

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

**WRIT PETITION NO. 12133 of 2017
with Civil Application No.5935/2020**

1. Satyanarayan s/o Hiralal Bhatawale,
Age: 37 Years, Occu: Agriculture,
2. Umesh s/o Hiralal Bhatawale,
Age: 45 years, Occu: Agri.,
3. Dinesh s/o. Hiralal Bhatawale,
Age: 39 years, Occu: Agri.
4. Gopal s/o. Chotulal Bhatawale,
Age: 60 years, Occu: Agri.,
5. Mahendra s/o Nandu Bhatawale,
Age: 28 years, Occu: Agri.,
6. Mukesh s/o Nandu Bhatawale,
Age: 25 years, Occu: Agri.,
7. Punamchand s/o Chotulal Bhatawale,
Age: 55 years, Occu: Agri.,
8. Mohan s/o. Chotulal Bhatawale,
Age: 52 years, Occu: Agri.,
9. Premchand s/o. Chotulal Bhatawale,
Age: 50 years, Occu: Agri.,
All R/o. Rahimpur,
Tq. & Dist. Nanded.
10. Gangaram s/o Chotulal Bhatewale
Age: 82 yrs, Occ. Agri.,
R/o Vasarni, Cidco, Nanded.

... **PETITIONERS**

V/s.

1. The Competent Authority /
Sub Divisional Officer /
The Land Acquisition Officer,
(For acquisition of Lands for
National Highway No. 361)
Sub Division Office, Chikhalwadi Corner,
Tq. & Dist. Nanded.
2. The Collector,
Tq. & Dist. Nanded.
3. The State of Maharashtra,
Public Works / B & C Department,
Through the Executive Engineer,
Office, Near I.T.I.,
Near Rest House, Tq. & Dist. Nanded.
4. The National Highway Authority of India,
Ministry of Road Transport and Highway,
Project implementation Unit, Nanded.
Through the Project Director,
N.H.A.I., P.I.U. Nanded.
Bharadwaj, Venkatadri Nagar,
Near Ayodhya Nagari,
Malegaon Road, Taroda (Kd.),
Tq. & Dist. Nanded

... RESPONDENTS

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Mr. Pratap P. Mandlik, *Advocate for the Petitioners*

Mr. P.K. Lakhotiya, AGP for Respondent-State

Mr. R.B. Bhosale and B.M. Dhanure for *Advocate for Respondent/U.O.I.*Mr. Deepak S. Manorkar, *Advocate for Respondent No.4*

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**CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRADE, JJ.**

RESERVED ON : 20th October, 2023

PRONOUNCED ON : 6th December, 2023

JUDGMENT (Per: Y.G. Khobragade, J.) :-

1. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

2. Heard at length Adv. Pratap Mandlik, the learned counsel appearing for the Petitioners, Shri Lakhotiya learned AGP for the Respondent Nos. 2 & 3 and Adv. Deepak Manorkar for the Respondent No.4. Besides oral arguments, both sides have tendered written notes of arguments. After going through the written notes of both the sides it appears that, they are not in consonance with the pleadings to the petition as well as affidavit in reply.

3. By the present petition under Article 226 of the Constitution of India, the Petitioners have put forth prayer clause-B-1 and B-2 as under:

“B-1. Appropriate Writ/Directions, may be issued against the respondents, directing them, if the respondents want total 2 H 21 Aar land of the petitioners, for construction of National Highway No. 361, they should acquire total land 2 H 21 Aar from S. No. 4/1,4/2, Gut No. 1, situated at Rahimpur Tq. & Dist. Nanded required for construction of National Highway No. 361 (as per notification dated 01-06-2016) by modifying the notification dated 06-04-2017 or by issuing fresh notification and to pay the compensation and all the consequential benefits to the petitioners as per law, for acquisition of 2H 21 Aar land.

B-2. The respondents may be directed not to interfere into the remaining land of petitioners i.e. land S. No. 4/1,4/2, Gut No. 1 situated at Rahimpur Tq. & Dist. Nanded (except 51 Aar which they have notified for acquisition) and not to construct any Road in the remaining land of the petitioners without acquisition and without paying the compensation, with all consequential benefits.”

4. Adv. Pratap Mandlik the learned counsel appearing for the Petitioners vehemently canvassed that one Chotulal Bhatawale was the owner of land bearing Survey No. 4/1/, 4/2 (Gut No. 1) ad-measuring 14 Acres 10 Guntha situated at Rahimpur, Tq. & Dist. Nanded. Said Shri Chotulal Bhatawale was having 7 sons viz., (1) Hiralal (2) Gangaram (3) Gopal (4) Nanhu (5) Punamchand (6) Mohan and (7) Premchand. In the year 1975, Shri Chotulal Bhatawale had partitioned the entire land Survey No. 4/1/, 4/2 (Gut No. 1) amongst his 7 sons. Accordingly, mutation entry no. 84 was effected. On 09.05.2017, Shri Hiralal s/o Chotulal died, therefore, names of his LRs (Satyanarayan, Dinesh and Umesh) were mutated in the revenue record.

5. The learned counsel for the Petitioners further submits that on 01.06.2016, the Respondent No. 4 - National Highway Authority of India issued a Notification u/s 3(k) of the National Highways Act, 1956 and proposed to acquire 2 H (Hectare) 21 R land of the Petitioners out of Survey No. 4/1/, 4/2 (Gut No. 1), but land was not acquired. However, again on 06.04.2017, the Respondent No.4 issued another Notification intending to acquire only 51 R land of the Petitioners. Since, the Petitioners realized that Respondent No.4 would be taking possession of 2 H 21 R land and going to pay compensation only for 51 R land. Therefore, the Petitioners approached the Respondent No. 4 and on inquiry, they were informed by the official of Respondent No. 4 about

passing of 30 meter wide State Highway Road through their land and the Respondent No. 4 require to acquire only 51 R land as per notification dated 06.04.2017. According to the Petitioners, the Respondents-State Authorities took possession of their land ad-measuring 30 ft x 1200 Ft. = 36000 sq.ft. from their land S.No. 4/1, 4/2 (Gut No. 1) for the construction of Nanded - Latur Road from the northern side of petition land and had assured to pay compensation, but no award was passed and no compensation was paid to them.

6. The learned counsel for the Petitioners submitted that because of passing of said Highway through the Petitioners land, it is divided in two parts and only 11 Gunthas land remained towards the northern side and 13.29 Gunthas land remained on southern side. Though, the existing road was constructed but as on today the revenue record shows that, the Petitioners are owners to the extent of 14 Acres and 10 Gunthas. Since, the Petitioners have not received compensation in respect of acquired land, therefore on 03.08.2015, they submitted a representation to the Hon'ble Union Minister. On 21.08.2015, the Hon'ble Minister directed the Executive Engineer, National Highway Authority to conduct an inquiry in respect of acquisition of the Petitioners land and to pay appropriate compensation, if already not paid.

7. The learned counsel for the Petitioners further submitted that on 03.02.2016, the Respondent No.3 Deputy Collector issued a letter to the Hon'ble Union Minister and informed that, no lands of the Petitioners are acquired for construction of Nanded-Latur highway and no proposal for acquisition of land of the Petitioners is pending. On 19.03.2016, Respondent No.2 issued letter and directed (i) the Sub Divisional Officer, Nanded, (ii) the Executive Engineer, P.W.D./B & C, Nanded and (iii) the Executive Engineer, National Highway Authority, Nanded Division to make an inquiry and to submit report in respect of grievance of the Petitioners even though no compensation has been paid in spite of acquisition of land.

8. The learned counsel for the Petitioners further submits that the Respondent-Authorities are claiming about passing of the 100 feet width road through the Petitioners land. The said road is State Highway No.2 (M.S.H.-2) Vasarani-Ambedkar Chowk. Therefore, on 28.12.2016, the Petitioners submitted an application under the Right to Information Act to the Respondent-P.W.D., seeking information as to when the State Highways was declared and when it was constructed. However, on 28.12.2016, the Public Works Department replied to them about non availability of such information with them.

9. According to the Petitioners, though the Respondents have acquired their land ad-measuring 30 ft x 12000 ft = 36000 for construction of State Highway, no compensation has been paid to them. Further, on 01.06.2016, Respondent No. 4 issued a notification and proposed to acquire 2 H 21 R of land for construction of National Highway No. 361 in between 522.420 kms to 600.400 kms (Khupsarwadi to Pardi Section) but subsequently the Respondents issued another notification on 06.04.2017 for acquisition of 51 R land only. Accordingly, the State Authorities have acquired entire land of the Petitioners, but no compensation has been paid, hence, prayed for award of compensation in respect of acquired land.

10. In support of their submissions, the learned counsel for the Petitioners relied on cases of **Tukaram Kanha Joshi & Ors. Vs. M.I.D.C., & Ors.; 2013 AIR SC 565, Vidya Devi Vs. The State of Himachal Pradesh & Ors.; (2020) 2 SCC 569 and Sukh Dutt Ratra and Another Vs. State of Himachal Pradesh and Ors.; (2022) 7 SCC 505.**

11. Per contra, Mr. Lakhotiya the learned AGP appearing for Respondent Nos.2 & 3 submits that, on 04.05.1967 the State Government issued Government Gazette and declared the existing Road as State Highway. The appropriate compensation for acquired land was already paid. The said road of 30 ft. width is in existence since 1967. The Petitioners are claiming

compensation for acquired land after lapse of 51 years. Therefore, claim of the Petitioners is hopelessly barred by limitation, hence, prayed for dismissal of the petition.

12. The learned AGP further canvassed that as per revenue record i.e. field book prepared in the year 1942 [Fasali 1352] which shows about the existence of vehicle road (Motarichi Sadak) passing through the survey nos. 4/1 and 4/2. So also, as per revenue record Pahanipatra of 1955-1958 which shows about existence of the road (Motarichi Sadak). He further submitted that, the Petitioners themselves admitted about existence of 30 meters wide road in between Gut No. 4/1 and Gut No. 4/2. Petitioner No.10 namely Gangaram Chotulal Bhatawale submitted the layout plan dated 09.05.2011 for sanction to the Assistant Director of Town Planning Nanded-Waghala, wherein the Petitioner has shown about existence of Latur-Nanded "30 ft" wide road in Gut No.1 at village Rahimpur. The said layout plan was sanctioned and approved by the Assistant Director of Town Planning Nanded-Waghala. The said layout plan is at Exh. Z-3. Therefore, as per the provisions of Sec. 19-E of the Bombay Highway Act, 1955, the Land Acquisition Act is not applicable. On 19.04.1967 the State Government issued a notification and Latur-Nanded Road was declared as State Highway taking into consideration the old revenue record of 1942. The Notification dated 01.06.2016 published by the

Government of India under Section 3 D of the National Highways Act and acquired 0.5095 out of S.Nos. 4/1 and 4/2 (Gut No.1). Therefore, the Petitioners are not entitled for compensation for the land which was acquired in the year 1967.

13. The learned AGP further canvassed that on 15.10.2018, the Deputy Land Record, Nanded, submitted its report to the Respondent No.2 - Collector about existence of 30 ft wide road since 1923. The road which is subject matter of the petition is 30 ft wide road at village Vasarni-Rahimpur and Mujapeth / Dhanegaon and work of widening of 100 ft. road is in progress. Therefore, the Petitioners may be entitled to receive the compensation for the land which has been acquired for widening of National Highway as per the law.

14. Adv. Deepak Manorkar the learned counsel for Respondent No. 4 submits that as per the revenue records a 30 meter width old existing road is passing through the land of the Petitioners. On 22.03.203, Respondent No. 4 issued a notification under Sub-section 2 of Section 2 of the National Highways Act, 1956 vide Gazette Notification No. S.O. 814 (E) and declared Highway as National Highway No. 361 starting from Tuljapur on NH-52 connecting to Latur – Ahmedpur – Nanded – Yavatmal - Wardha terminating at NH-44 junction near Butibori (Nagpur-Maharashtra). Thereafter, Respondent No.4 proposed a four lane up-gradation of Tuljapur (Km 000) to Waranga (Km 244.369) section of

NH-361 passing through Osmanabad-Latur-Nanded-Yavatmal-Nagpur. The said project has been divided into four packages. The learned Counsel for the Respondent No. 4 canvassed that the Respondent No. 1 already initiated land acquisition proceeding bearing क2016/रारामा-361/भुसं/समो/सिआर-6/152 . On 06.02.2018, the Land Acquisition Officer passed an award and determined appropriate compensation in respect acquired land. Accordingly, Respondent No. 4 already deposited said amount before the Competent Court, hence, prayed for dismissal of the petition.

15. It is submitted that as per revenue record i.e. Field Book which pertains to year 1942 [Fasali 1352] shows existence of vehicle road through the Survey Nos. 4/1 and 4/2. The Revenue and Inspection Record (Pahanipatra) pertaining to 1955-1958 shows about existence of the vehicle Road. The Petitioners themselves admitted that on 09.05.2011, the Assistant Director of Town Planning Authority sanctioned layout Development Plan which was submitted by Shri Gangaram Chotulal Bhatawale i.e. Petitioner No.10. In the said map existence of Latur-Nanded “30 ft” wide road was shown. The Petitioners have not denied about existence of 30 ft. wide Road between Gut No.1. Therefore, as per the provisions of Section 19-E of the Bombay Highways Act, 1955, the Land Acquisition Act is not applicable. Though the existing road constructed but as on today the revenue record shows that they

are owners to the extent of 14 Acres and 10 Gunthas. However, it is submitted that, revenue record does not confer right of the petitioners and said revenue record can only used for fiscal purpose.

16. In the case of **Suraj Bhan & Ors. V/s. Financial Commissioner & Ors.; (2007) 6 SCC 186**, it has been held that mutation entries in the revenue record does not confer any right, title or interest in favour of the person and objective is only for fiscal purpose.

17. In the case of **State of Maharashtra Vs Digambar; 1995 AIR (SC) 1991**, it has been held that no person is entitled to obtain the equitable relief under Article 226 of the Constitution if his conduct is blameworthy because of laches, undue delay and acquiescence or waiver the relief so granted becomes unsustainable. The relief sought under Article 226 of the Constitution by a person against the welfare state is founded on its alleged illegal or wrongful executive action, the need to explain laches or undue delay on his part to obtain such relief would be more stringent than in other cases. (Emphasis Supplied). Therefore, the petitioners are required to show that their land has been acquired by the Respondent No. 4 but no compensation has been paid.

18. No doubt in cases of **Vidya Devi** and **Tukaram Joshi** cited (supra) relied on behalf of the Petitioners, the Hon'ble Supreme Court laid down the law that right to property is a Constitutional right under Article 300-A of the Constitution of India and the State cannot dispossess a citizen of his property except in accordance with procedure established by the law. The obligation to pay compensation, though not expressly included in Article 300-A, can be inferred in that Article.

19. The Petitioners contended that the Respondent-Authorities took possession of their land ad-measuring 30 ft x 1200 ft. = 36000 sq.ft., from their land S.Nos. 4/1, 4/2 Gut No.1 for construction of Nanded-Latur Road land and assured to pay compensation, but no award was passed and no compensation was paid to them. However, on perusal of notification dated 01.06.2016, it appears that the Respondent No.4 had shown area of Petitioners land as 2.2101 and 1.1901 out of S. Nos. 4/1,4/2, Gut No.1, but said land was not acquired. As per the notification dated 06.04.2017, the Respondent No.4-Authority intended to acquire the Petitioners land as well land of other villagers from village Rahimpur (Khurd) as under:

Sr. No.	Name of Land Owners	Acquired Area
1	Premchand Chottulal Bhatawale	0.0631
2	Gangaram Chottulal Bhatawale	0.2140
3	Hiralal Chottulal Bhatawale	0.0631

4	Punamchand Chottulal Bhatawale	0.0631
5	Mohan Chottulal Bhatawale	0.0431
6	Gopal Chottulal Bhatawale	0.0631
7	Shrinivas Nanasaheb Jadhao	0.0509
8	(1) Balaji Motiram Kendre (2) Gopalrao Motiram Kendre	0.0100
9	Laxmibai Balaji Kendre	0.0133
10	(1) Ramdas Sugram Sangle (2) Kisan Sugram Sangale	0.0110
11	(1) Mohan Sambhaji Ghuge (2) Gajanan Sambhaji Ghuge	0.0110
12	1) Ramnivas Bhagwandas Bhutada (2) Govind Bhagwandas Bhutada	0.0303
13	Abhimanyu Nagorao Jogdand	0.0168
14	(1) Panduran Raghunath Durpade (2) Ramrao Raghunath Durpade (3) Angadrao Raghunath Durpade	0.0124
15	Paddinbai Madhorao Munde	0.0297

20. It is needless to say that, in pursuance of notification dated 01.06.2016, the Land Acquisition proceeding bearing क. 2016/रारामा-361/भुसं/समो/सिआर-6/152 was initiated. On 06.02.2018, the Land Acquisition Officer passed an award and determined compensation in respect the acquired land. The Petitioners have not disputed about passing of award and deposit of compensation amount by Respondent No. 4 before the Competent Court as per said Award. It is trite that, no land owner can force or compel the acquiring body to acquire specific area of land beyond it's requirement unless such exigencies arises in exceptional circumstances. The

Petitioners have not brought any material on record to show that while acquiring their land in the year 1967, the compensation was not paid to their predecessor-in-title. Needless to say, by the present petition, the Petitioners are trying to claim compensation for their land allegedly acquired by the Respondent-State to the extent of 30 ft. width road in the year 1967, which is hopelessly barred by law of Limitation.

21. On face of record it appears about existence of 30 ft., wide old existing State Highway passing through the land of the Petitioners. On 22.03.2013, Respondent No. 4 issued a notification under Sub-section 2 of Section 2 of the National Highways Act, 1956 vide Gazette Notification No. S.O. 814 (E) and declared highway as National Highway 361 starting from Tuljapur on NH-52 connecting to Latur-Ahemadpur-Nanded-Yavatmal-Wardha terminating at NH-44 junction near Butibori (Nagpur-Maharashtra). Thereafter, Respondent No. 4 proposed up-gradation of the said Road into four lanes from Tuljapur (Km 000) to Waranga (Km 244.369) section of NH-361 passing through Osmanabad-Latur-Nanded-Yavatmal-Nagpur. The said project has been divided into 4 packages.

22. It is not in dispute that on 01.06.2016, Respondent No. 4 – NHAI issued a notification and intended to acquire their land 2 H 21 R out of S No. 4/1,4/2, Gut No. 1, situated at Rahimpur Tq. & Dist. Nanded for construction

of National Highway No. 361, but no acquisition proceeding was initiated and no compensation was determined. However, on 06.04.2017, Respondent No. 4 issued fresh notification dated 01.06.2016 and acquired the land of the Petitioners viz., 0.0631 H.R.+(Premchand)+0.2140 H.R. + (Gangaram) + 0.0631 H.R. (Hiralal) + 0.0631 H.R. (Punamchand)+0.0431H.R. (Mohan)+ 0.0631 H.R. (Gopal)= Total 0.5095 H.R., which is lesser area than the notification dated 01.06.2016. Respondent No. 4 deposited compensation amount as per award before the Civil Court. The Petitioners, therefore, are entitled to the compensation to the extent their lands have been acquired.

23. Therefore, we do not find any substance in the submissions of the Petitioners. Hence, the present **Writ Petition fails and the same is disposed off.** Rule is discharged.

24. **Pending Civil Application would not survive and stands disposed off.**

25. The learned advocate for the Petitioners prays for continuing the ad-interim relief granted on 05.11.2020 in Civil Application No.5935 of 2020 in Writ Petition No.12133 of 2017, for six weeks. By the said order, this Court had expected that the width of the road concerned should not be extended beyond 10 meters of the Petitioners claimed land.

26. The Respondents oppose the said request.

27. Since a public project is involved and the said project has been stalled only for the reason that an interim order on a Civil Application was granted after three years of the filing of the petition, we are not inclined to continue the said relief.

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]