ram and ors., (2008) 14 SCC 32.

7. In our view, the Petitions are not only misconceived and devoid of merit but also suffer from delay and laches and filed as an afterthought. The Petitions are accordingly dismissed. There shall be no order as to costs.

8. Learned Counsel for the Petitioners pray that ad-interim order not to carry out any construction, which has been continued from time to time, may be continued for a further period of 8 weeks. The prayer is opposed by the learned Counsel for the Respondents. Having regard to the facts and circumstances of the case and particularly since this is a public project and out of the 25 Kms underground pipeline, the work of about 24 Kms is completed and only the work of last 1 Km is remaining, we are not inclined to continue the ad-interim order. The prayer for continuation of the ad-interim order shall stand rejected.

(K.K. SONAWANE, J.)

(A.A. SAYED, J.)