

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

940 WRIT PETITION NO.11077 OF 2021

**BHIMSING NATTHU PATIL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...

Advocate for Petitioners : Mr. Shinde S.K.
AGP for Respondents/State : Mr. S.G. Karlekar

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**CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRAGADE, JJ.
DATE : 6th June, 2023**

PC. :-

1. The petitioners have put-forth prayer clauses A to C as under:

“A) Issue Writ of Mandamus or any other Writ or directions in the nature of Mandamus, directing the respondents to initiate the acquisition proceeding acquiring the land of petitioners from Land Survey No. 341/1/2, 541/2/A and 357 situated at village Jamda, Taluka Chalisgaon, District Jalgaon, and for that purpose necessary directions may kindly be issued.

B) Issue Writ of Mandamus or any other Writ or directions in the nature of Mandamus, direct the respondent No. 1 to 5 to deposit the certain amount against the rent or compensation as per law with the petitioners and for that purpose necessary directions may kindly be issued.

C) Pending hearing and final disposal of this writ petition direct the respondent No. 1 to 5 to deposit the certain amount against the rent or compensation as per law with the petitioners and for that purpose necessary directions may kindly be issued.”

2. By the first order passed on 05.10.2021, the contention of the petitioners was recorded that the possession has been taken by the respondents in January-2021 without initiating acquisition proceedings.

3. We have considered the submissions of the learned advocates for the respective sides and have perused the various maps placed on record. We can clearly see that there are disputed issues as under:

- a) The petitioners claim that their lands are utilised for widening of the road.
- b) Their lands are divided into two portions and a new road has been carved out.
- c) The acquiring authority submits that there is a clear mandate from the authorities that the land is not to be acquired since the strengthening/improvement under the Hybrid Annuity Scheme of the roads would be carried out within the available area as indicated by the revenue records. In short, the land which belongs to the State and which is available,

should be utilised and there would not be widening of the road beyond the land that belongs to the State.

4. Considering the above, it is obvious that the issues raised need a proper adjudication by recording oral and documentary evidence. It also cannot be disputed that if the petitioners' lands are utilised by the authorities for the purpose of strengthening/improvement of the roads beyond the area that belongs to the Government, the petitioners would be entitled for compensation. No land of a land owner can be utilised in a public project without acquisition proceedings provided it is established that the land utilised falls in the share of the land owner.

5. As such, since the disputed issues cannot be decided / adjudicated upon by this Court, **this petition is disposed off** with liberty to the petitioners to avail of the remedy of approaching the Civil Court for crystalising their claim as regards their lands. Needless to state, there is no reason for stalling of the road/project and more so since the road is now complete and the project work is already over. In the event the petitioners establish that the lands which rightfully belong to them have been utilised for the project, they would be entitled for compensation.

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]