

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

WRIT PETITION NO. 1127 OF 2018

(Shri Panalal s/o Shivratan Bagdia vs. The Union of India thr. its Secretary for Road
Transport and Highways, New Delhi & Ors.)

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

Court's or Judge's orders.

Shri A.B. Patil, Advocate for the petitioner.
Mrs. M.R. Chandurkar, Advocate for the respondent
No. 1.
Shri D.P. Thakare, Additional Government Pleader for
the respondent Nos. 2 & 4.
Shri S.P. Palshikar, Advocate for the respondent No. 3.
Shri Vivek Sawarkar with Shri Shrikant Saoji,
Advocate for the respondent No. 5.

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**CORAM : DIPANKAR DATTA, C.J. &
PUSHPA V. GANEDIWALA, J.
FEBRUARY 03, 2021.**

1. The petitioner claims to be the owner and in peaceful possession of a piece and parcel of land bearing Survey No. 110 in Mouza – Chikhli, Tq. - Chikhli, District – Buldhana, measuring approximately 14500 square feet (hereafter ‘the subject land’, for short).

2. Intending to construct a commercial complex on the subject land, the petitioner had

approached the Municipal Council, Chikhli for sanction of a building plan. Such building plan was sanctioned in favour of the petitioner on 24.02.2015. Resting thereon, the petitioner claims to have commenced construction on the subject land. However, on 02.05.2015, the Municipal Council advised the petitioner to obtain a 'No Objection Certificate' from the Public Works Department of the Government of Maharashtra. The petitioner, thereafter, sought for permission. Since the subject land is by the side of National Highway No. 753-A and within the jurisdiction of the Executive Engineer, National Highway Division, Akola, the Executive Engineer by his communication dated 01.04.2017 granted a 'No Objection Certificate' in favour of the petitioner to construct a building on the subject land for commercial use, on the terms mentioned therein. Having been favoured with such permission, the petitioner resumed construction activities once again. On or about 31.07.2017, the petitioner received a notice of even date issued by the Executive Engineer, National Highway Division advising the petitioner to stop construction activities. It was alleged in that notice that the petitioner was constructing a commercial complex – market, within the prohibited distance (as ordained by the Government Resolution dated 09.03.2001) of 37 meters from the center of the Highway. Accordingly, he was advised to stop

construction immediately. Such notice was followed by a communication dated 04.08.2017 issued by the Executive Engineer cancelling the permission granted earlier on 01.04.2017. A few months thereafter, the Municipal Council issued an order dated 08.12.2017, advising the petitioner to demolish whatever construction had been raised by him, in view of the order of cancellation dated 04.08.2017.

3. Aggrieved by the aforesaid decisions and actions of the respondents, the petitioner presented this writ petition on 13.02.2018 seeking, *inter alia*, the following relief:

“a) Quash and set aside the orders dated 04.08.2017 issued by the Respondent No. 5 Executive Engineer, National Highways Division, Akola and order dated 08.12.2017 issued by the Respondent No. 3 Chikhli Municipal Council, hereto annexed as ANNEXURE NO. 19 & 20.

b) Quash and set aside the notification dated 05.03.2014 issued by the Respondent No. 1 the Ministry of Road Transport and Highways, Union of India, declaring the Malkapur-Buldana-Chikhli-Deulgaon Raja – Jalna road, as National Highway No.753A,

hereto annexed at ANNEXURE No. 22.

c) Direct the respondents No. 3 Municipal Council Chikhli and Respondent No.5, Executive Engineer, National Highways Division, Akola to permit the petitioner to complete the construction of his commercial complex as sanctioned by the Municipal Council.

d) In the alternative, Direct the Respondents No. 1 to 5 to acquire the said plot of the petitioner bearing Survey No. 110, mouza Chikhli, Tq. Chikhli, District – Buldhana, admeasuring 14500 sq. ft. and construction thereon, under the provisions of the Right to Fair Compensation Act, 2013, within a stipulated period of time.”

4. The writ petition was first moved on 26.02.2018, when notice was directed to be issued to the respondents. In terms of orders passed from time to time, affidavits as well as additional affidavits have been filed. Today, the writ petition has been taken up for final hearing in presence of the parties with their consent.

5. Shri Patil, learned counsel for the

petitioner, advanced arguments for quite some time. In course of hearing, certain decisions were cited by him in support of the contention that the petitioner is entitled to compensation since his right to property has been infringed by reason of the Government Resolution dated 09.03.2001 as well as the orders passed from time to time by the Executive Engineer, National Highways Division and the Municipal Council. Our attention was finally drawn to the affidavit in reply of the respondent nos. 1 and 5, in particular to paragraph 4 thereof wherein it has been stated as under:

“Without prejudice to the aforesaid fact, the respondent no. 1 and 5 respectfully submits that the petitioner has not filed a single document on record in respect of his ownership over the alleged land and therefore it is humbly prayed that the petitioner be directed to file his ownership documents in respect of alleged land. It is submitted that the acquisition proceedings for acquisition of land for M.S.R.T.C. clearly mentions that there is Chikhli by-pass on east side and there is no mention of any leftover land in between. It is most humbly submitted that if the petitioner files all the ownership documents in respect of alleged land and further gets the alleged land

measured from the appropriate authority in presence of the respondent no. 5 and if such measurement concludes that there is narrow left over land between M.S.R.T.C.s acquired land and 30 meters wide acquired land for Chikhli by-pass and confirms actual possession of the alleged plot/ land then the respondent no. 1 and 5 are ready to acquire the alleged land as per law.”

6. It was contended by Shri Patil, by referring to the reply-affidavit of the respondent nos. 1 and 5, that if they are agreeable to acquire the subject land, the petitioner is willing to give up prayers (a), (b) and (c) and press only prayer (d) of the writ petition.

7. A bare perusal of paragraph 4 of the reply-affidavit of the respondent nos. 1 and 5 would reveal a clear stance being taken that they are willing to acquire the subject land subject to certain conditions viz. the petitioner produces documents in support of his title to such land, there is appropriate measurement in the presence of the respondent no.5, if such measurement concludes that there is narrow left over land between the Maharashtra State Road Transport Corporation's acquired land and 30 meters wide acquired land for Chikhli by-pass and confirms

actual possession of the subject land by the petitioner, and acquisition as per law. Shri Vivek Sawarkar, learned counsel for the respondent no.5 did not take a contrary stand at the hearing.

8. There are pleadings in the writ petition that the subject land was part of a bigger plot of land and that, part of it had been acquired for the purposes of providing a 'bus stand' by the Maharashtra State Road Transport Corporation (hereafter 'the Corporation', for short) as well as by the State of Maharashtra for the purposes of construction of a road. Insofar as acquisition of land for the road is concerned, there is an averment in the writ petition that no compensation has been paid to the petitioner. However, any averment in regard to receipt of compensation by the petitioner in respect of acquisition of land for the Corporation, is conspicuous by its absence. We, however, place on record the statement of Shri Patil that the petitioner has received compensation for such acquisition and that he intends to file an affidavit in course of this day to such effect.

9. If at all the statement of Shri Patil is correct, it stands to reason that the petitioner could not have been paid compensation for acquisition of land, which was acquired for the benefit of the

Corporation, unless he was the owner. However, such payment *per se* is not decisive for the purpose of proof of the petitioner's ownership of the subject land. The question that would survive and has to be examined is whether the subject land was comprised in the bigger plot land, part of which has been acquired, and whether even after such acquisition, the petitioner continued to be the owner of the subject land on which construction of a commercial complex is claimed to have been commenced by the petitioner. These are questions of fact, which in exercise of writ jurisdiction, we need not investigate. The petitioner having given up prayers (a), (b) and (c), it would be open to him to establish before the National Highways Division that he is the owner of the subject land and since the National Highways Division has expressed its inclination to acquire it subject to the conditions noted above, the petitioner would be entitled to compensation as per law provided of course the question of ownership and the other questions are answered in his favour. We find the alternative prayer of the petitioner to be fair and reasonable, as is the stand of the respondent nos. 1 and 5.

10. Having regard to the facts and circumstances noted above, we find no reason to keep the writ petition pending for deciding the rival

claims of the parties. While injunctioning the petitioner from carrying on any further construction activities, we grant liberty to him to approach the respondent no. 5 with documentary proof to establish his ownership over the subject land. Should the respondent no. 5 be satisfied that the petitioner is the owner of the subject land, it shall proceed to acquire it in accordance with law and pay whatever compensation is payable to the petitioner, also in accordance with law. If at all there is any construction on the subject land, the desirability of compensating the petitioner therefor, in accordance with law, may also be considered.

11. If the petitioner approaches the respondent no. 5 with the title documents of the subject land, it is expected that a decision shall be taken with regard to acquisition of land and payment of compensation to him as early as possible but preferably within a period of six months from date of approach.

12. This order is passed in the special facts and circumstances of the case as well as the statement in paragraph 4 of the reply affidavit of the respondent nos. 1 and 5 and shall not be treated as a precedent.

13. The writ petition is disposed of. There shall be no order as to costs.

(PUSHPA V. GANEDIWALA, J.)

(CHIEF JUSTICE)

*GS.

Gopichand
Shamdasani

Digitally signed
by Gopichand
Shamdasani
Date:
2021.02.04
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