

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

WRIT PETITION NO. 6800 OF 2019

Shivaji Daulatrao Budhal and Ors. ..Petitioners

V/s.

The State of Maharashtra and Ors. ..Respondents

Mr. Devdatt Palodkar for the Petitioner.

Ms. Vaishali Patil-Jadhav, AGP for Respondent No.1 to 5/State.

Mr. S.G. Sagle for Respondent No. 6.

Mr. V.P. Narwade for Respondent No.8.

Ms. Aarti Bhagwat h/f Mr. G.K. Kshirsagar for Respondent No.9.

**CORAM : C.V. BHADANG &
SANDIPKUMAR C. MORE, J.J.**

RESERVED ON : 27 JUNE 2022

PRONOUNCED ON : 20 AUGUST 2022

(Signed judgment is pronounced by Sandipkumar C. More, J. as per clause (i) of Rule 1 of Chapter XI of Bombay High Court Appellate Side Rules, 1960 as C.V. Bhadang, J. is sitting at Mumbai)

JUDGMENT (PER : C.V.BHADANG, J.)

. By this petition, under Article 226 of the Constitution of India, the petitioners are challenging communication dated 20.3.2019 issued by the Respondent no 6- Executive engineer Minor Irrigation Aurangabad and the communication dated 13.5.2019 issued by respondent No. 8 Village Panchayat Savaladbara, Taluka Soyegaon, District Aurangabad.

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2. The agricultural lands of the petitioners were acquired for the purpose of construction of a Storage Tank at Savaladbara which is stated to be almost complete. As the construction of the tank had caused obstruction/disturbance of approach roads two alternate roads have been provided by the acquiring body to the agriculturist. However, certain agriculturists started demanding additional approach roads through part of the land which was acquired for the purpose of the construction of the storage Tank. On 13.3.2019, respondent No.6 communicated to the respondent No. 9 that the demand for construction of an additional road is not technically feasible. However, shortly thereafter the sixth respondent indicated the respondent No 9 and others that after the model code of conduct for the 2019 parliamentary elections, ceases, an approach road will be provided through the acquired lands. According to the petitioners, this second communication and the change of stand by the sixth respondent is under political pressure. It is contended that the road cannot be constructed through the lands in view of the provisions of Section 99 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('2013 Act' for short) as it entails change of user.

3. The contesting respondent Nos. 6 and 9 have filed their affidavits in reply and have resisted the petition.

4. Mr. Dhananjay Garje, Deputy Executive Engineer

Minor Irrigation Division Aurangabad has filed a reply. It is contended that the construction of the Savaladbara Storage Tank was completed in June 2019. A decision to lay a road connecting old *Savaladbara* to *Jaicha Dev* under the *Palak Mantri Panand Road Scheme* was taken after evaluation of the technical feasibility as the existing roads were submerged due to construction of the storage Tank. The respondent village Panchayat had passed a resolution on 5.5.2018 and 13.1.2019 which was forwarded by the second respondent for necessary action on 18.4.2019. The superintending Engineer, Aurangabad had directed a survey being conducted and to prepare estimates. It is contended that the inspection notes dated 23.10.2020 and 25.3.2020 recorded a consistent demand by the agriculturists for a road which is being constructed through the land already acquired without any necessity to acquire any additional land. It is submitted that the decision was taken after a joint inspection conducted by the Tahsildar Soygaon and the officers of the Irrigation Department and discussion with the Collector. It is submitted that the Governing Council of the Godavari Marathwada Irrigation Development Corporation has approved the construction of the proposed road at the Full Tank Level vide Resolution No. 77. It is submitted that the construction of the road is in larger public interest. It is submitted that the objection raised by the petitioners is misconceived and out of ulterior motive as the petitioners have no objection as such for the construction of the proposed road, except that it should not be constructed through the land already

acquired. According to the petitioners, the road may be constructed by further acquisition of land which they are prepared to give. The petitioner No. 1 has even proposed that the road be constructed either on southern side of petitioners' land or southern side of Gat Nos. 198, 199, and 200 by acquisition under the 2013 Act.

5. Respondent No. 9 has filed his affidavit-in-reply dated 1.2.2022 and has opposed the petition on similar grounds. It is submitted that there was a long standing demand of the villagers and representations were being made from the year 2013 to 2019. The decision to construct the road is a conscious decision taken after survey/inspection and evaluation of the technical feasibility. It is submitted that the petition is filed with an ulterior motive for personal gain and is in the nature of abuse of the process of the court

6. We have heard the learned counsel for the parties. Perused record.

7. The learned counsel for the petitioners submitted that the respondent authorities have changed their stand on construction of the proposed road, within a week which is indicative of the decision being taken under political influence. It is submitted that the land which was acquired for the construction of the storage Tank cannot be used for any other purpose in view

of the provisions of Section 99 of the 2013 Act. It is submitted that already an alternate road/access is provided to the agriculturists and inspite of the same, if the authorities want to construct the road it should be done after further acquisition of the lands. It is submitted that the acquisition for the storage tank is governed by the 2013 Act where in there is no provision for such change of user of the acquired lands. It is submitted that the land which was acquired for construction of the storage Tank cannot be used for laying of the road. Reliance is placed on the decision of the Supreme Court in *Executive Engineer, Goshkhurd Project Ambade, Bhandara, Maharashtra Vidarbha Irrigation Development Corporation v/s. Mahesh and others*¹.

8. The learned AGP and the learned counsel for respondent Nos. 6 and 9 have submitted that the laying of the road is for allied purpose arising out of the construction of the storage Tank on account of which the existing road was submerged under water necessitating construction and provision of other road which decision is taken consciously upon technical evaluation. On behalf of the respondents reliance is placed on the decision of the Supreme Court in *Pune Municipal Corporation and another Vs Motibagh Co-operative Housing Society Limited and Ors. in Civil Appeal No. 4589 of 2008 dated 09.08.2017, Shri Chandragauda Ramgonda Patil and other v/s. State of Maharashtra and Ors.*² and *The Collector of 24 Parganas V/s Lalit Mohan Mullick and*

1 (2022) 2 Supreme Court Cases 772

2 (1996) 6 Supreme Court Cases 405

*others*³.

9. We have considered the submissions made. The construction of the storage Tank is already complete. It appears that since 2013 the villagers were demanding a road. There was a joint inspection conducted by the revenue officers and the experts from the office of the acquiring body and after technical evaluation the decision is taken to construct the road at the full Tank Level under the Guardian Minister Scheme. It is not possible to evaluate or examine the technical decision. In such cases the courts would be slow to interfere with the decision by the experts in the field in the absence of demonstration of gross abuse/arbitrary exercise of powers. In the present case we find none. It is significant to note that the petitioners have no objection for the construction of the road as such. The only contention is that it should not be done through the land already acquired. The petitioners claim that the road be constructed by further acquisition of lands under the 2013 Act.

10. The contention in our view cannot be accepted. This is because the Petitioners do not have any objection for construction/laying of the road. The contention is that it should be done after further acquisition of the land under the 2013 Act. Precisely for this reason, it is contended on behalf of the Respondent that the objection to the construction of the road through the land already acquired, is with an ulterior motive and

3 (1986)2 Supreme Court Cases 138

for personal gain. The reliance placed on behalf of the Respondent on Section 99 of 2013 act is misplaced. Section 99 provides that no change of purpose or “related purpose” for which the land is originally sought to be acquired shall be allowed. For the present purpose, we find that laying of the road for providing access to the agriculturists would fall within the ambit of “related purpose” within the meaning of Section 99 of the Act, as the existing road/access has been submerged due to the construction of the storage tank.

11. The decision in the case of Mahesh (supra) *inter alia* involved the issue of saving of the provisions of 1894 Act and retrospectivity of the provisions of the 2013 Act. In our view, that decision cannot come to the aid of the Petitioner in this case.

12. Considering the over all circumstances, no case for interference is made out. The petition is without any merit and is accordingly dismissed, with no order as to costs.

SANDIPKUMAR C. MORE, J.

C.V. BHADANG, J.