

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

919 WRIT PETITION NO.4111 OF 2019

SHIVAJI MANMATHAPPA KATTE AND OTHERS
VERSUS
THE UNION OF INDIA AND OTHERS

...

Advocate for Petitioners : Ms. Bodke Patil Poonam V.
AGP for Respondents/State : Mrs. R.P. Gour
Advocate for R/1 & 5 : Mrs. Sudha K.

...

**CORAM : C.V. BHADANG &
SANDIPKUMAR C. MORE, JJ.**
DATE : 21st July, 2022

PC. :-

The grievance of the petitioners is that without following due procedure for acquisition of the land, a highway has been constructed through their land. The petitioners in such circumstances have sought a direction to the respondent-authorities to initiate acquisition proceedings and to pay compensation in respect of construction of the said highway and for certain consequential benefits.

2. We have heard the learned counsel for the parties. Similar issue has been dealt with by co-ordinate bench of this Court in several petitions including Writ Petition No.4022/2019 (**Pandurang Sakhrama Nikam and**

others V/s. The State of Maharashtra and others) decided on 20.01.2022 in which the Division Bench has held thus:

“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.”

3. The learned counsel for the petitioners has brought to our notice similar orders passed in a batch of writ petitions being Writ Petition No.5069/2019 and others which were decided on 02.03.2022 and yet another batch of petitions being Writ Petition No.8722/2021 and others decided on 05.07.222. It is not necessary to multiply the decisions in the matter.

4. This Court in the order dated 02.03.2022 has accepted that the petitions involve a host of disputed factors as to whether the subject road was earlier a village road which was then designated as a district road and after which as a state highway. There is also a dispute about whether additional land was used for widening of the road as the respondents dispute that there was any such widening, making use of land of the petitioners. It is in these circumstances that it was directed that a joint measurement may be carried out and if the dispute still subsists, the parties can approach the Civil Court. We propose to follow the same course.

5. In that view of the matter, the Writ Petition is disposed of in terms of para 13 and 14 of the decision in Writ Petition No.4022/2019 as reproduced above. We direct the acquiring body to bear the fees for measurement of the road since widening of the road is almost complete.

6. 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 land, 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, for getting their rights adjudicated, and if so advised.

7. Writ Petition is disposed of in aforesaid terms with no order as to costs.

[SANDIPKUMAR C. MORE, J.]

[C.V. BHADANG, J.]