

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

961 WRIT PETITION NO.8088 OF 2019

**DILIP VISHWAMBHAR SULAKHE AND OTHERS
VERSUS
THE UNION OF INDIA THROUGH SECRETARY AND OTHERS**

...
Advocate for Petitioners : Mr. P.R. Katneshwarkar h/f.
Mr. Saisagar A. Ambilwade
AGP for Respondent – State : Mr. S.B. Yawalkar
Advocate for Respondent Nos.1, 3 to 5 : Mr. A.N. Patale
Advocate for Respondent No.6 : Mr. Deepak Manorkar
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**CORAM : NTIN W. SAMBRE AND
 S.G. CHAPALGAONKAR, JJ.**

DATE : 05-04-2023

PER COURT :

1. Heard learned counsel appearing on behalf of the respective parties.

2. The case of petitioners - agriculturists is that though National Highway passes through their respective lands, neither the proceedings for acquisition are taken out nor any compensation is offered by private negotiations.

3. Mr. Katneshwarkar, learned counsel appearing for petitioners, in order to justify the aforesaid claim, has relied upon the communication issued by the respondent - Collector to the Chief Engineer, National Highway (Public Works), Konkan Bhavan,

Mumbai. According to him, the Collector, so as to verify claims of petitioners has sought the production of the record from the National Highway Authorities in order to assist whether the road with 13 meters width was already in existence. However, respondents authorities have failed to satisfy the same. Subsequent to above, joint meetings were held on 12.04.2018 and 29.06.2018 in the office of Collector, Beed, and in accordance with the directions of respondent – Collector, the lands of petitioners were measured, however, the re-measurement report could not be placed on record for the failure of respondent – authority to pay the measurement charges. He would further urge that petitioners be permitted to apply for joint measurement and in case if their lands are affected by the alignment of the National Highway, respondents be directed to pay compensation after assessing the impact of such National Highway over the lands of petitioners.

4. Counsel for respondents submit that the road being in existence since 1961 can be inferred from the development plan prepared by the Government of Maharashtra. According to respondent no.3, it can be gathered from the record available with the PWD that the road is in existence for more than 56 years, since it was constructed by PWD itself. He would further urge that even if

the width of the existing road is shown to be 7 meters, however, there are bituminous roads with 2.5 meters side shoulder on each side. There are earthwork slope, side berms, gutter and land strip for arboriculture can be noticed. As such, it is held that width of the road as on today is 12 meters.

5. The fact remains that petitioners are not entitled for the compensation for the land which is occupied by the existing road as the said road, admittedly, is in existence for last more than 40 years. The aforesaid inference can be drawn by relying on the judgment of the Apex Court in the matter of **State of Maharashtra Vs. Digambar**, reported in (1995) 4 SCC 683.

6. The counsel for petitioners has placed reliance on the Division Bench judgment of this Court delivered in **Writ Petition No.10104 of 2013, Ganesh Narsing Lolge and another vs. State of Maharashtra & Others** decided on 19.03.2018 and judgment of the Apex Court in the matter of **Vidya Devi vs. State of Himachal Pradesh and Others** reported in (2020) 2 SCC 569 and the judgment of the Apex Court in the matter of **Sukh Dutt Ratra vs. State of Himachal Pradesh** reported in **Laws (SC)-2022-4-10** for supporting his claim for compensation, we are unable to agree with the said submissions of petitioners as the law laid down by the Apex Court in the aforesaid

two judgments is based on the exercise of powers under Article 136 and 142 i.e. extra ordinary jurisdiction conferred upon the Apex Court. The powers conferred under the aforesaid Articles cannot be said to be akin to powers under Article 226 of the Constitution of India. In the aforesaid background, the law laid down by the Apex Court in the aforesaid judgments will be hardly of any assistance to the petitioners as the judgments in those matters were delivered to do complete justice in those matters.

7. Counsel for petitioners states that they are willing to get the lands measured at their own costs. In this view, we deem it appropriate to direct all the respondents to co-operate and agree for joint measurement at the costs of petitioners. If it is inferred from the joint measurement report that the lands of petitioners are affected, to which respondents are in agreement, the respondents shall submit a proposal for acquisition of the land of petitioners so affected within eight weeks thereafter. The said proposal be decided within the statutory period.

8. Needless to clarify, in case if such proposal is placed for acquisition, petitioners shall be entitled to all the benefits under the the Right to Fair Compensation and Transparency in Land

Acquisition, Rehabilitation, and Resettlement Act, 2013 including the costs of the joint measurement.

9. In view of the above, the petition stands disposed of. However, petitioners shall be at liberty to canvass their grievance afresh, in case if any cause to that effect arises.

(S.G. CHAPALGAONKAR, J.)

(NITIN W. SAMBRE , J.)

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