

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1459 OF 2018

PUNDLIKRAO AAPPARAO DANAVE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr. Lute Sandeep N.
AGP for Respondents No. 1 to 3 : Mr. V. M. Kagne
Advocate for Respondent No. 4 : Mr. B. B. Kulkarni

...

WITH

WRIT PETITION NO. 1465 OF 2018

AJINATH SHEMPHAD GADEKAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr. Lute Sandeep N.
AGP for Respondents No. 1 to 3 : Mr. V. M. Kagne
Advocate for Respondent No. 4 : Mr. B. B. Kulkarni

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CORAM: S. V. GANGAPURWALA &
ANIL S. KILOR, JJ.

DATE: 03rd SEPTEMBER, 2019

PER COURT:

1. Mr. Lute, learned counsel for the petitioners submits that without resorting to the acquisition proceedings the respondents have carried out the work of road widening. The respondents could not

have deprived the petitioners of their right to property without due process of law. The acquisition proceedings ought to have been initiated.

2. Mr. Kulkarni, learned counsel for respondent no. 4 submits that the lands of some of the petitioners are affected in straightening the road. The Bhokardan – (Kumbhari Phata) – Hasnabad – Jawkheta – Rajur – Deoulgaon Raja road is part of newly declared National Highway No. 753.

3. Paragraph no. 7 of the affidavit filed by the Executive Engineer, National Highway Division, Aurangabad reads thus -

*"7) At few places and villages, land acquisition is required to make road straight and as per MORT&H'S geometrical norms Land Acquisition process has been initiated and being carried as private negotiation as per the State Government circular no. LQN-1/2017/case no 12/A – 2 Dated 25 Jan 2017. I say & submit that all the work currently going on at the site within the existing Right Of Way (ROW) & no land will be acquired without following due process of Law. **Copy of latter Dated 23/06/2017 to District Collector Jalna is annexed herewith & marked as Exhibit R/C***

As the work of construction of road is being carried out within the available ROW only (for Straight road alignment) so question of Land Acquisition does not arise for this portion. As per Bombay Highway Act 1955 clause no. 20, the land (Being used for state highway and now upgraded as National Highway) already in possession of Government and being used for highway purpose will be assumed as the property of government.

As per state government circular no.LQN-1/2017/case no 12/A- 2 Dated 25 Jan 2017 private negotiation process has been initiated for the locations required. Land acquisition (L.A.) list has been attached separately & marked as **Exhibit R/D**. I further say that Execution of road construction work is being carried out in available ROW only. As the work is being carried out in available ROW only, the claim of petitioner does not arise."

4. It is not disputed by the respondents that gut numbers of some of the petitioners are affected. According to Mr. Lute, learned counsel for the petitioners, the gut numbers of some of the petitioners are mentioned by the respondents. The gut numbers admittedly affected in the construction of the road are the Gut Nos. 19, 99, 135, 136, 138, 139 and 144 of Jawkheda Khurd in Writ Petition No. 1459 of 2018, and Gut Nos. 58,59 and 62 of village Kota Dhabhadi and Gut No. 178 of

village Pimpalgaon Shermulki as per the affidavit filed by the respondent. The respondent intends to engage in private negotiation with those land holders.

5. The affidavit is filed on 16.02.2018. Even as per the respondents case as yet even private negotiation has not been entered into with the persons whose gut numbers are affected, we direct that the respondents may explore the possibility of acquisition by private negotiation within a period of four (04) months from today in respect of gut numbers which are admitted by them to be affected in straightening the road, and if within four (04) months the private negotiations do not fructify, then the respondents shall initiate acquisition proceedings in accordance with the provisions of law immediately thereafter.

6. As far as the other gut numbers are concerned, the petitioners may get their lands measured or may ask for the joint measurement of

the lands, and depending upon the report of the joint measurement further steps be taken by the parties.

7. Writ Petitions stand disposed of accordingly.

No costs.

[ANIL S. KILOR, J.] [S. V. GANGAPURWALA, J.]

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