

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

WRIT PETITION NO.11042 OF 2018

Dr.Hiralal Ganpatrao Nimbalkar,
Age : 52 years, Occupation : Service,
R/o Nilanga, Taluka Nilanga,
District Latur.

...PETITIONER

-VERSUS-

1. The State of Maharashtra.
Through the Collector,
Latur, District Latur.
2. The Executive Engineer,
Maharashtra State Electricity
Transmission Co. Ltd., E.H.V.
Sub Station Premises,
P-21, MIDC, Latur.
3. The Chief Engineer,
Maharashtra State Electricity
Distribution Co. Ltd.,
Latur Division, Latur.
4. The Tahsildar,
Tahsil Office, Nilanga,
Taluka Nilanga,
District Latur.

...RESPONDENTS

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Advocate for the Petitioner : Ms.Ansari A.N.
AGP for Respondents 1 and 4 : Shri S.G.Sangle
Advocate for Respondent 2 : Shri D.P. Palodkar
Advocate for Respondent 3 : Shri D.P. Deshpande (Absent)

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**CORAM : RAVINDRA V. GHUGE
&**

S.G. MEHARE, JJ.

DATE :- 06th September, 2021

ORAL JUDGMENT (Per Ravindra V. Ghuge, J.):-

1. None appears for respondent No.3. Heard the learned counsel.

2. The petitioner has put forth prayer clauses B and C as under :-

“B) *The Respondents be directed to start the acquisition proceeding in the matter of providing alternative way from Survey No.171 situated at Nilanga Talikhed Road, Taluka Nilanga, District Latur, under the provisions of Right to Fair Compensation and Transparency in Land Acquisition Act, 2013, by issuing any appropriate writ order or direction as the case may be.*”

“C) *The petitioner be granted damages of Rs.1,00,000/- per year for illegal use of his land from the year 2012 onwards, till acquisition of land by issuing any appropriate writ order or direction as the case may be.*”

3. The petitioner submits that he is a joint owner of the agricultural land admeasuring 4 acres and 3 gunthas in Survey No.171 at Nilanga, Taluka Nilanga, District Latur. The Non Agricultural (N.A.) permission is now granted by the competent authority in favour of the petitioner to the extent of 3 acres and 3 gunthas. Plots have been carved out as per the sanctioned layout

plan. However, in the case of the brother of the petitioner, namely, Mr.Ajit Ganpatrao Nimbalkar, owing to an electric tower with connecting electricity transmission wires installed in the land on the public road Nilanga- Talikhed, the land available cannot be put to any use as the public is now bypassing the tower and travelling through the land. As such, practically the land admeasuring 17006.962 square feet, which is almost half an acre, cannot be used by the petitioner since 2012.

4. Being aggrieved, the petitioner approached the competent authority by filing an application under Rule 3(1)(2) of the Maharashtra Electricity Work of Licensees Rules, 2012. The said application was contested by respondent Nos.2 and 3. By order dated 26.09.2016, the District Collector came to the conclusion that the tower was erected for 132 KV electricity transmission. Tower No.2 was erected on the road, which was being used as a “Vahiwat” by the villagers and by the people residing in the surrounding areas. The construction of tower No.2 was completed in 2010 and 132 KV line was laid in 2012.

5. The revenue records produced by the Tahasildar, Nilanga clearly indicate, on the basis of the village map and measurement map, that tower No.2 is erected on the road which

was used by the villagers in the surrounding areas. Consequentially, the District Collector ordered respondent Nos.2 and 3 to remove the disputed tower No.2 and by removing the said obstruction, clear the road for its regular use. Six months time was granted so as to clear the “Vahiwat” road by removing the obstruction. In the alternative, the District Collector ordered that an alternate road may be created by respondent Nos.2 and 3.

6. Respondent Nos.2 and 3 approached the Maharashtra Electricity Regulatory Commission (for short, “MERC”) by preferring Case No.140/2016. The learned advocate representing respondent No.2 refers to the order dated 01.03.2017 delivered by the MERC. He refers to paragraph 13 and points out that the brother of the petitioner has preferred the civil suit in the Civil Court claiming compensation of Rs.45 lacs against respondent Nos.2 and 3 for having erected the transmission tower on his land in Gat No.171. We are of the view that this aspect is a different issue. The issue before the District Collector and taken up in this petition is that because of the erection tower No.2, the main road has got blocked and the villagers are trespassing from the land of the petitioner’s brother thereby, consuming 17006.962 square feet of land.

7. The learned advocate for respondent No.2 further points out from paragraph 13 that a reference is made by the MERC that the shifting of tower No.2 is not a feasible option and the District Collector's order is set aside to that extent. We find that in the concluding paragraph 14, the MERC has noted that the Collector has fairly set out in his order that the tower No.2 was erected on the Nilanga-Talikhed road and therefore, there is an option of providing an alternate road. As such, by considering the limited scope of revision, the MERC refused to interfere with the Collector's order in this regard.

8. The learned advocate for respondent No.2, therefore, contends that shifting of tower No.2 is held to be unfeasible and the Collector's direction to remove the tower was set aside by the MERC. As such, the Collector's order in the alternative was that an alternate road may be demarcated so that there would not be a blockade on account of the tower and the MERC has not interfered in the Collector's order to this extent.

9. The applicants before the MERC i.e. respondent Nos.2 and 3 herein, yet preferred a review application before the MERC. By order dated 06.09.2017, the review petition was rejected.

10. The petitioner then approached the MERC in Case No.100/2018 praying for legal action to be taken against respondent Nos.2 and 3 for disobedience of the lawful authority of the MERC. By order dated 19.07.2018, the MERC concluded that it has not issued any directives to any authority. It has merely asked the District Collector to take an action on the demand of the petitioner for a road after apprising the requirements under various programmes being implemented in the district for road construction. The petition filed by the petitioner was, therefore, rejected by the MERC.

11. We have perused the petition paper book and we find several reminders by the District Collector indicating to respondent Nos.2 and 3 that they should submit a proposal for acquiring the land so that the Nilanga-Talikhed road, which has been obstructed by their tower No.2, is relieved of the obstruction. These two respondents have turned a deaf ear to the directions and requests of the District Collector. Consequentially, the land could not be used by the petitioner and his brother for agricultural purposes for several years and after being granted N.A. permission, could not be utilized and was non productive for five years.

12. The petitioner has frankly set out in the memo of the petition that the affected portion, on account of the public using it as a diversion to the Nilanga-Talikhed road due to unauthorized erection of Tower No.2, falls in the portion utilized by the brother of the petitioner and both these brothers have a joint ownership. The Circle Officer's report dated 12.02.2018 reinforces the fact that the diversion road is being used through the affected portion, which was utilized by the brother of the petitioner for agricultural purposes. It is pertinent to note that the Circle Officer has said in clause 6 of his communication to the Tahasildar that the south side of tower No.2 will have to be acquired beyond the protective fencing of the tower so as to be used as the Nilanga- Talikhed road.

13. In our view, this is a classic case of high handedness by respondent Nos.2 and 3. They have shown scant respect to the orders of the District Collector as well as the order of the MERC. The MERC has clearly set out that the option suggested by the District Collector that the land which is being used as diversion from the agricultural field of the petitioner's brother, needs to be acquired, has also been completely ignored by respondent Nos.2 and 3 thereby, compelling the petitioner to approach this Court

by filing this petition. It is apparent that the said land could not be utilized for agricultural purposes from 2012 to 2017 and after the N.A. permission in 2017, the said land could not be sold or utilized for non agricultural purposes since 2017 to 2021.

14. In view of the above, this Writ Petition is allowed.

15. We direct respondent Nos.2 and to 3 to initiate the acquisition proceedings on the south side of tower No.2 beyond the margin land utilized for the protective fencing, under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, within six months from today. The proposal for such acquisition shall be tendered on or before 15.10.2021 to the competent authority.

16. The hardships, agony and litigation have been caused to the petitioner/ his brother owing to the high handedness of respondent Nos.2 and 3 since 2012 till 2021. As such, an amount of Rs.5 lacs as costs, shall be deposited by respondent Nos.2 and 3, on or before 15.10.2021 in this Court. The said amount of Rs.5 lacs shall be received by the brother of the petitioner, namely, Mr.Ajit Ganpatrao Nimbalkar.