

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

PUBLIC INTEREST LITIGATION NO. 56 OF 2020

Jayshri Ravi Sabu through
registered GPA holder
Rajesh Bhagwandas Soni and others .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Shri V. D. Sapkal, Senior Advocate i/by Shri Pratik A. Bhosle,
Advocate for Petitioners.

Shri A. R. Kale, A.G.P. for Respondent Nos. 1, 2, 4 and 5.

Shri S. V. Adwant, Advocate for Respondent Nos. 3, 6 and 7.

**CORAM : S. V. GANGAPURWALA AND
SHRIKANT D. KULKARNI, JJ.**

CLOSED FOR ORDER ON : 02.03.2021

ORDER PRONOUNCED ON: 23.04.2021

FINAL ORDER (*Per S. V. Gangapurwala, J.*) :-

. The petitioners assail the notification dated 20th August, 2020 thereby proposing to acquire the lands in Nidhona village, Dist. Jalna for construction of interchange to Maharashtra Samruddhi Highway. The petitioners also seek directions against the respondents to proceed ahead with the earlier notification dated 02nd May, 2017 proposing construction of interchange at village Gundewadi, Dist. Jalna. The petitioners also seek enquiry into the affairs of the respondent authorities responsible for changing the spot of interchange. The

petitioners are the owners of lands in the village where initially interchange was to be constructed as per the notification dated 02nd May 2017. The site for interchange on the Samruddhi Highway has been changed under the impugned notification.

02. Mr. Sapkal, the learned senior advocate for petitioners strenuously contends that, the Samruddhi Highway is for boosting agricultural economy. Under notification dated 02nd May, 2017, the interchange at village Gundewadi was proposed. It has various benefits. The said spot is in the vicinity to market yard of Agricultural Produce Market Committee (APMC) and agro based industries. The other benefits of interchange at village Gundewadi also exist, such as connectivity to other State Highways that can ensure joining Samruddhi Highway with other districts through which it does not pass. The cost of acquisition per hector of land in village Gundewadi is approximately Rs. 1.11 Crores. However, the Maharashtra State Road Development Corporation (for short "MSRDC") wants to construct interchange as per new design in 25 hectares, then it would cost Rs. 28.00 crores for acquisition and Rs. 73.00 crores for construction thereby increasing the cost.

03. The learned senior advocate further submits that, the new notification dated 20th August, 2020 for constructing interchange at village Nidhona is not feasible and it is published by tweaking the procedure. The explanation given by the MSRDC that it is beneficial for connecting Dry Port to Samruddhi Highway and that the new interchange is close from

M.I.D.C. cannot be accepted. Prior to publication of the impugned notification U/Sec. 15(2) of the Maharashtra Highways Act, joint measurement survey (JMS) U/Sec. 16 of the Maharashtra Highways Act was conducted. After conducting the JMS, the Government machinery were certain that the lands which it intends to acquire are actually capable of being acquired. However, it published the impugned notification. Same is contrary to the scheme of the Highways Act, 1955. The work of erection of pillars is in progress, even before publication of the impugned notification. This shows the haste on the part of the respondents. The area, because of the change in the interchange comes in industrial zone and the cost of acquisition is Rs. 03.00 crores per hector. Even as per the MSRDC, it is much more than the cost of acquisition of the land in village Gundewadi.

04. The learned senior advocate further submits that, the impugned notification is issued with a malafide intention. Various steel re-rolling mill owners have purchased lands after 2018 in this area of village Nidhona in the same gut numbers which are now notified by the respondents. Some people residing outside Jalna district have purchased lands in this area. It cannot be a mere co-incidence that the President of the Steel Re-rolling Mill Association Jalna wrote a letter on 02nd February, 2018 requesting to connect dry port to Samruddhi Highway and the purchase of the lands in that area began from March 2018. Immediately after purchase of lands by such persons, the lands have been illegally fragmented, converted into

N.A. and sold without permissions to extract more compensation from the Government. According to the the learned senior advocate, the explanation given by the MSRDC that interchange at village Nidhona is beneficial for connecting dry port to Samruddhi Highway cannot be accepted because the dry port is already linked to Samruddhi Highway via a 50 meters wide DP road, which is provided for in the regional plan of Jalna. The minutes of meeting of the Regional Planning Board filed on record would make that position clear. The object of Samruddhi Highway is for boosting agricultural economy, the interchange should be close to the agro base industries and the Krishi Samruddhi Kendra, which are at Gundewadi and not close to M.I.D.C.

05. The learned senior advocate further submits that, similar kind of mischief has been done by the Government authorities in collusion with the land mafia in other Government projects thereby making out a case for probing angle of corruption. The learned senior counsel relies on the illustration and the following circumstances to buttress his submissions. Some of the same people have purchased land in Nagewadi village adjacent to dry port for Rs. 1,92,00,000/-. The Chairman of the Jawarharlal Neharu Port Trust (for short "JNPT") has sought approval to construct approach road from dry port to Aurangabad-Jalna Highway. In fact, there was already a connecting road from dry port to Aurangabad-Jalna highway which was of 15 meter and land to dry port was allotted on the very condition that this road of 15 meters be widened to 24 meters. Therefore, there was no

need to construct a new approach road. In the meeting of regional planning board of Jalna, under the Chairmanship of the Collector, it was resolved that this 15 meters road be widened to 50 meters.

06. The learned senior counsel further submits that, though there was existing approach road, approval was sought for constructing new approach road and after approval, lands of same people were acquired for new approach road for a consideration of Rs. 6,30,45,675/- in May 2018. This means that these people earned a profit of approximately Rs. 4.38 crores in a span of one year. If the earlier approach road was widened to 50 meters, then it would have incurred expenditure of Rs. 10 crores and the expenses which are required for the new approach road are of Rs. 20 crores. This has caused a loss of Rs. 10 crores to the government. Same people had also purchased lands in village Kharpudi after the year 2018. Later on this area was notified for establishment of CIDCO township, but later on the government conducted a feasibility survey and decided to drop the CIDCO project. The same investors have purchased lands in various areas which later are notified for various government projects. According to the learned senior advocate, the aforesaid material is sufficient to establish a nexus between government officers and land mafias and a clear pattern in which the land mafias purchase lands and later the Government notifies the same lands for different projects and these lands are purchased by the Government for higher considerations even when low cost lands are available. Such nexus has caused loss to the

Government in past and now under the present project the loss would be caused if the spot of interchange is substituted from Gundewadi to Nidhona.

07. Mr. Adwant, the learned advocate for respondent Nos. 3, 6 and 7 submits that, the petitioners are espousing their private cause under the cloak of a Public Interest Litigation. The petitioners hidden agenda is to assert their personal interest of private profit as their properties are in the vicinity of village Gundewadi. The present petition is not a public interest litigation, but a private interest litigation. The learned advocate further submits that, the provisional interchange at Nidhona is in the public interest for public welfare and is a part of development project in Jalna.

08. Mr. Adwant, the learned advocate further submits that, it is upon the advice of the experts, the interchange is constructed at Nidhona. Prior to the preparation of feasibility study for access controlled Nagpur-Mumbai Super Communication Expressway for Aurangabad Revenue Division - Jalna District Package No. VIII, opinion from the reputed consulting firm was also obtained. For consultation services, the tender of Louis Berger Consulting Pvt. Ltd. Gurgaon, Haryana was accepted. The team of technically qualified persons of the respondents has physically examined the location and has demarcated the alignments of the proposed road by fixing the temporary benchmarks. While preparing alignment of the road, various norms were considered with an intend not to disturb the ecology

of the area. Various aspects like urban economics, the time, spatial, economics and site dimensions, avoiding water bodies like lake, dams, etc., avoiding villages, avoiding various forest areas, taking care of the land use pattern, avoiding environmentally sensitive area, keeping away from existing major towns were considered.

09. The learned advocate further submits that, while arriving at decision to have interchange at Nidhona, the distance, traffic movement, safety norms, fuel consumption, vehicle operating cost and environmental impact were also considered. The Government authorities at the district level and local bodies were also contacted, the master plan of Jalna district was obtained and studies in view of various technical, economical and social aspect of the project were conducted. The topographic survey was carried out containing the details of physical and topographical features within the survey corridor such as roads, rivers, streams, rail crossings, electric lines, high/low tension lines and their off-sets from the road edge, buildings, etc.

10. The learned advocate further submits that, the land acquired for Nidhona interchange is about 25 hectares as against land of 63 hectares at Gundewadi. Thus precious land of about 38 hectares near the city of Jalna is saved. The location of dry port and industrial area is on the west side of Jalna city on barren land towards JNPT and Gundewadi is located on north side of the city. The entire movement of the traffic from industrial zone and dry port will be through habited area, industrial traffic is of

heavy motor vehicles, heavy containers, cargo fleets, multi axle long trailers, which creates nuisance to the local traffic with high pollution, hampering the health of public at large. Therefore, location of Nidhona is more appropriate over Gundewadi. The tentative plan at Gundewadi involved use of land measuring more than 101 Hectors, which itself would cost more than Rs. 109 crores against which the finalized plan at Nidhona was to utilize only 25 hectors land, which resulted in saving huge public money. The total cost of interchange at Nidhona is considerably less than what it would have been in the event the interchange had been finalized at Gundewadi. On the date of filing affidavit more than 7.07% of work has been done. The work of interchange has commenced much prior to the filing of the petition. The averments of the petitioners about loss caused because of the interchange at Nidhona is misplaced. The amount that would have been spent for Nidhona interchange is Rs. 145.97 crores and not Rs. 305,07,20,280/- as claimed by the petitioners.

11. According to Mr. Adwant the decision to have interchange at Nidhona is based on technical feasibility, utility, service and all aspects have been considered. The learned counsel submits that, the erection of pillar for predefined Nidhona interchange at chainage 370+334 is in progress as per DPR, EPc tender and approved design and drawing location. As per the work order issued to the respondent No. 3, 58% of the work has been completed, 18 RA bills have been submitted and Rs. 874.14 crores have been paid to the contractor. The entire procedure

provided under the Maharashtra Highways Act has been followed.

12. The learned advocate for the respondent relied upon the judgments of the Apex Court to buttress his submissions that, the present matter cannot be entertained as PIL and also that this Court would not interfere with the decision taken by the experts. We would not be referring all the judgments, as it would be repetition on the same issues. Some of the judgments relied by the learned advocate for respondents would be referred at the appropriate place. Some of the judgments relied by the advocate for respondents are as under :

- (i) Federation of Railway Officers Association Vs. Union of India reported in *(2003) 4 SCC 289*.
- (ii) Project Director, Project Implementation Unit Vs. P. V. Krishnamoorthy and others reported in *2020 SCC Online SC 1005*.
- (iii) Balco Employees Union (Regd.) Vs. Union of India and others reported in *(2002) 2 SCC 357*.

13. Upon considering the pleadings of the parties and submissions of the learned advocates, it transpires that the petitioners are the owners of lands situated at a place where, if, the interchange would have been constructed at Gundewadi, as per notification of the year 2017, their lands would have been acquired. The petitioners certainly are interested persons. Now that interchange is constructed at Nidhona, the petitioners'

lands would not be required for acquisition and probably that is the reason prompting the petitioners to file the present petition as public interest litigation.

14. The interchange is a road junction that uses grade separations and typically one or more ramps, to permit traffic on atleast one highway to pass through the junction without interruption from other cross traffic streams. According to the Executive Engineer, MSRDC, an interchange is a system of interconnecting roadways in conjunction with one or more grade separations that provides for movement of traffic between two or more roadways or highways on different levels.

15. Perusal of the affidavit filed by the MSRDC, it is claimed by the MSRDC that while taking the decision to have interchange at Nidhona, the stakeholders of Samruddhi Highway have considered following fundamentals.

- (i) Strategic option study,
- (ii) Feasibility and traffic study,
- (iii) Road inventory, conditions of existing road including designs, BOQ, specifications laid down in IRC codes, MoRT and H specifications for roads and bridges,
- (iv) Environmental screening,
- (v) Cost estimates,
- (vi) Best possible options and
- (vii) Urban economics.

16. While deciding the site of interchange at Nidhona, following fundamentals have been considered by the respondent No. 3.

- (a) Current traffic count,
- (b) Road inventory,
- (c) Conditions of existing roads including design,
- (d) Anticipated future traffic growth,
- (e) Direction of the development of the city,
- (f) Nodal points of public transport system,
- (g) Location of MIDC,
- (h) Location of Dry-Port of JNPT,
- (i) Location of the residential clusters of the city,
- (j) Location of the educational hubs,
- (k) Location of health centres and hospitals,
- (l) Problems of urbanization,
- (m) Present and future traffic movement in the periphery of the proposed expressway,
- (n) Other technical parameters.

17. It has been apprised by the Executive Engineer, MSRDC by filing a note that, if the interchange would be at Gundewadi, then three vehicular over passes (VOP) were required to be constructed and at Nidhona interchange location only one vehicular over pass is required from Toll Plaza to cross Samruddhi Mahamarg and connect trumpet to facilitate the traffic movement. It is sought to be canvassed by the respondents that, at Nidhona only one VOP is sufficient to cross

Samruddhi Mahamarg and connect trumpet to facilitate the traffic movement, but at Gundewadi three VOP's are required to cross the Samruddhi Mahamarg (Highway) and connect trumpet to facilitate the traffic movement. It is also further sought to be canvassed by the respondents that, due to mixing of local traffic more distance to travel and traffic congestion would lead to more probable accidents in future at Gundewadi, whereas Nidhona interchange will require less distance to travel and congestion free traffic. Gundewadi interchange is located in proximity of Jalna city and will result in traffic congestion and would be a waste of time. Whereas Nidhona interchange is technically viable. It is away from the city requiring less connecting road network and would reduce traffic congestion. At Gundewadi interchange connecting existing road are already full of local, APMC and industrial traffic, heavy container traffic movement will be much difficult to cater. At Nidhona interchange being connected by MIDC Phase - III road, heavy container and multi axle traffic movement will be easily facilitated. It is also further stated that, the interchange at Nidhona would be more cost effective.

18. The MSRDC is assisted by technical experts. They have also sought the services of experts.

19. The feasibility and viability of the project involving technical consideration and more particularly that of interchange of road projects is job of experts. The Courts do not have the necessary wisdom to sit over as an appellate authority

over the decision of the experts. The Courts do not possess the necessary expertise in those fields. The Apex Court in a case of **Federation of Railway Officers Association Vs. Union of India** (supra) observed thus :

“18. Even if we assume that there is force in the material placed by the petitioners that by forming new railway zones efficiency in the Railway Administration would not enhance, the reasons given by the Government and material placed by them in support of forming new railway zones is no less or even more forceful. Further, when technical questions arise and experts in the field have expressed various views and all those aspects have been taken into consideration by the Government in deciding the matter, could it still be said that this Court should re-examine to interfere with the same. The wholesome rule in regard to judicial interference in administrative decisions is that if the Government takes into consideration all relevant factors, eschews from considering irrelevant factors and acts reasonably within the parameters of the law, courts would keep off the same. Even on the test suggested by Dr. Pal, we cannot travel outside this principle to sit in appeal on the decision of the Government.”

20. In a case of **Project Director, Project Implementation Unit Vs. P. V. Krishnamoorthy and others** (supra), the Apex Court has observed thus :

“28. Here, it will be apposite to mention that NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of national highways.

The projects involving construction of new highways and widening and development of the existing highways, which are vital for the development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and maintenance of national highways after thorough study by expert in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would sub-serve the larger public interest. In such matters, the scope of judicial review is very limited. The court can nullify the acquisition of land and, in the rarest of rare cases, the particular project, if it is found to be ex facie contrary to the mandate of law or tainted due to mala fides. In the case in hand, neither has any violation of mandate of the 1956 Act been established nor has the charge of malice in fact been proved. Therefore, the order under challenge cannot be sustained.”

21. The MSRDC is a professionally managed statutory body having expertise in the field of development and maintenance of state highways. It comprises of persons having knowledge and expertise in the field of highway development and maintenance. From the affidavit filed on record by the respondents, it appears that, the decision has been taken to change the location of interchange from Gundewadi to Nidhona after thorough enquiry and discussion by the experts. Different factors as observed

supra have been considered. It will not be appropriate for the Court to decide whether the interchange at Gundewadi would be more feasible and viable than the interchange at Nidhona. Interfering in such matters would be sitting over the decision of the experts, though the Court does not possess an expertise in the said field. The intended project is to construct the roads which reduces the travel time, cost, help in fast movement of the people with safety norms.

22. Only because some persons have purchased the properties in the vicinity of Nidhona interchange in the year 2018 and prior to the impugned notification of the year 2020 would not be sufficient to conclude that the interchange at Nidhona is not technically viable and/or not feasible or that the same is not cost effective. The respondents have demonstrated that, interchange at Nidhona would require less land to be acquired than the one at Gundewadi, if the interchange would have been at Gundewadi.

23. The Courts would not examine the relative merit of the interchange at Gundewadi or at Nidhona, more particularly when the said exercise has been done by the technically expert body of persons.

24. The present P.I.L. in fact is a private interest litigation. The petitioners own and possess the lands in the vicinity of Gundewadi. Because of the change of location from Gundewadi to Nidhona, the lands of the petitioners are now not acquired. It

appears that, petitioners are interested in acquisition of their lands. The present petition would be entertained as P.I.L., if it is shown that the interchange at Nidhona is not feasible or viable. Perusing the affidavits and the other supporting documents filed by respondents, it transpires that, the respondents have considered all the technical, environmental, geographical, topographic and all other relevant aspects in taking decision to have an interchange at Nidhona. Apart from the petitioners, none of the residents either at Nidhona or Gundewadi have made grievance by approaching the Court. The Apex Court in a case of **Balco Employees Union (Regd.) Vs. Union of India and others** (supra) has observed thus :

“80. PIL is not a pill or a panacea for all wrongs. It was essentially meant to protect basic human rights of the weak and the disadvantaged and was a procedure which was innovated where a public-spirited person files a petition in effect on behalf of such persons who on account of poverty, helplessness or economic and social disabilities could not approach the Court for relief. There have been, in recent times, increasingly instances of abuse of PIL. Therefore, there is a need to re-emphasize the parameters within which PIL can be resorted to by a petitioner and entertained by the Court. This aspect has come up for consideration before this Court and all we need to do is to recapitulate and re-emphasize the same.

234. In respect of public projects and policies which are initiated by the Government the courts should not become an approval authority. Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large, and not merely of

a small section of the society, has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in conflict with any law or is not mala fide, it will not be in public interest to require the court to go into and investigate those areas which are the function of the executive. For any project which is approved after due deliberation the court should refrain from being asked to review the decision just because a petitioner in filing a PIL alleges that, such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the Government, is possible. When two or more options or views are possible and after considering them the Government takes a policy decision it is then not the function of the Court to go into the matter afresh and, in a way, sit in appeal over such a policy decision.

88. It will be seen that whenever the Court has interfered and given directions while entertaining PIL it has mainly been where there has been an element of violation of Article 21 or of human rights or where the litigation has been initiated for the benefit of the poor and the underprivileged who are unable to come to court due to some disadvantage. In those cases also it is the legal rights which are secured by the courts. We may, however, add that public interest litigation was not meant to be a weapon to challenge the financial or economic decisions which are taken by the Government in exercise of their administrative power. No doubt a person personally aggrieved by any such decision, which he regards as illegal, can impugn the same in a court of law, but, a public interest litigation at the behest of a stranger ought not to be entertained. Such a litigation cannot *per se* be on behalf of the poor and the downtrodden, unless the court is satisfied that there has been violation of Article 21 and the persons adversely affected are

unable to approach the court.”

25. As has been observed by the Apex Court, every matter of public interest on curiosity cannot be a subject matter of P.I.L. The Courts would interfere, if there is clear violation of statutory provisions or non compliance by the State with its constitutional or statutory duties. In the present matter, we do not find any of such contingencies arising.

26. In view of the aforesaid, we are not inclined to entertain the present public interest litigation petition. The public interest litigation is dismissed.

[SHRIKANT D. KULKARNI, J.] [S. V. GANGAPURWALA, J.]

27. At this stage, Mr. Bhosale, the learned counsel for petitioners submits that, Rs. 2,00,000/- (Rs. Two Lacs only) have been deposited by the petitioners to show the bonafides, the same be refunded to the petitioners.

28. The learned counsel for the petitioners graciously on instructions of the petitioners submits that Rs. 1,00,000/- (Rs. One Lacs only) be remitted to the Government Medical College and Hospital, Aurangabad, running Covid treatment centre.

29. In view of the request made by the learned counsel for the petitioners, the Registry shall remit an amount of Rs. 1,00,000/-

(Rs. One Lac only) to the Government Medical College and Hospital, Aurangabad running Covid treatment centre. The remaining amount of Rs. 1,00,000/- (Rs. One Lac only) is allowed to be withdrawn by the petitioners.

[SHRIKANT D. KULKARNI, J.] [S. V. GANGAPURWALA, J.]

bsb/April 21