

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

917 PUBLIC INTEREST LITIGATION NO.37 OF 2019

ANANDRAO SAMBHAJI KADAM
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr.Latange V.P.
AGP for Respondent Nos. 1 to 3 : Mr.A.B.Girase
Advocate for Respondent No. 5 : Mr.M.V.Kini & Co. and
Mr.Manorkar Deepak S.
Advocate for Respondent Nos. 5 & 7: Mr. D.S. Manorkar
Advocate for respondent No. 6 : Mr. D.G. Nagode
Advocate for respondent Nos. 8 & 9 : Mr. P.P. Mandlik

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**CORAM : PRASANNA B. VARALE AND
AVINASH G.GHAROTE, JJ.**

DATED : 29th AUGUST, 2019.

ORAL ORDER :

Heard Mr. Latange, the learned counsel for the petitioner, Mr. A.B. Girase, the learned Government Pleader appearing for respondent Nos. 1 to 3, Mr. Mandlik, the learned counsel for respondent Nos. 5 and 7 and Mr.Nagode, the learned counsel for respondent No. 6.

2. Mr. Mandlik, the learned counsel for intervenor-respondent Nos. 5 and 7 submits that the

petitioner has espoused the public cause before this Court. It is the prayer in the Writ Petition that by way of directions, the principal prayer in the present Public Interest Litigation is the prayer Clause 'C' and thereby the petitioner is seeking direction to the respondent authorities, that the acquisition process be started in view of the Government notifications dated 6.8.2018 and 7.1.2019 for the construction of the National Highway No. 361, from Wardha-Yeotamal-Waranga Phata Section, District Hingoli, in the State of Maharashtra, and start the process of construction of by-pass and for that purpose, issue necessary orders.

3. The learned counsel for the petitioner placed heavy reliance on minutes of meeting dated 21.3.2018 and submitted that the respondent authority i.e. the National Highway Pradhikaran was of the opinion that the by-pass is an alternate to the National Highway passing through Waranga Phata.

4. Notice was issued to the respondents and an affidavit in reply is filed on behalf of the Project Director through Mr.R.V. Singh, for respondent No. 6. In his oral submission Mr. Manorkar, the learned counsel for respondent Nos. 5 and 7, invited our attention to the various documents placed on record including a map at Exh. R-1 and further submitted that the minutes of meeting on which the petitioner has placed heavy reliance, is the only proposal to be submitted to the Higher Authorities for their consideration and mere preliminary opinion cannot be a decisive factor, so as to undertake the work of the construction of the road so as to effect the changes in the road. Mr. Manorkar, learned counsel for respondent Nos. 5 and 7 by inviting our attention to the map submitted that though it was initially a proposal by providing the by-pass, an alternate way on the repeated representations and requests made to the authorities, the authorities thought it fit to expand the road to meet the demands of the hour. Our

attention is invited to the copy of the representation submitted to the authority. It was then submission of Mr. Manorkar that the authority was requested to expand the road on the backdrop of the fact that the exercise of the bypass would then result in acquisition of certain lands, which are fertile lands and instead of undertaking such a course, if existing road is expanded, it may be more fruitful for all purposes. It is also submitted before us by Mr. Mandilk, the learned Senior Counsel appearing on behalf of the interveners that the exercise of expansion of the existing road i.e. MH-161 was already in process and progress. Our attention is also invited to the copies of the award placed on record and submitted that the basic activities, such as, acquisition of the land, is already undertaken and abandonment of this work would only result in loss to the Public Exchequer and there would be further delay in making available transport facilities.

5. Mr. Manorkar, learned counsel for respondent Nos. 5 and 7 then submits before us that in so far as the National High Way No. 361 is concerned, the exercise of acquisition of majority of land is completed and, more particularly, out of the area to the extent of 1.81 hectors, an area of 1.54 hectors is already acquired. In so far as the position of National High Way No. 161 Akola-Hingoli (Waranga-Fata) is concerned, Mr. Mandlik, the learned Senior Advocate by inviting our attention to the E-Statement placed on record at Annexure - 'X-1' submits that the total area under the award for acquisition is 304.36 R and to the majority of land owners, even the compensation is also paid. He also invited our attention to the joint measurement statement placed at Exh. X-3 & submits that the measurement was carried out on 07.02.2018 and this document can safely be relied on, as it is a certified statement.

6. Considering all these aspects, we are of the clear opinion that no public purpose would be served

at this stage by directing respondents/ National High Way Authority to abandon expansion work of the construction in relation to the National High Way No. 161, 'Vardha-Yavatmal-Waranga Phata' and directing the authorities to undertake the work of by-pass afresh. We also find the merit in the submission of Mr. Mandlik, learned Senior Advocate that such abandonment of the work and initiation of work of by-pass afresh would only result in the loss of public exchequer and no fruitful purpose would be served.

7. Considering these facts, we see no reason to issue any direction as prayed by the petitioner in the present Public Interest Litigation. Accordingly, the present Public Interest Litigation is disposed of.

(AVINASH G. GHAROTE)
JUDGE

(PRASANNA B. VARALE)
JUDGE

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