

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

WRIT PETITION NO. 2583 OF 2019

Kalpana Kailash Baswade & others

Petitioners

Versus

The State of Maharashtra & others

Respondents

Mr. V. S. Panpatte, advocate for the Petitioners.

Mr. P. S. Patil, AGP for Respondent Nos. 1 to 4.

Mr. Amol N. Patale, advocate for Respondent Nos. 5 to 7.

WITH

WRIT PETITION NO. 3306 OF 2019

Baburao s/o Sambhaji Baswade & others

Petitioners

Versus

The State of Maharashtra & others

Respondents

Mr. V. S. Panpatte, advocate for the Petitioners.

Mrs. M. S. Deshpande, AGP for Respondent Nos. 1 to 4.

Mr. S. S. Deve, advocate for Respondent Nos. 5 to 7.

WITH

WRIT PETITION NO. 7116 OF 2019

Tanaji s/o Madhavrao Panchal & others

Petitioners

Versus

The State of Maharashtra & others

Respondents

Mr. V. S. Panpatte, advocate for the Petitioners.
Mr. A. S. Shinde, AGP for Respondent Nos. 1 to 4.
Mr. S. S. Deve, advocate for Respondent Nos. 5 to 7.

**CORAM : C. V. BHADANG AND
SANDIPKUMAR C. MORE, JJ.**

DATE : 15 July 2022.

PC :

All these petitions involve a common grievance of the petitioners that without following the procedure for acquisition of land, National Highway No.161/A has been constructed through their lands. The petitioners, in such circumstances, are seeking a direction to the Respondent-authorities to initiate acquisition proceedings and to pay compensation in respect of construction of the said Highway and for the consequential reliefs.

2 We have heard the learned Counsel for the parties.

3 We find that similar petitions have been dealt with by this Court previously, in **Bhagoji s/o Nathaji Maind and others Vs. State of Maharashtra and others**, 2021 (5) AIR Bom R 163, which was decided on 03.08.2020 and followed by batch of writ

petitions bearing W. P. No.5069 of 2019 (**Kashinath Sopan Istalkar Vs. The Union of India and others**), decided on 02.03.2022. In the later order, reliance is placed on the judgment of this Court in the case of **Bhagoji s/o Nathaji Maind** (*supra*). It is the common grievance of the petitioners that it was a village road initially, followed by a State Highway and then National Highway, presently under the management of the National Highways Authority of India (NHAI).

4 The learned Counsel for the petitioners states that since the time the road was a village road, its width has been increased and the road has been widened from time to time without the authorities taking any steps for acquisition of their lands, which is in breach of their Constitutional right to property under Article 300A of the Constitution of India. The stand of the Respondent-NHAI all along has been that the road was constructed by the State Public Works Department (PWD) and has been handed over to the NHAI and NHAI has not carried out any widening or extension.

5 Upon hearing the learned Counsel for the parties and on perusal of the orders of this Court in previously dealt writ petitions, we find that this Court has time and again noted that the petitions involve disputed questions of fact. However, even in the

order dated 05.07.2022, in a batch of writ petitions bearing W. P. No.8722/2021 and others, this Court has found that a similar course, as was adopted by the Coordinate bench, can be taken in order to maintain consistency.

6 It is not necessary to multiply authorities/decisions on the point. However, the Division Bench of this Court in W. P. No. 4022 of 2019 (**Pandurang Sakharam Nikam and others Vs. The State of Maharashtra and others**) has held thus in paragraph nos. 13 and 14 of the order:

“13 In this backdrop, upon perusal of the record, we find that the short controversy regarding the exact width of the subject road, is purely factual dispute. Nothing is on record to establish with any amount of exactitude, the actual width of the subject road. This question of fact cannot be satisfactorily resolved on the basis of the documents available on record. The substratum of the matter is the exact extent of the width of the subject road and whether the respondents can undertake the construction/upgradation of the said road without acquiring the lands of the petitioners. It is trite that no person can be deprived of his property except by following due procedure established by law. Therefore, in case, the respondent authorities arrive at the conclusion that the lands of the petitioners are affected, they must forthwith take up acquisition proceedings as per

the law.

14 In the circumstances, to resolve the issue of the exact width of the subject road, we consider it appropriate to direct the respondent authorities to take effective steps to carry out a joint measurement of the subject road at the concerned villages through appropriate authority in presence of the both the sides and under the supervision of the Collectors of Osmanabad and Solapur districts after following due procedure of law as expeditiously as possible and preferably within two months. It is also ordered that in case, after the measurement it is found that the lands of the petitioners are affected by the proposed work, the respondent authorities shall commence the process of acquisition immediately.”

7 In such circumstances, we dispose of these petitions in terms of paragraph 14, as above, directing the acquiring body to bear the fees for measurement of the road since widening of the road is said to be almost completed.

8 We make it clear that the petitioners would participate in the joint measurement along with their land records/revenue record for assisting the authority in the matter of conduction of such joint measurement. We make it clear that after the joint measurement of the said lands, if there is any dispute or if the finding of joint measurement is not acceptable to the petitioners,

the petitioners would be at liberty to take recourse to the appropriate remedy as may be available in law, before the Civil Court, if so advised.

9 Writ Petitions are disposed of in the aforesaid terms.

SANDIPKUMAR C. MORE, J.

C. V. BHADANG, J.

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