

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 93 OF 2022

Vijaykumar Narayandas Harkut and Ors.

..VS..

State of Maharashtra & Ors.

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

Court's or Judge's orders

Shri Alok Daga, Advocate for petitioners.
Smt. S. S. Jachak, A.G.P for respondent Nos.1 to 3.

CORAM : SUNIL B. SHUKRE AND
ANIL L. PANSARE, JJ.

DATED : 21.01.2022

1. Hearing is conducted through Video Conferencing and all the learned Advocates agreed that the audio and visual quality was proper.

2. Heard Shri Daga, learned counsel for the petitioners and Smt. S. S. Jachak, learned A.G.P, who appears by waiving notice for respondent Nos.1 to 3.

3. The petitioners have questioned the notices received by them for removal of the encroachments that they have made on some portion of Morshi, Chandur Bazar and Achalpur highway.

4. Learned counsel for the petitioners submits that before issuing the impugned notices, the respondent No.2 has not followed the procedure prescribed in Section 14

of the Maharashtra Highways Act, 1955 (for short the “Highways Act”). He points out that it is necessary for the authority to take a survey and measurements and also levels of the lands and demarcate the boundaries of the highway by pointing stones and other suitable marks of different colour but, in this case nothing has been done and the requirement of proviso to Section 14 of the Highways Act, has also not been complied with and it is submitted that it is necessary for the Highway Authority to take consent of the occupier before entering or permitting any of its Officer to enter but, no such consent has been obtained by the respondent No.2. According to him, such failure on the part of the respondent No.2 only indicates that the provisions of Section 14 of the Highways Act have not been complied with.

5. From the documents filed on record including the notice dated 23.12.2021 received by each of the petitioners and the impugned notices, it can be seen that this is not the case where the petitioners have been taken by surprise. In the notice dated 23.12.2021, it was clearly mentioned that certain constructions made by each of the petitioners had entered into the demarcation line of the boundary of the national highway and, therefore, it amounted to encroachment. But, the notice further shows, in order to give an opportunity to these petitioners, the authority called upon each of the petitioners to submit ownership documents to it, so that further necessary action in accordance with law could be taken.

6. According to learned counsel for the petitioners, some petitioners did submit some documents but some of the petitioners could not submit all the documents necessary for reaching any conclusion about the ownership and, therefore, these petitioners orally sought 15 days time for compliance, which was orally granted to the petitioners and yet, on the same day on which a hearing was held i.e. on 31.12.2021, the impugned notices calling upon each of the petitioners to remove the encroachments have been issued by the respondent No.2. Although, there is a pleading made by the petitioners regarding seeking of time and its grant by the respondent No.2, there is no pleading about filing of some documents by the petitioners. Then, the impugned notices also show that the petitioners were issued notices way-back in February, 2020 about the encroachments that they made but, no action was taken by the petitioners. The petitioners have of course denied these contentions so categorically made in the impugned notices by raising the necessary pleadings. But, we cannot lose sight of the fact that the work of highway had been started much earlier and, therefore, the petitioners did have an idea about what may happen to their constructions, if their constructions ventured inside the boundary of the national highway and, therefore, the submission that the petitioners did not have any notice of the proposed action of respondent No.2 loses its force.

7. Even otherwise, the petitioners had been granted an opportunity to produce their documents of ownership by the notice issued on 23.12.2021 and since issuance of this notice, the petitioners had with them 07 clear days for making compliance which the petitioners ought to have utilised but, it seems the petitioners did not. After all, construction of a national highway is a project of great national importance and, therefore, it is the duty of every citizen to co-operate with the authorities in constructing the national highway within minimum required time. It is well-known that any national highway constitutes main channel of transportation and communication and serves a bigger object of connecting smaller cities, towns and villages with the bigger cities thereby expediting effective rendering of different kinds of services to citizens of India. Therefore, whenever such a project is undertaken by the Highway Authority and reasonable time as in the present case is given to the persons who have made encroachments in the opinion of the Highway Authority, such persons must exhibit all promptitude at their command to submit the requisite documents and co-operate with the authorities. But, in this case in spite of receipt of 07 clear days notice, the petitioners have not done anything to prove their claim that they are not the encroachers. Had the petitioners submitted the requisite documents to the authorities, the authorities may not have issued the impugned notices to the petitioners.

8. Then, the impugned notices all of which are of the date of 31.12.2021 give further additional time to the petitioners till 02nd January, 2022 for removal of their encroachments. It appears that the encroachments of the petitioners, in spite of the deadline of 02nd January, 2022 have still not been removed by the respondent No.2 and this would show that even otherwise the petitioners have received more time than the authority is required to give them in law for removal of their encroachments, if any.

9. The matter does not end here. The petitioners have alternate remedy available in law and it is to be found in the provisions made in Section 24 of the Highways Act. It also appears to us that the issue of encroachment, which has been raised in this case is itself based on disputed questions of fact. It is because of the fact that the petitioners are contending that they are not the encroachers, but, the impugned notices describe the petitioners as encroachers to the extent shown in the impugned notices. This is what gives rise to a dispute as regards questions of fact which can only be resolved after tendering of detailed evidence which would be possible before a Civil Court of a competent jurisdiction.

10. In view of above, we find that this is not a fit case wherein this Court should interfere by invoking extraordinary jurisdiction under Article 226 of the Constitution of India.

11. The petition stands summarily **dismissed**.

12. We grant liberty to the petitioners to take recourse to such alternate remedy as may be advised to them. We also make it clear here that we have not made any observations as regards the issue of payment of compensation, if any, to any of the petitioners and if the same arises, it would have to be decided by a Court of competent jurisdiction, in accordance with law.

JUDGE

JUDGE

Kirtak