

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION (St) NO. 10232 OF 2019

Narayan A. Shetty & ors.

....Petitioners

Versus

Highway Authority/The Executive Engineer
& ors.

...Respondents

Mr. R. S. Datar, a/w Mr. A. J. Kandarkar, for the Petitioners.
Mrs. Madhubala Kajale, 'B' Panel Counsel, for Respondent
nos.3 and 4/State.

**CORAM: R. M. BORDE &
N. J. JAMADAR, JJ**

DATED: 11th April, 2019

PC:-

1. Mr. Datar, the learned Counsel for the Petitioners state that the Petitioners have received notices calling upon them to remove the construction within seven days from the date of notice. The notice is issued under provisions of Section 23(1) of Maharashtra Highways Act, wherein it is alleged that portion of structure raised by the Petitioner is affected due to proposed widening of Jawhar-Wada-Bhivand-Kalyan-Khopoli State Highway No.76. The Petitioners claim that they have tendered appeal under Section 24 of the Act to the Collector challenging the action and, the appeals are stated to be pending. Section 24 of the Act reads thus:

“24. Where the person, on whom notice to remove an encroachment has been served under sub-section (1) of section 23 lays claim that the land in respect of which encroachment has been alleged, is his property or that he has acquired a right over it by virtue of adverse possession or otherwise he shall within the time-limit prescribed in the notice for the removal of the encroachment, file an appeal before the Collector under intimation to the Highway Authority or the authorized office referred to in sub-section (1) of section 21, as the case may be. The collector shall after due enquiry record his decision in writing and communicate the same to the appellant and the Highway Authority or such officer. The Highway Authority or such officer shall till then desist from taking further action in the matter.”

2. The Petitioners have apprehension that, during the pendency of the appeals, adverse action would be taken, as such, are praying for issuance of directions to the Collector for expeditious disposal of the appeals presented by the petitioners.

3. According to us, this petition can be disposed of by directing the Collector to take decision in the appeals presented by the Petitioners under Section 24 of the Act, as expeditiously as possible, preferably within two months from today, and it is accordingly directed. It is clarified that, this Court has not considered the contentions of the Petitioners touching merits of the controversy and it would be open for the Collector to take decision in accordance with the provisions of law and after extending opportunity of hearing to the Petitioners.

4. Writ Petition is disposed of accordingly.

5. The apprehension expressed by the Petitioners as regard taking of coercive steps for demolition of construction is unfounded in view of the provisions of Section 24 of the Act which prohibits the Highway Authority or such office from taking any action till the appeal proceedings are disposed of.

[N. J. JAMADAR, J.]

[R. M. BORDE, J.]