

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 8722 OF 2021
WITH WP/11160/2019 WITH WP/3836/2019 WITH WP/2073/2021 WITH
WP/11161/2019 WITH WP/11162/2019

RAOSAHEB HANMANTRAO LONDHE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Advocate for Petitioners : Mr. O.B. Boinwad h/f. Mr. G.R. Jadhav
AGP for Respondent Nos. 1, 2 & 5 : Mrs. V.N. Patil – Jadhav
Advocate for Respondent Nos. 4 to 7 in WP/8722/21, for Respondent No. 3 in
WP/11160/19, WP/11161/19, WP/11162/19, for Respondent Nos. 4, 7 & 8 in
WP/2073/21 : Mr. A.N. Patale
Advocate for Petitioners in WP/3836/19 : Mr. Arvind Deshmukh
Advocate for Respondent Nos. 5 to 7 in WP/3836/19 : Mr. S.S. Deve
Advocate for Respondent Nos. 4 & 6 in WP/11161/19 and WP/11162/19 :
Mr. A.B. Dhongade
Advocate for Respondent Nos. 4, 6 & 7 in WP/11160/19 : Mr. R.B. Bhosle

**CORAM : C.V. BHADANG &
SANDIPKUMAR C. MORE, JJ.**
DATE : 5 JULY, 2022.

ORDER :-

All these petitions involve a common grievance of the petitioners that without following the procedure for acquisition of land, National Highway No. 161A has been constructed through their lands. 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 reliefs.

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

3. Learned counsel for the petitioners placed reliance on the decision of this Court in *Bhagoji S/o. Nathaji Maind and others Versus State of Maharashtra and others, 2021 (5) AIR Bom R 163*, and the order dated 2nd March, 2022, passed in a batch of writ petitions being W.P. No. 5069 of 2019 *Kashinath Sopan Istalkar vs. The Union of India and others*. The latter order is based on the judgment and order passed in *Bhagoji Nathaji Maind* (supra).

4. It is claimed on behalf of the petitioners that initially the road was a village road which was subsequently designated as a District Road followed by a State High way and then a National Highway presently under the management of the National Highways Authority of India (NHAI). The learned counsel for the petitioners strenuously urged that initially the road which was only a village road, has been extended and 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, which according to the learned counsel is impermissible.

5. The learned counsel for respondent Nos. 4, 6 and 7 submits that the road was constructed by the State Public Works Department (PWD) and has been handed over to the National Highways Authority of India. However, according to learned counsel there is no extension or widening undertaken by the NHAI.

6. The learned counsel for the petitioners have tendered a copy of the letter dated 2nd March, 2019 from the office of Sub Divisional Officer, Kinwat, Dist. Nanded, in order to submit that a joint measurement was proposed and the Deputy Superintendent of Land Record (DILR) Kinwat, was to conduct a joint measurement, after the acquiring body deposits the necessary fees for holding such joint measurement.

7. We have considered the circumstances and the submissions made.

8. The case made out by the petitioners is in respect of widening of road which is National Highway bearing No. 161A from Bhokar- Himayatnagar – Sarkhani – Kinwat – Mahur - Arni, without necessary acquisition of their lands. We find that this Court in the order dated 2nd March, 2022 in a batch of writ petitions bearing W.P. No. 5069 of 2019 and others, has found that the petitions involve “a host of disputed factors”. However, only on account of the fact that a coordinate Bench of this court in the earlier W.P. No. 5069 of 2019 and connected matters, has taken recourse of directing a joint measurement that we propose to follow the same course.

9. A Division Bench of this Court in W.P. No. 4022 of 2019 ***Pandurang Sakharam Nikam and others vs. The State of Maharashtra and others*** had held in para. 13 and 14 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.”

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

10. We make it clear that the petitioners would participate in the joint measurement alongwith 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.

11. Writ petitions are disposed of in aforesaid terms with no order as to costs.

SANDIPKUMAR C. MORE, J.

C.V. BHADANG, J.

grt/-