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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10536 OF 2017

Kashinath Sakharam Mahalunkar

& anr.

.. Petitioners

Vs.

The State of Maharashtra & ors.

.. Respondents

.....

Mr. Uday Warunjikar for the petitioners.

Mr. M.M. Pable, AGP for respondent Nos.1 to 3.

Mr. Nitin Deshpande for respondent No.4.

Mr. S.S. Patwardhan for respondent No.5.

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**CORAM : NARESH H. PATIL, CJ. &
M.S. KARNIK, J.**

RESERVED ON : 18th DECEMBER, 2018

PRONOUNCED ON : 8th JANUARY, 2019

ORDER (PER M.S.KARNIK, J.) :-

By this Petition filed under Article 226 of the Constitution of India, the petitioners are challenging an award dated 27/11/2013 passed by the Special Land Acquisition Officer ('SLAO' for short) – respondent No.1. The petitioners are further praying for appropriate directions to the respondents not to obstruct petitioners' peaceful possession, enjoyment and cultivation of the lands and restraining the respondents from taking possession.

2. The facts of the case in a nutshell are thus :-

Petitioner No.1 is owner of Gat No. 65 and 79 of Village – Mhalunge Ingle and petitioner No.2 is owner of Gat No.52 of same village. According to the petitioners, there exists a Main District Road ('MDR' for short) No. 18 by name Chass-Khalus- Kivale- Koregaon- Ambethan- Mhalunge. The said road was handed over by respondent No.4– Zilha Parishad to respondent No.3 – the Executive Engineer, PWD vide a letter dated 27/11/1990. The petitioners contend that certain steps were taken for acquisition of land for construction of MDR-18. To a query made by the petitioners, the Gaon Kamgar Talathi by his reply dated 30th January, 2010 informed the petitioners that their lands are not part of any acquisition. Similar was the response of the Superintendent of Land Record who has given certificate stating that after verifying the village map, no road is passing through the land of the petitioners.

3. According to petitioners, further steps were taken towards acquisition for construction of MDR-18. A Notification under Section 4 of the Land Acquisition Act (hereinafter

referred to as 'the said Act' for short) was issued on 16th September, 2010. According to the petitioners, notices issued on 29/9/2010 were never received by the petitioners. The declaration under Section 6 of the said Act came to be issued on 26/9/2011. An award under Section 11 of the said Act was made on 27/11/2013.

4. It appears that there is a communication dated 22nd June, 2010 of the Taluka Inspector of Land Record (TILR) informing the Land Acquisition Officer that survey could not be conducted as there was opposition of land owners. Learned Counsel placed much emphasis on the factum of not carrying out joint measurement to contend that the award is vitiated on this ground alone.

5. Learned Counsel submits that land belonging to the petitioners is not subject matter of acquisition and therefore petitioners are not concerned with the award. Learned Counsel submitted that for the benefit of a builder/developer who is constructing a township on the outskirts of the petitioners'

village that respondents took steps to make a new road for convenience of the Developer/Builder. As a result of this arbitrary change in alignment of the road to favour a particular builder/developer, the standing crops on the lands of the petitioners are destroyed.

6. Per contra, it is the stand of the respondents that land acquisition proceedings were initiated by respondent No.2 – SLAO, in respect of MDR-18 by name Chas-Kadus-Kivle-Ambethan-Mhalunge. The said MDR was constructed by Zilha Parishad, Pune and handed over to the Public Works Department (PWD) way back on 27/10/1990. Since then this road is maintained by PWD. In view of the rapid industrialization in the surrounding Chakan area, over a period of time, traffic considerably increased on MDR-18. The road therefore required to be widened. MDR-18 appears in the road development plan – 2000-2021. The width of the existing road is approximately 10 meters. As per MDR standards, required width of MDR has to be 24 meters for public transportation for development purpose.

7. Vide letter dated 18/2/2010, respondent No.3 wrote to respondent No.2 for acquisition of land for widening of existing MDR-18. Consequent to initiation of the acquisition proceedings, an award under Section 11 was made on 27/11/2013. The stand of respondent No.3 is that acquisition proceedings were initiated for widening of already existing public road (MDR-18) which is beneficial for public at large. The existing 10 meters road is being widened to 24 meters.

8. According to the respondents, confusion is sought to be created by the petitioners as regards MDR -18 and existing village road No.11. Village Road No.11 is a Road under the jurisdiction of the Zilha Parishad. Village Road No.11 appears in the village map maintained by the Deputy Superintendent Land Records, Khed Rajaguru Nagar. Thus, according to learned AGP, village road no.11 and MDR 18 are two different roads.

9. The allegation of the petitioners that road is constructed from the petitioners non agricultural lands without

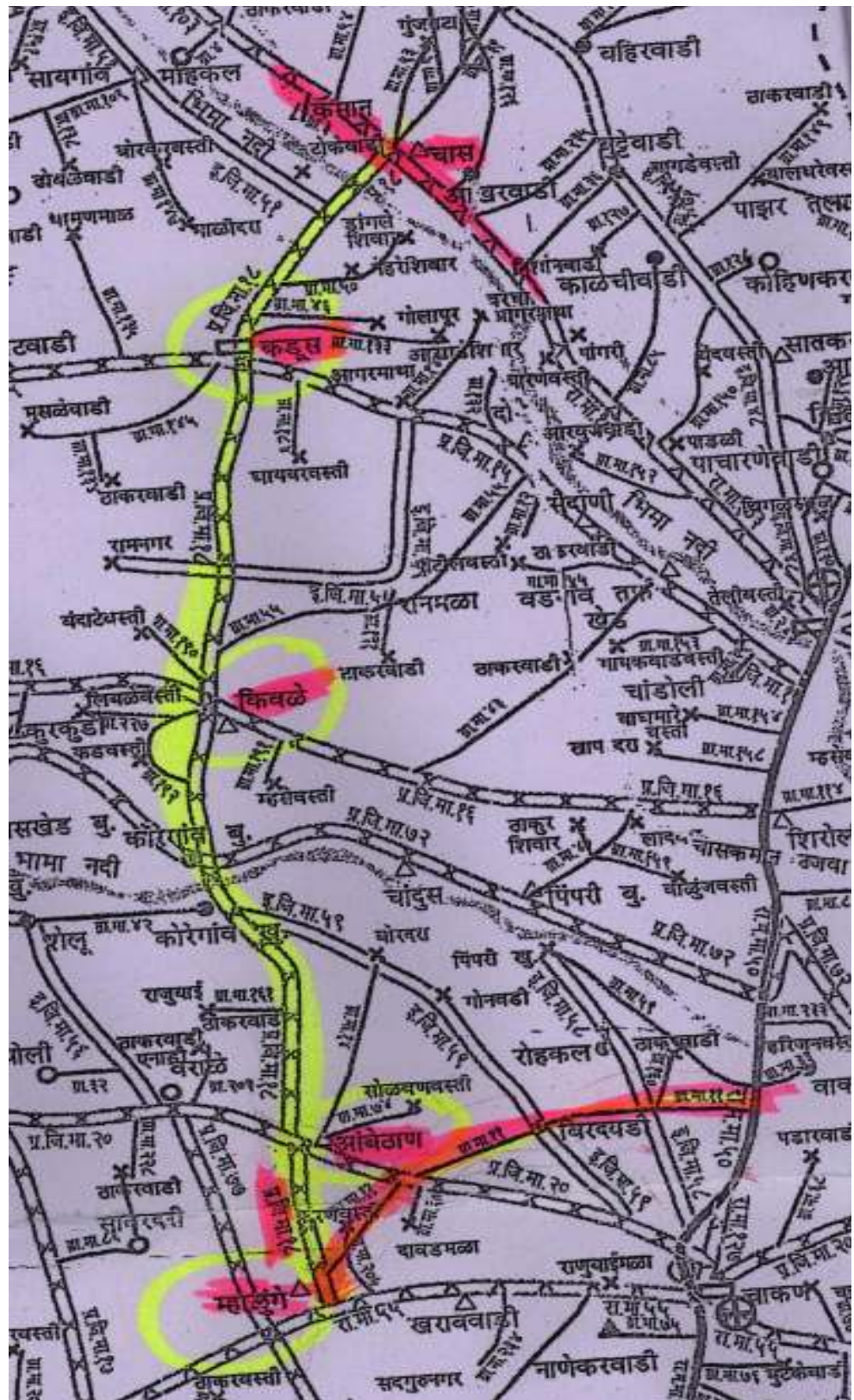
acquiring the said land with a view to favour a private builder/developer is denied by the respondents. Respondent No.3 submitted that the road from Mahalunge to Davane Vasti, Biradwadi Bham road and Mahalunge to Dwarka-Ambethan-Koregaon-Kiwale is not the same road. The road from Mahalunge to Dwarka-Ambethan-Koregaon-Kiwale is MDR-18. The road from Mahalunge to Davane Vasti, Biradwadi Bham road is a different road bearing name and number as village road 11.

10. Affidavit-in-replies have been filed on behalf of the respondent No.2 – the Deputy Collector (Land Acquisition), respondent No.4 – Zilha Parishad as well as respondent No.5 – Village Panchayat which have generally taken the same stand as respondent No.3.

11. Learned AGP relying on the Google map as well as the road development plan – 2000-2021 which shows existence of MDR-18, pointed out that acquisition is for the purpose of widening of existing 10 meters wide road to 24 meters as per

MDR standards. Learned Counsel for the respondents submits that on account of heavy traffic on the said road in view of the rapid industrialization in Chakan area that it was imperative to widen MDR-18. Learned Counsel for the respondents point out that MDR-18 is a separate road from Village road no.11. Village road No.11 is shown in the village map. According to the respondents, the petitioners relying upon village road no.11 which is the only road appearing in the village map are trying to make out a case that as village road no.11 does not pass through the lands of the petitioners, the respondents cannot forcibly take possession of petitioners land without initiating acquisition proceedings.

12. We have heard learned Counsel for the parties at some length. For the sake of convenience and with a view to better appreciate the controversy it would be material to reproduce the relevant portion of the road development plan – 2001-2021 which shows the existence of the MDR-18 and village road no.11.



The petitioners are concerned with their lands Gat Nos. 52, 65 and 79 of Village Mhalunge. The road development plan – 2000-2021 clearly indicates that MDR-18 passes through Chass, Khalus, Kivale, Koregaon, Ambethan, Mhalunge. In so far as village road no. 11 is concerned, the same goes from Mahalunge to Davane Vasti, Biradwadi Bham road and then joins National Highway No.50. It is apparent that MDR-18 and village road no.11 are two different roads. Thus, the road from Mahalunge to Dwarka-Ambethan-Koregaon Kiwale is MDR-18 whereas the road from Mahalunge to Davane Vasti, Biradwadi Bham road is a different road being village road no. 11.

13. Much reliance is placed by the petitioners on Certificate issued by Talathi dated 30/1/2010 to demonstrate that petitioners' lands Gat Nos. 52, 65 and 79 do not come under any land acquisition. Reliance is also placed on the communication dated 1/10/2011 of Deputy Superintendent of Land Records which is based on the village map certifying that no road appears to be passing through the said village.

14. It would however be material to refer to Section 4(1) Notifications dated 29th September, 2010 and 12th April, 2012 in respect of land Gat Nos. 65 and 79 which clearly indicate that the said lands of the petitioners are required for MDR-18. Even the exact specification of the MDR-18 as 18/100 to 21/500 kms. is mentioned.

15. The award dated 27/11/2013 mentions following :-

(a) for the proposed MDR-18 from the kilometer 18/100 to 21/500 land acquisition proposal under the said Act has been submitted vide proposal dated 9/2/2010.

(b) Section 4 Notification came to be issued on 8/9/2010 and was published in the Government Gazette on 16th September, 2010.

(c) Section 4 Notification was published in two newspapers on 18/9/2010. As many as 31 objections were received within the time limit.

16. A reading of the award clearly reveals that not only is the procedure followed under the said Act but upon issuance of the notices upon publication of Section 4(1) Notification, as many as 31 objections are received. After holding an enquiry under Section 5-A, Section 6 declaration came to be issued on 26/9/2011. The Notification as well as the declaration under Section 6 clearly indicates that apart from other lands, even the petitioners' lands are subject matter of acquisition. The details as regards petitioners' lands are (a) Gat No. 51 – 10 Ares, (b) Gat No.65 – 2 Ares, and (c) Gat No.79 – 12 Ares. Thus award made under Section 11 clearly indicates that petitioners' lands are very much subject matter of acquisition and same are acquired by following due process of law.

17. At this stage it is material to deal with the contention of petitioners that no joint measurements are carried out before acquiring their lands. TILR vide letter dated 26/2/2010 addressed to the SLAO, Pune informed him that notice for joint measurements was issued. There was however resistance from

the land holders and therefore the measurements could not be carried out. However, the communication dated 23/8/2010 issued by the Deputy Superintendent of Land Record to SLAO clearly indicates that joint measurements are completed and the measurement map is also forwarded. We do not, therefore, find any merit in the contention of the petitioners that no joint measurement in respect of MDR-18 is carried out.

18. The award under Section 11 has been passed on 27th November, 2013. Our attention is also invited to affidavit-in-reply filed on behalf of respondent No.2 – SLO. It would be material to reproduce paragraph 8 of the affidavit filed by Deputy Collector (Land Acquisition No.1.), District Pune which reads thus :-

“8. I say that though award is declared, taking possession of the awarded land has not yet been commenced till today by this Respondent. I say that pursuant to the Government Resolution No.LQN/12/2013/PK-190/A-2/Part-12, dated 9th May, 2014, Respondent No.2 herein Land Acquisition Officer 1 has started procedure for revision draft award on the basis of Section 24 of The Right of Fair

Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Copy of the said resolution dated 9th May 2014 is annexed here as Exh.6. The allegation that this Respondent is constructing the Road and trying to disposes the Petitioners is totally false.”

19. The materials on record therefore clearly indicate that lands of petitioners are very much a part of acquisition proceedings. Notification issued under Section 4, declaration made under Section 6 and the award under Section 11 in clear terms indicate that lands belonging to petitioners are subject matter of acquisition. It is specific stand of respondents that there exists 10 meters wide road passing through village Chass-Khalus-Kivale-Koregaon-Ambethan-Mhalunge. In view of the increase in traffic as a result of rapid industrialization in Chakan area, widening of existing 10 meters road is necessary. Road development plan – 2001-2021 clearly indicates that MDR-18 passes through Chass, Khalus, Kivale, Koregaon, Ambethan, Mhalunge. Thus MDR-18 is a separate road whereas village road no.11 passes from Mahalunge to Davane Vasti, Biradwadi Bham road. The relevant portion of the road development plan

extracted herein before clarifies the actual on site position regarding existence of MDR-18 and village road no.11. We therefore do not find any substance in the contention of petitioners that possession of their lands are being taken forcibly without initiating acquisition proceedings. As indicated earlier, the award clearly makes a reference to petitioners' lands and we are satisfied that provisions of the said Act are followed before making an award under Section 11.

20. It is also stated across the bar by learned AGP that except for some portion which is in possession of the petitioners, rest of the road is completed. The photographs on record reveals existing road is in a very bad condition. It is common knowledge that Chakan is a highly developed industrial area. In public interest MDR – 18 needs to be fully functional considering the large number of vehicles including commercial vehicles which have to pass through this area.

21. There is absolutely no material on record except bare contention of the petitioners that alignment of the road is changed for the convenience of a builder/developer. On the contrary, the materials on record clearly indicate that there was in existence a 10 meters wide road which is now being widened to 24 meters to ensure the prescribed standards of MDR are maintained. The acquisition is in public interest. The petitioners' lands are very much a part of acquisition proceedings which have now culminated in an Award.

22. The present Petition is devoid of any merits and is accordingly dismissed with no order as to costs.

(M.S. KARNIK, J.)

(CHIEF JUSTICE)