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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8057 OF 2018

Dr. Dattatraya Bhagwan Sarje & ors. .. Petitioners

Vs.

The State of Maharashtra and ors. .. Respondents

WITH
WRIT PETITION NO. 8465 OF 2018

Mr. Shivaji Mahadeo Ingale and ors. .. Petitioners

Vs.

Deputy Collector, Land Acquisition Officer,
Solapur and ors. .. Respondents

WITH
WRIT PETITION NO. 8466 OF 2018

Mr. Pandurang R. Sutar and ors. .. Respondents

Vs.

Mr. Shravan Kshirsagar, Land
Acquisition Officer, Solapur and ors. .. Respondents

WITH
WRIT PETITION NO. 10677 OF 2018

Kaurav Trimbak Mahadik and ors. .. Petitioners

Vs.

Union of India and ors. .. Respondents

WITH
WRIT PETITION NO. 10700 OF 2018

Shamrao Saudagar Khule and ors. .. Petitioners

Vs.

Union of India and ors. .. Respondents

WITH
WRIT PETITION NO. 12263 OF 2018

Shivaji Raghunath Kapare and ors. .. Petitioners

Vs.

Union of India and ors. .. Respondents

WITH
WRIT PETITION STAMP NO. 26402 OF 2018

Sanjay Shripati Hande and ors. .. Petitioners

Vs.

The State of Maharashtra and ors. .. Respondents

Mr. A. V. Anturkar, Senior Advocate I/by Mr. Ajay Joshi for petitioners in
WP Nos. 8057/18 & WPST/26402/18.

Mr. Balkrishna Joshi a/w Ms. Gauri Jadhav for petitioners in WP Nos.
8465/18 & WP/8466/18.

Ms. Preeti Walimbe I/by Mr. Rupesh Bobade for petitioners in WP Nos.
10677/19, 10700/18 and 12263/18.

Mr. R. V. Govilkar for respondent no.1 and 2 in WP/10677/18.

Mr. Vijay Patil for respondent No.4 in WP/8057/18, WP/8465/17 and WP/8466/18.

Mr. M. M. Pabale, AGP for respondent nos.1 to 3 and 5 to 7 in WP/8057/18, & for respondent no.1 and 5 in WP/8465/18 and for respondent no.5 in WP/8466/18 and for respondent nos.3 and 4 in WP/10677/18, WP/10700/18 and WP/12263/18.

Ms. P. N. Diwan, AGP for respondent nos.1 to 3 and 5 to 7 in WPST/26402/18.

CORAM: NARESH H. PATIL, CJ. &
G. S. KULKARNI, J.

RESERVED ON : OCTOBER 30, 2018.

PRONOUNCED ON : NOVEMBER 01, 2018.

P. C.

1. This batch of petitions assail an action of the respondents and principally of the Maharashtra State Road Development Corporation (for short MSRDC) in undertaking work of rehabilitation and up-gradation of Satara to Mahswad and Mahswad to Tembhurni State Highway No. 145 / National Highway No. 548 C, being undertaken by the MSRDC as entrusted to it by the Ministry of Road Transport and Highway (MORTH) Government of India.

2. As the challenge in these petitions is common, we propose to dispose of these petitions by this common order.

3. The petitioners claim to be owners of the land adjoining the subject road. The contention of the petitioners is that under the garb of up-gradation / widening of the subject road, the land of the petitioners is being taken over and/or acquired, without following the due procedure of acquiring the land, by making payment of compensation under the appropriate law.

4. Mr. Anturkar, learned senior counsel appearing for the petitioners in Writ Petition No.8057/18 and Writ Petition Stamp No.26402/18, at the out-set, submits that it is the case of the three petitioners (Petitioner Nos.1, 10 and 12 in Writ Petition No.8057 of 2018) of their land being taken away without following appropriate acquisition procedure. In regard to the other petitioners, Mr. Anturkar contends that on the face of the documents placed on record on behalf of the MSRDC, it can be seen that the width of the subject road varies at places and the endeavour of the MSRDC to maintain a uniform width of 24 mtrs. cannot be met, unless the land of the petitioners which is outside the existing

width of the subject road, is acquired. It is thus contended that the action of the MSRDC and the MORTH of undertaking up-gradation/concretization/widening of the subject road is required to be set aside and/or stayed till the proper land acquisition procedure is followed. The second contention urged by Mr. Anturkar, learned senior counsel for the petitioners, is that the notification dated 28/07/2017 issued by the National Highway Authority under Section 3A of the National Highways Act, 1956 (for short the Act) has lapsed in terms of Section 3D(3) of the Act as no declaration under sub-section (1) of Section 3D is published within a period of one year from the date of publication of the notification under Section 3A and thus Section 3A notification as issued by the competent authority ceases to have any effect.

5. Mr. Balkrishna Joshi, the learned counsel appearing for the petitioners in the connected petitions has also reiterated the submissions of Mr. Anturkar, learned senior counsel on the issue of the width of the subject road. Mr. Joshi would draw our attention to the panchanama (page 64 of Writ Petition No. 8465 of 2018) to point out that the existing road was not uniformly of 24 mtrs. and necessarily those areas which are beyond 24 mtrs. width would be required to be acquired by the

respondents.

6. Writ Petition No. 8057 of 2018 was earlier heard by the Division Bench on 10/8/2018. The Division Bench while adjourning the hearing of the said petition, to enable the respondents to file affidavit, till the next date of hearing restrained the authorities from carrying out any further work on the lands described in Schedule – A of the petition. This order has remained in operation. However, in the other connected petitions, there was no such ad-interim relief granted at any point of time.

7. Ms. Preeti Walimbe, the learned counsel appearing for the petitioners in some of the petitions, has adopted the arguments of the learned senior counsel Mr. Anturkar and the learned counsel Mr. Joshi.

8. The MSRDC has appeared and has placed on record affidavit of Mr. D. D. Baravkar, Executive Engineer of MSRDC. In para 16 of the said affidavit, the MSRDC has conceded that the notification dated 28/07/2017 issued under Section 3A of the Act has lapsed as the requisite process could not be completed in time due to the agitations and opposition of the land owners. It is stated that a fresh notification for acquiring the

lands which are required for the project and which are beyond the existing Right of Way (ROW) would be acquired. On such a statement being made in the affidavit-in-reply, the contention of the petitioners that the subject notification issued under Section 3A of the Act is being acted upon does not survive and thus do not require any adjudication in present proceedings.

9. As regards the principal contention of the petitioners in regard to the width of the existing subject road and the contention of the petitioners that the respondents are trying to widen the road affecting the petitioners' land, is denied in totality by the MSRDC. The MSRDC contends that such a stand in the petitions is a futile attempt to seek compensation for the land over which the existing road from Mhaswad to Tembhurni was already constructed more than 45 years back. It is stated that the said road is shown in the road development plan published by the Government of Maharashtra for the years 1961-1981, 1981 – 2001 and 2001 – 2021 of Solapur District. It is further stated that the petitioners themselves have conceded that the subject road was prepared in the year 1972 under the scheme of daily wages policy and thus admittedly existence of the road since last about 45 years is an undisputed position. The

contention of the MSRDC is that by the present petitions, the petitioners are in fact trying to seek compensation for that portion of the land which had merged in the existing road which is in use for last 45 years. It is stated that said road was constructed about 45 years ago on the lands which were then handed over by the land owners to PWD of the State, voluntarily and without seeking any compensation. The said road had thus become part and parcel of Mhaswad-Malshiras-Akluj-Tembhurni-Kurduwadi-Latur Road which was numbered as State Highway No. 145. It is further stated that the Government of India, through MORTH, upgraded the said State Highway No. 145 as well as Satara-Koregaon-Mhaswad State High Court No. 141 into National Highway No. 548 C in January, 2017. The National Highway thus extends from Satara to Latur. It is stated that on the up-gradation of the subject road to National Highway, it was proposed to concretize the same. It is stated that to undertake this work, the MORTH has appointed MSRDC as an implementing agency to carry out the said work.

10. The contents of paragraph 6 of the reply affidavit are material. It states that the petitioners themselves have shown that the subject road was constructed about 45 years back and at the relevant time the road was

constructed of the width of 7 mtr. Tar with side shoulders of Murum of the width of 2.5 mtr. on each side. It is stated that beyond both the sides of the road, there is earthwork slope, side berms, gutter and land strip for arboriculture. It is stated that the width of the ROW (Right of Way) all through the length of the subject road was about 18 mtrs. to 24 mtrs. and even today the existing road is in the same position. It is stated that on the appointment of respondent no.4 as agency for rehabilitation and up-gradation of the road, in anticipation of it being upgraded to status of the National Highway, the Executive Engineer, Akulj PWD, handed over the subject road to MSRDC in the year 2017 vide letter dated 22/08/2017. The width of the ROW of the road extending from Mhaswad to Tembhurni appeared to be an average of 24 mtrs. from the statements enclosed with the said letter. The copy of the said letter is placed on record. It is further stated that the width of the ROW of the road from Satara to Mhaswad is average 30 mtrs. as per the letter dated 25/5/2016 of the Executive Engineer PWD, Satara. It is thus contended that what is being undertaken by the MSRDC is only the up-gradation of the existing road and the contention of the petitioners that the up-gradation of the existing road would entail acquisition of new land is stated to be unfounded and misconceived.

11. The contentions of the MSRDC in paras 10, 11, 12, 13, 15 and 16 of the affidavit-in-reply need to be noted, which read thus:

10. As already pointed out above, the width of the ROW of the subject road is around 18 to 24 meters. The State Road was 7 meters wide Tar Road plus Murum side shoulders on both sides of 2.5 meter width making the width of the road around 12 meter (top width). In addition there are berms, embankments, gutters etc on the side making the ROW to be 18 to 24 meter wide. Presently MSRDC is upgrading and strengthening the State road to National Highway (NH) standards as per the Manul of Highways with paved shoulder, published by Indian Tar road will be upgraed to 7 meter concrete carriageway with 1.5 meter wide paved shoulders on either side and with Murum side shoulders of width of 2 meters on both sides. Thus, the total top width of the new road would be about 14 meters which would be very much within the width of present / existing ROW of 18 to 24 meters. I therefore submit that as the road is being upgraded and strengthened in the already existing ROW the upgraded road would not extend beyond the present ROW which is of an average width of 18 to 24 meters all throughout the length. I however say that at some points or stretch of the existing Road, in order to improve the curves, for bus bay, for toll plaza, for bridge approaches etc. it may be necessary to travel beyond the width of the existing ROW. I say that in such cases, work would be carried out only by acquiring the required land under the National Highways Act. The stand of MSRDC in this regard is very clear from the submission made to the Special Land Acquisition Officer No.11 on 21/4/2018 in reply to the objections raised by some of the land owners whose lands were notified for acquisition under section 3A(1) of the National Highway Act, 19546. Copy of the said submissions dated 21/4/2013 annexed herewith and marked as Exhibit "4".

11. I submit that the Sub Dvisional Officer, Malshiras has submitted a detailed report to Collector on 16/4/2018 pointing out that the existing ROW is around 18 to 24 meters and that MSRDC is carrying out work on the existing ROW and that for any work which would be required to be undertaken beyond the existing ROW, the required land will be acquired. Copy of the said report is annexed hereto and marked as Exhibit "5".

12. I therefore submit that the present petition is misconceived. I say that no compensation is liable to be paid for the up-gradation of the existing road which is being carried out in the existing ROW. I say that wherever the work would extend beyond the width of existing the ROW the said portion of the land would be acquired by following due process of law.

13. I say that as far as present Petitioners are concerned I am annexing hereto a chart showing the width of the ROW of the present existing road abutting the Petitioner's land. I say that presently the work is being carried out only in the existing ROW and no work is travelling beyond the existing ROW. In the circumstances of the case it is submitted that the ex parte ad-interim relief granted in the present case is required to be vacated as the Petitioners have no cause of action and the petition is required to be rejected. I say that due to the ad-interim relief the work has been stopped affecting very adversely the progress of the work and inconveniencing the public at large. I say that due to stoppage of work there is loss to public Ex chequer as the contractor may claim damages for the stoppage / delay of work and the cost of the project road will also escalate. I say that before receipt of the ad-interim order by, Respondent No.4, the tar of the road portion covered in Schedule A of the Petition had already been removed and it is now in the rough condition. It is therefore very much necessary to vacate the ad-interim relief so that the contractor can carry out the work of up-gradation.

15. I say that the Petitioners are just trying to take advantage of the failure of the concerned Revenue Authorities to take entry of the road in 7/12 Extract. The fact however remains that the road is in existence since prior to 45 years and the Petitioners cannot be allowed to claim ownership of any portions of the said existing road merely on the ground that entry of the same is not taken in the 7/12 extract. I say that as per the record of the TILR as well as PWD the width of the road is around from 18 meters to 24 meters. I say that the Petitioners are thus raising disputed questions of fact which cannot be gone into in Writ Jurisdiction.

16. I say that it is true that Respondent No. 7 has published Notification U/s

3A of the National Highway Act in July 2017 for the purposes of acquiring the lands mentioned in the said notification. However, I say that the said notification has lapsed as the requisite process could not be completed in time due to the agitations and opposition of the land owners. However, the concerned officer will issue a fresh notification for acquiring the lands which are required for the present project and which are beyond the existing ROW. I say that it is true that the Executive Engineer PWD Akulj informed MSRDC by letter dated 29/12/2017 that the land plan of the subject road cannot be given. I however submit that the statement has been given by the PWD department showing the width of the ROW at various stages of the road.”

12. Also on behalf of the State of Maharashtra, affidavit-in-reply is placed on record by Mr. Shravan Kshirsagar, Deputy Collector (land Acquisition No.11) Solapur to, inter alia, contend that contention of the petitioners of the applicability of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is totally untenable as wherever the land would be acquired, the same would be governed by the National Highways Act, 1956.

13. We have heard the learned counsel for the parties. With their assistance we have perused the record.

14. As observed above, the contention of the petitioners that the respondents are acting under notification dated 28/7/2017 issued under

Section 3A of the Act clearly does not survive in view of the categorical statement as made in para 16 of the affidavit-in-reply that the said notification has lapsed and proper measures would be taken to issue fresh notification.

15. As regards the other issues on the width of the existing road and that the work of up-gradation / concretization of the existing road at its entirety would entail acquisition of the land belonging to the petitioners also cannot be accepted. The MSRDC in its affidavit-in-reply has stated that the land would be acquired in a manner known to law at those places where the existing width /ROW is not sufficient and exceeds, the requirement of a uniform width of 24 mtrs. to be maintained. It is an undisputed position that the subject road is in use since last 45 years, as also on documents it is shown that the width of the road would be required to be maintained at 24 mtrs. throughout the highway as described in the reply affidavit of the MSRDC. It is also clearly stated that wherever the requirements of land are exceeded, proper procedure to acquire the land, wherever necessary, would be adopted by the respondents.

16. We find that in view of the clear position as emerged on record,

the factual controversy about width of the road being not uniform and that the respondents would in fact encroach upon the petitioners' land, is purely a factual dispute and cannot be gone into and adjudicated in the present proceedings under Article 226 of the Constitution. Such an adjudication would involve testing on facts the version of the authorities against the version of the petitioners. Also the contention of Mr. Anturkar that on the respondents' own documents this issue can be resolved, also cannot be accepted on reading of the said documents as it surely would require adjudication of a factual controversy of examining the width of the road at different points.

17. In the above circumstances, we propose to pass the following order :-

ORDER

(a) We accept the statement as made on behalf of the MSRDC that wherever the authorities feel the need to acquire land, such land being beyond the existing width of the subject road, a proper procedure for acquisition of the land would be resorted to by the respondents.

(b) We accordingly refrain from undertaking adjudication of the factual controversy in regard to the width of the subject road at certain places exceeding the width of the existing road, requiring fresh acquisition of land.

(c) Ad-interim order dated 10/8/2018 stands vacated.

18. The writ petitions are disposed of in the above terms. No costs.

G. S. KULKARNI J.

CHIEF JUSTICE