

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11050 OF 2016

Mr.Dattatraya Annappa Handiphod,
age: 47 years, Occ: Agriculture,
R/o Nadi Ves, Krishna Ghat Road,
Handiphod Mala, Miraj, Tal. Miraj,
District Sangli and others.

Petitioners

Versus

The Project Director,
National Highway Authority India,
Solapur, District Solapur.

Respondents

WITH
WRIT PETITION NO.11703 OF 2017

Murgyappa Siddhappa Yelzare
and others

Petitioners

Versus

The Project Director,
National Highway Authority India
and others

Respondents

WITH
WRIT PETITION NO.14192 OF 2017

Mr.Gangadhar Bhimsen Yalparte
and another

Petitioners

Versus

The Project Director,
National Highway Authority India
and others

Respondents

Mr.Sunil Sen, advocate i/by Mr.P.M.Jadhav, advocate for
Petitioners.

Smt.S.V.Bharucha, advocate along with Mr.P.K.Khosla, advocate for Respondent No.6 in W.P.No.11050 of 2016.

Mr.Anil Singh, Assistant Solicitor General along with Mr.Rakesh Singh, Mr.Pushkar Mishra & Ms.Carina Xavier i/by M/s.M.V.Kini & Co., advocate for Respondent No.1-NHAI.

Smt.Madhubala Kajale, advocate B Panel, for Respondent-State.

Mr.R.V.Govilkar, advocate along with Mr.Parag Vyas, advocate for Respondent-UOI.

CORAM : R.M.BORDE &

V.L.ACHLIYA, JJ.

DATE : 16th January, 2019

ORDER (Per R.M.Borde, J.):

1 The petitioners, whose landed properties are being acquired for constructing a bypass to the National Highway at Miraj, are questioning the legality and validity of the notification issued under Section 3D of the National Highways Act, 1956. The petitioners are also praying for issuance of directions to the respondents to implement alignment nos.2 and 3 , as proposed by the National Highways Authorities in respect of said bypass and not to deviate therefrom while executing the work.

2 The petitioners contend that during the meeting between PWD, Collector and the villagers, five alignments proposed by the experts in respect of the construction of bypass were discussed. It is contended that alignment no.3 has been agreed upon since it involves minimum damage to the houses and structures and only 9 houses are affected. An approval has been accorded for alignment no. II, but the said alignment, in all respects, is akin to alignment no. III, that was agreed upon. The proposed width of the road is 60 meters and travels a length of 14.69 Kms and the acquisition proposed is for 88.14 hectares

land. The petitioners contend that they have been issued, in pursuant to the applications tendered under the provisions of Right to Information Act, a map of the proposed Highway from Malgaon to Miraj showing gat numbers and survey numbers proposed to be acquired as well as alignment that has been finalised.

3 It is further contended that the actual work undertaken is not in observance of the alignment proposed by the experts and that has been approved and there is a deviation therefrom. The petitioners contend that the road length has been reduced to 12.81 Kms, which itself is an indicator that the alignment, as proposed, has been deviated from. It is further contended that as per the alignment proposed by the experts and approved by the authorities, only 9 structures were proposed to be affected, whereas, as per the present alignment, according to the petitioners, about 55 houses are being affected. The petitioner contends that underlying survey numbers and village maps are manipulated and the village boundaries do not match seamlessly.

4 The petitioners contend that since there is a deviation from the alignment that has been proposed by the experts while executing the work, the final notification issued under Section 3D of the National Highways Act, deserves to be quashed and set aside and respondent-authorities need to be directed to carry out the construction work of the Highway in accordance with the plan i.e. the alignment that has been approved.

5 The contentions raised by the petitioners have been seriously disputed by the respondents i.e. Project Director, National Highways Authority of India, in an affidavit presented on record on 25.01.2018.

6 It is contended that there is no provision under the Act which provides for curtailment or deviation from the road alignment once it is approved by the competent authority i.e. NHAI. The consultants are expected to submit a Detailed Project Report (DPR) along with alignment of the road and road plan; and the same was to be studied by the experts and upon acceptance and approval of the said road alignment by the experts, report for acquisition of land is required to be submitted to the Government of India and consequently, relevant notifications are required to be issued under the provisions of National Highways Act. The alignment, that has been finalised, cannot be altered once it is approved by the experts, as has been ruled by the Hon'ble Supreme Court in the matter of **Union of India Vs. Dr.Kushala Shetty & others**, reported in AIR 2011 SC 3210.

7 It is contended that a Detailed Project Report (DPR) for rehabilitation and upgradation of Sangli-Solapur Section National Highway No.166, having approximate length of 195 Kms. in the State of Maharashtra, was carried out by the Consultants M/s Aarvee Associates, Architects & Consultant Private Limited, Hyderabad, and the Project Report has been submitted to the Central Government. It is contended that the Consultants carried out the preliminary survey for finalizing the bypass alignment for Miraj City and prepared various alternatives and those were

submitted to the District Collector/District Magistrate, Sangli for finalising the alignment upon extending hearing to the interested parties. The District Collector, Sangli proposed a public consultation meeting on 05.10.2013 which was attended by all the stake holders, including Officers of National Highways Authority as well as concerned villagers whose properties are likely to be affected. In the public meeting, various alternatives were discussed and the bypass alignment, as per alternative no.III has been finalised. The consultants were, therefore, directed to carry out the survey of the land at ground level in respect of alignment Option III. However, the villagers have opposed the said alignment and as such, again a public hearing was proposed on 31.01.2014 and during the said public meeting, again alternatives were discussed and the consultants were directed to carry out fresh survey as per the various alignments suggested by the interested persons. After carrying out survey once again, the consultant suggested that Option III is the most feasible and viable option. Alignment Option No. III, as approved in the public meeting, is the same Option which was approved by the Ministry, though it is referred to as Option No. II. It is further pointed out that after public consultation, a notification under Section 3(A) of the National Highway Act was published on 02.12.2016. The properties affected and the area proposed to be acquired is finalised only after joint measurement carried out by the DPR consultants along with Revenue Officers and such joint measurement has been carried out in the presence of land owners. After observing the procedure prescribed under law, a final notification has been published under section 3(D) of the National Highways Act.

8 It is specifically contended that after issuance of notification under Section 3(A), the affected persons were heard personally on 23.01.2017, 24.01.2017 and 30.01.2017 and, on consideration of the objections and the record, report was submitted to the Central Government by the Sub-Divisional Officer, Miraj, who is the competent authority under the act and, on the basis of such report, final notification has been published under Section 3(D) of the Act. After publication of notification under Section 3(D), the lands under acquisition shall be deemed to have vested absolutely in the Central Government. So far as objection raised by the petitioners in respect of Survey Nos. 1965, 1963, 1572 of village Malgaon, those are included in supplementary 3(A) notification and the objection raised as regards granting favour to certain section is found to be incorrect. The petitioners' presumption is based on the mis-construed notion that the road alignment may pass through Survey Nos. 1666, 1665, 1664 and 1947. The alignment does not pass through the said land survey numbers and the construction of highway would be as per the final plan prepared by the DPR consultants as alignment Option No. III which was approved and finalised by the Central Government.

9 So far as the objection raised by petitioner that as regards discrepancy in the length of by-pass road, it is contended that Option No. II, which has by-pass length of 14.69 Kms, having three vehicular underpasses, three pedestrian underpasses, three Railway Over bridges and two minor bridges confirm with the approved plan. When the DPR consultants superimposed the

alignment plan on the village map, the length of Highway would be exactly matching with the approved length in the option and, therefore, for each 100 meter interval level, the DPR consultants have to provide chainage in drawing itself and accordingly, length of road/bypass is to be fixed on the village map, as per the scale to match the length, otherwise, the length of the road either exceeds or may be shorter than what has been planned and/or accepted. It is contended that the DPR consultants had submitted Draft 3(A) notification along with alignment of Sangli Solapur Section of NH 166, wherein the alignment plan which was superimposed on the village maps specifically refers to chainage i.e. the length of the road, wherein Gat Nos./Survey No. and area to be required are approximate and the same is finalised after actual measurement by the survey authorities under Section 3(B) of the National Highways Act, 1956. It is contended that the alignment plan with chainage, as submitted by the DPR Consultant, is exactly matching with the length of Highway at Option II i.e. 14.69 Kms from Chainage 189.440 to 204.130 Kms. It is, thus, contended that there has been no deviation, as contended by the petitioners. It is further contended that as per the design criteria, the minimum radius for horizontal curve shall more than 400 meters to maintain design speed of 100 Km per hour and as such, the alignment of bypass cannot be changed instantly to safeguard any land owner due to design constraints to maintain design speed of 100 Km. per hour.

10 It has also been pointed out in an affidavit tendered by the Project Director of National Highway authority of India on 21.12.2018, that on 19.11.2018, the competent authority has

declared the award for an area admeasuring 37.5428 hectors. The land under the award has been acquired from Malgaon village. There are various awards declared by the competent authority determining the amount of compensation. The process of acquisition has been completed and land required for by-pass has been duly acquired by following the process established by law.

11 In this view of the matter, grievance raised by petitioners in the instant group of petitions need not be considered. If, at all, petitioners have any issue as regards amount of compensation determined, they can approach the arbitrator in accordance with Section 3(G)(5) of the National Highways Act.

12 Considering the contentions raised by the respondents, proposed work of construction of National Highway and by-pass near Miraj city, which is part of the larger project, need not be stalled. Acquisition proceedings have been completed and the properties under acquisition required for constructing the by-pass vests in the Central Government free from all encumbrances. In the circumstances, the project work involving a larger magnitude need not be stalled. Apart from this, the contentions raised by petitioners do not bear any merit requiring this Court to exercise extra ordinary jurisdiction under Article 226 of the Constitution of India.

13 It would be appropriate to refer to the decision of the Hon'ble Supreme Court in the matter **Union of India Vs. Dr. Kushala Shetty**, reported in AIR 2011 SC 3210. The Hon'ble Supreme Court in paragraphs no. 23 and 24 of the judgment,

which is relevant for consideration, has observed thus :

23 We may also refer to the Constitution Bench judgment in *E.P. Royappa v. State of Tamil Nadu and another* (1974) 4 SCC 3 : (AIR 1974 SC 555 : 1974 Lab IC 427). In that case, the petitioner, who was transferred from the Post of Chief Secretary and posted as Officer on Special Duty, challenged the action of government on various grounds including the one that the decision of the government was vitiated due to mala fides of the Chief Minister. This Court rejected the plea of mala fides by making the following observations :

“90..... The petitioner set out in the petition various incidents in the course of administration where he crossed the path of the second respondent and incurred his wrath by inconvenient and uncompromising acts and notings and contended that the second respondent, therefore, nursed hostility and malus animus against the petitioner and it was for this reason and not on account of exigencies of administration that the petitioner was transferred from the post of Chief Secretary. The incidents referred to by the petitioner, if true, constituted gross acts of maladministration and the charge levelled against the second respondent was that because the petitioner in the course of his duties obstructed and thwarted the second respondent in these acts of maladministration, that the second respondent was annoyed with him and it was with a view to putting him out of the way and at the same time deflating him that the second respondent transferred him from the post of Chief Secretary. The transfer of the petitioner was, therefore, in mala fide exercise of power and accordingly invalid.

91 Now, when we examine this contention we must bear in mind two important

considerations. In the first place, we must make it clear, despite a very strenuous argument to the contrary, that we are not called upon to investigate into acts of maladministration by the political Government headed by the second respondent. It is not within our province to embark on a far-flung inquiry into acts of commission and omission charged against the second respondent in the administration of the affairs of Tamil Nadu. That is not the scope of the inquiry before us and we must decline to enter upon any such inquiry. It is one thing to say that the second respondent was guilty of misrule and another to say that he had *malus animus* against the petitioner which was the operative cause of the displacement of the petitioner from the post of Chief Secretary. We are concerned only with the latter limited issue, not with the former popular issue. We cannot permit the petitioner to side track the issue and escape the burden of establishing hostility and *malus animus* on the part of the second respondent by diverting our attention to incidents of suspicious exercise of executive power. That would be nothing short of drawing a red herring across the trail. The only question before us is whether the action taken by the respondents includes any component of *mala fides*; whether hostility and *malus animus* against the petitioner were the operational cause of the transfer of the petitioner from the post of Chief Secretary.

92 Secondly, we must not also overlook that the burden of establishing *mala fides* is very heavy on the person who alleges it. The allegations of *mala fides* are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. Here the petitioner, who was himself once the Chief Secretary, has flung a series of charges of oblique conduct against the Chief Minister. That is in itself a rather extraordinary and unusual occurrence and if

these charges are true, they are bound to shake the confidence of the people in the political custodians of power in the State and therefore, the anxiety of the Court should be all the greater to insist on a high degree of proof. In this context it may be noted that top administrators are often required to do acts which affect others adversely but which are necessary in the execution of their duties. These acts may lend themselves to misconstruction and suspicion as to the bona fides of their author when the full facts and surrounding circumstances are not known. The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charge of unworthy conduct against ministers and other high authorities, not because of any special status which they are supposed to enjoy, nor because they are highly placed in social life or administrative set up – these considerations are wholly irrelevant in judicial approach – but because otherwise, functioning effectively would become difficult in a democracy. It is from this standpoint that we must assess the merits of the allegations of mala fides made by the petitioner against the second respondent.

24 Here it will be apposite to mention that NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of National Highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway development and maintenance. NHAI prepares

and implements projects relating to development and maintenance of National Highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The Courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited. The Court can nullify the acquisition of land and, in rarest of rare cases, the particular project, if it is found to be ex-facie contrary to the mandate of law or tainted due to mala fides. In the case in hand, neither any violation of mandate of the 1956 Act has been established nor the charge of malice in fact has been proved. Therefore, the order under challenge cannot be sustained.

14 For the reasons recorded above, we do not find any merit in the grievance raised by the petitioners in the group of instant petitions. Petitions are devoid of substance.

15 All writ petitions stand dismissed.

V.L.ACHLIYA
JUDGE

R.M.BORDE
JUDGE