

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.493/2017

Rajkumar Premchand Kohli Vs. Union of India and anothere.

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Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

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Shri S. M. Patrikar, Advocate for the petitioner.
Shri U. M. Aurangabadkar, Assistant Solicitor General of India for the
respondent No.1.
Shri A. A. Kathane, Advocate for the respondent No.2.

CORAM : **R.K. DESHPANDE &**
MILIND N. JADHAV, JJ.
DATED : **11th NOVEMBER, 2019**

. The petition claims direction to the respondents not to demolish the structure standing on Khasara No. 121/1A unless and until due process of law for acquisition under the provisions of Right to Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 is followed.

2. Initially, on 03.02.2017, *status quo* order was passed by this Court. Thereafter, on 26.08.2019, following order was passed.

“The portion has been demolished by National Highway Authority of India for Full Cloverleaf connecting two major Highways i.e. National Highway No. 6 and National Highway No.7.

We wanted to ascertain as to whether the portion so demolished is part and parcel of Survey No.121/1A, as claimed by the petitioner.

The petitioner has not joined the Revenue Authority as party respondent in this petition. Similarly, the sale deed has also not been produced on record to establish the ownership.

The petitioner is, therefore, permitted to join the Revenue Authority as party respondent.

Amendment be carried out within a period of two days.

Shri Uke, learned Additional Government Pleader, waives service of notice for added respondent.”

3. Shri. Patrikar, the learned counsel appearing for the petitioner has invited our attention to Civil Application No. 2812 of 2019 for amendment of the petition. For the reasons stated in the application, the application is allowed. Necessary amendment be carried out forthwith.

4. We have seen the copy of transfer-deed attached to the application of the amendment, which pertains to Khasara No. 121/1. Shri. Kathane, the learned counsel appearing for the respondent No.2 – National Highway Authority has invited our attention to the notification for acquisition of the land published at 04.06.2013 and in the schedule under the said notification what is acquired is survey No.121/4 and non agricultural land having area of 0.12 H.R.

5. In the affidavit filed in response to this petition, the respondent No. 2 – National Highway Authority has taken a stand in paragraph 2, which is reproduced below.

***“AS TO PARA NO. 2 :-** The contents of this para are disputed and denied. The present respondent has carried out the entire works on acquired lands only. The alleged demolition activity has been done by the NHAI on the illegally constructed structure by the petitioner. The nullah and the land of said nullah always belong to the State Government. That, as per the Joint Measurement Report supplied by the Taluka Land Revenue department; there is an existence of nullah in survey No. 121/1(A). Though the said survey*

*belongs to the petitioner as alleged by him; the fact remains that the nullah is always a property of Government and no compensation or title can be claimed by the petitioner in respect of the said demolition on the said nullah. Also; the existence of a bridge constructed on National Highway No. 6; itself proves the fact that there is a existence of a flowing Nullah from long time. Hence, the alleged claim made by the petitioner for grant of compensation for structures on nullah is devoid of merits and required to be rejected. The copy of said Joint Measurement Report supplied by the Taluka Land Revenue department is annexed herewith as **ANNEXURE-R-1**. The copy of photographs demonstrating the Nullah, the existing bridge on National Highway No.6, and the illegal construction made by the petitioner is collectively annexed herewith as **ANNEXURE-R-2**.”*

The position that emerges from the aforesaid factual aspect is that the petitioner claims to be the owner of Khasra No.121/1A and the acquisition by the National Highway Authority is in respect of

Khasara No.121/4, which does not belong to the petitioner. Khasara No. 121/1A is shown to be of Nullah over which the petitioner fails to establish a title. The title in respect of the land covered by Nullah normally vests in the Revenue Department of the State Government.

6. In view of above, we do not find any case is made out. The Writ Petition is dismissed.

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