

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1991 OF 2020

SHIVAJI BALKRISHNA WAKLE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for the Petitioner : Shri Chandak Raviraj R.
AGP for Respondents 1 to 3 : Shri S.B. Yawalkar
Standing Counsel for Respondents 4 and 5 : Shri S.S. Deve

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CORAM : RAVINDRA V. GHUGE
&
S.G. MEHARE, JJ.

DATE :- 14th December, 2021

Per Court :-

1. By this Writ Petition, the petitioner has put forth
prayer clauses B and C as under :-

- “B) *By way of passing appropriate writ, order or directions in the like nature, the Respondents No.2, 4 and 5 may kindly be directed to initiate the Land Acquisition proceedings under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, regarding the petitioners’ land situated in Gut No.179 at village Bhadji, Tq.Khultabad, Dist.Aurangabad to the extent of 0.64 R as affected in the proposed construction of National Highway No.752/H and to pay the compensation in accordance with the law.*
- C) *To hold and declare that the act of ongoing construction of Highway No.752/H through the*

land of petitioner bearing Gut No.179 situated at village Bhadji, Tq.Khultabad, Dist. Aurangabad without following due process of law, is illegal and void ab initio.”

2. By an order dated 05.10.2021, we had recorded as under :-

- “1. During the course of the hearing, the learned advocate Mr. Deve has drawn our attention to the affidavit-in-reply filed by Smt. Vidya Nivrutti Chamle, Sub Divisional Engineer, National Highway Sub Division, Aurangabad. The learned advocate has apologized that the time of reaching the site at 9.30 a.m. is wrongly typed as 9.30 p.m. and the presence of the Highway Authorities at the site was at 10.00 a.m. and not 10.00 p.m. It is then pointed out that neither the petitioner nor the officers of the T.I.L.R. office were present on 26.09.2019 for carrying out the measurement at 9.30 a.m. on 26.09.2019, by virtue of the notice dated 16.09.2019, which was issued pursuant to the order of this Court, dated 27.08.2019 passed in Writ Petition No.9398 of 2019 filed by the present petitioner. Mr. Deve further submits on instructions that the measurements and the map placed before us at page No.61, was not drawn and no measurement was made in the presence of respondent No.5 - Authority.*
- 2. The learned advocate for the petitioner submits that the petitioner was also present, though the 5th respondent has incorrectly stated in her affidavit that he was not present at the site for measurement. He further submits that the T.I.L.R. office representatives who were cast with the duties of carrying out the measurement, were also present.*
- 3. In view of the above, we call upon the*

petitioner to file an affidavit stating that he was present on 26.09.2019 at the site when the measurement has taken place. We also direct respondent No.3 to enter a short affidavit clarifying the said situation and also place the record before us which would indicate, as to who were present when the measurement was carried out.

- 4. Let such affidavits be entered on or before 21.10.2021.*
- 5. List this petition in the “urgent category” on 25.10.2021.”*

3. After considering the submissions of the parties, we passed the order on 23.11.2021, which reads thus:-

- “1. Pursuant to our order dated 05/10/2021, the affidavits have been filed on behalf of the respondents. From the said affidavits, we noticed that the Sub-Divisional Engineer, National Highways, Sub Division Aurangabad Smt.Vidya Nivrutti Chamle was not present when the measurement was carried out on 9.30 a.m. on 26/09/2019, which was under the orders of this Court.*
- 2. Mr.Deve, the learned Advocate representing the said authority, submits on instructions that a re-measurement may be ordered.*
- 3. In view of the above and taking into account that Smt.Chamle can alone be blamed for not remaining present at 9.30 a.m. when the measurement commenced, we are not inclined to order remeasurement as this would be an endless exercise. Instead, we permit the said authority to file any document that she has in her department, to indicate that the measurement carried out on 26/09/2019 and the map prepared on the basis of such measurement, is incorrect. Let a short affidavit*

alongwith such documents be filed on or before 10/12/2021.

4. *List this petition in the Urgent Category on 14/12/2021.”*

4. Having recorded the submissions of the learned advocates for the respective sides, we find that the map at page 61 of the petition paper book indicates a twist in the Khultabad-Phulambri road, which is the subject matter of this petition. Based on the same, the petitioner contends that earlier his land admeasuring 49 R from Gat No.179 was affected by the said national highway. Subsequently, 15 R land was affected. No compensation has been granted to him.

5. Considering the affidavit in reply filed by respondent No.5 dated 10.12.2021 through Pallavi Ramanlal Sonawane, Executive Engineer, National Highway Division, Aurangabad, the learned advocate for the petitioner submits that the new map placed at page 97 by the said affiant would falsely indicate that his land Gat No.179 is not affected at all. However, the measurement carried out by the Taluka Inspector of Land Records (TILR) under the orders of this Court, on 26.09.2019, would indicate that his land to the extent of 49 R initially and then to the extent of 15 R has been consumed in the said

Khultabad-Phulambri national highway. Respondent No.4 would be the authority to decide this dispute.

6. The learned AGP representing respondent Nos.1 to 3 and the learned advocate representing respondent Nos.4 and 5 submit that there is no difficulty in directing respondent No.4 to decide this issue since the petitioner's claim for compensation would rest on whether, his land has been consumed in the said road and if that be so, it may amount to acquisition of land.

7. As such, this Writ Petition is disposed off with the following directions :-

(a) The petitioner as well as respondent No.5 shall appear before respondent No.4 on 04.01.2022 at 12:00 noon at the address supplied by advocate Shri Deve, which is as under :-

“The Competent Authority/ The Special Land Acquisition Officer and Sub Divisional Officer, National Highway No.752/H, Kannad, Taluka : Kannad, District Aurangabad.”

(b) Respondent No.4 would consider the measurement carried out by the TILR on 26.09.2019 and all such documents as may be placed before him by the litigating parties.

(c) Written notes of submissions are permitted and we

also permit legal assistance to represent the case of the litigating parties before respondent No.4.

(d) We expect respondent No.4 to decide the said issue after granting reasonable opportunity of hearing to the parties, on or before 28.02.2022.

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(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)