

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3393 OF 2010

Damodar Amrut Deore, since
deceased, through

1a. Smt. Parvatibai Damodar Deore
& Others

.... Petitioners

Vs.

Malegaon Municipal Corporation & Anr.

.... Respondents

Mr. P.N. Joshi for the Petitioners.

Mr. S.S. Patwardhan for Respondent No.1.

Dr. (Mrs.) Kirti Kulkarni, AGP, for Respondent
No.2-State.

**CORAM: S.C. DHARMADHIKARI &
M.S. KARNIK, JJ.**

DATE : MAY 03, 2019

P.C:

1. We have heard Mr. Joshi, appearing for the
petitioners.

2. The claim of the petitioners is that, there were two
reservations clamped in the Development Plan on the subject
immovable property.

3. The one which has been taken to its logical end is for the benefit of the Irrigation Department and for an irrigation project. The latter one, for Fire Brigade Station, could not be taken to its logical conclusion and has lapsed.

4. The further version of the petitioners is that, from the petitioners' property a portion was carved out as a road and that is indeed a 15 metre wide D.P. Road. That portion or area is taken over, the road is laid but the Malegaon Municipal Council, now the Malegaon Municipal Corporation, has not compensated the petitioners for this act of the public body. This is taking over a property without due process of law. That has indeed adversely affected the right guaranteed by Article 300A of the Constitution of India. The petitioners are thus deprived of the use and enjoyment of their property.

5. On a perusal of this petition and its annexures, to which our attention was invited, and the affidavit filed in reply and the rejoinder, it is evident that, whether there was an existing D.P. Road to which an internal layout road connected

itself or whether the petitioners' assertion that the width of the road styled as D.P. Road is indeed 15 metres and that is a portion carved out from their own property, would require the petitioners to not only plead but prove all this by stepping into the witness box. The burden is on the petitioners and therefore, in our limited jurisdiction, a factual aspect as this cannot be resolved satisfactorily. The petitioners must, therefore, approach an appropriate forum including a Competent Civil Court and lay a claim for damages/compensation for the alleged wrongful deprivation of the petitioners' right to use and enjoy their own property. It will then be open for the petitioners to take recourse to the permissible Rules of evidence and to equally question the contents of the public documents. To our mind, therefore, the writ petition under Article 226 of the Constitution of India is not the appropriate remedy to resolve highly disputed factual issues, more particularly when contrary maps and plans are relied upon.

6. In such circumstances, we dispose of this writ petition on a limited ground and that is it involves highly

disputed questions of fact and the petitioners must, therefore, resort to the above remedies. We clarify that we have not expressed any opinion on the rival contentions.

(M.S. KARNIK, J.)

(S.C. DHARMADHIKARI, J.)