

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

WRIT PETITION NO. 12260 of 2023

Shri Gangaram s/o Chotulal Bhatewale
Age: 82 yrs, Occ. Agri. & Business,
R/o. Opp. Akashwani Kendra, Vasarni,
Nanded, Tq. & Dist. Nanded.

... **PETITIONER**

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,
Nanded, Tq. & Dist. Nanded.
2. The Collector,
Tq. & Dist. Nanded.
3. The State of Maharashtra,
Public Works / B & C Department,
Through the Executive Engineer,
having its 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.
Ashtavinayak Nagar, Taroda (Kh),
Nanded, District Nanded.

... **RESPONDENTS**

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Mr. A.A. Mukhedkar , *Advocate for the Petitioner*
Mr. P.K. Lakhotiya, AGP for Respondent-State

Mr. R.B. Bhosale and B.M. Dhanure for *Advocate for Respondent/*
Union of India

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

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

1. By the present petition under Article 226 and 227 of the Constitution of India, the Petitioner has put forth prayer clause-B and C as under:

B) The notice dtd.14-8-2023 issued by respondent no.1, may please be quashed and set-aside.

C) To hold and declare that the notice dtd.14-8-2023 issued by respondent no.1 is violative and contrary to the order dtd.5- 11-2020 passed in Civil Application no.5935 of 2020 in Writ petition no.12133 of 2017 and other orders passed therein, by the division bench of this Honourable Court.”

2. Since the Petitioner prays for declaration that the notice dated 14.08.2023 issued by the Respondent No.1 is contrary to the order dated 05.11.2020 (**Coram: Sunil P. Deshmukh & M.G. Sewlikar, JJ.**) passed in Civil Application No.5935 of 2020 in Writ petition No.12133 of 2017, therefore, it will be just and proper to reproduce the said order, which reads as under:

“Learned AGP seeks time once again. Mr. Mandlik apprehends that in the circumstances, the purpose underlying the matter is getting obfuscated. He further submits that on many occasions time has been sought. Learned AGP however earnestly requests for time. Having regard to aforesaid, we deem it appropriate to put up the matter on 03-12-2020. We expect that so far as the width of the road is concerned it would not be expanded beyond 10 metres petitioner's claimed land.”

3. The learned advocate appearing for the Petitioner tendered Written Notes of Arguments, in as much as, he also orally argued the matter for a considerable time.

4. The learned counsel appearing for the Petitioner canvassed that, the present Petitioner is the Petitioner No.10 in Writ Petition No.12133/2017. The Petitioner and others have put forth following prayers in Writ Petition No.12133/2017 as under:

“B-1. Appropriate Writ/Directions, may be issued against the respondents, directing them, if the respondents want total 2 H 21 R 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 R 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.”

5. However, during the pendency of the said petition, the present Petitioner and others filed Civil Application No.5935/2020 on 29.09.2020 and sought injunction against the Respondent-Authorities restraining them from causing any obstruction to the peaceful possession of the Petitioner. On 05.11.2020 the Coordinate Bench of this Court (**Coram: Sunil P. Deshmukh and M.G. Sewlikar, JJ.**) passed the above quoted order. However, instead of obeying the mandatory order that the road would not be expanded beyond 10 meters of Petitioners' land, on 14.08.2023 the Respondent-Authorities issued the notice/Notification dated 14.08.2023 which is subject matter of Writ Petition No.12133/2017, wherein it has been stated that, the Petitioner shall hand over vacant possession of his land and house property ad-measuring 4300 sq. mtr., out of Gut No.1 at Rahimpur, Nanded within a period of eight days. Therefore, action on part of the Respondent No. 1 while issuance of Notice dated 14.08.2023 is violative and contrary to the order dated 05.11.2020 passed in Civil Application No.5935 of 2020 in Writ Petition No.12133 of 2017 passed by this Court. Hence, the impugned notice is liable to be quashed and set aside.

6. In support of these submissions the learned advocate for the Petitioner relied on the 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**, wherein it has been held that, when the State Authorities take possession of the property without following the due procedure prescribed under the law, without even giving compensation, discretion has to be exercised in favour of the Petitioner under Article 226 of the Constitution of India. The delay and laches would not be an impediment for payment for compensation.

7. Per contra, the State Government countered the claim of the Petitioner by filing affidavit in reply of Mr. Gajendra Rajput, the Executive Engineer, PWD, Nanded (Respondent No.3).

8. Mr. P.K. Lakhotiya, the learned AGP canvassed that, on 28.02.2020 this Court passed an order and had directed the Respondent No.2 - District Collector, Nanded and the Respondent No.3 - Executive Engineer, PWD Department, Nanded to file separate affidavits after causing an inquiry about the acquisition proceedings of the Petitioners' land for construction of National Highway. In pursuance of said order the inquiry was conducted. The Assistant Engineer Grade-I, PWD (South) Nanded submitted its report dated 24.09.2020

specifying that no any record confirming acquisition of Gut No.1 of village Rahimpur was traceable, but 10 ft wide road exists since long.

9. The Respondent No.4 - Project Director, NHAI, P.I.U. Nanded filed affidavit in reply and countered the claim of the Petitioner. Mr. Deepak S. Manorkar, the learned counsel appearing for the Respondent No.4 vehemently canvassed that, by invoking Sub-section 2 of Section 2 of the National Highways Act, 1956, the Central Government issued a Notification bearing No.S.O. 814(E) dated 22.03.2013 and declared the State Highway No. MSH-2 being National Highway starting from Tuljapur (NH52) connecting Latur – Ahmedpur – Nanded – Yavatmal - Wardha terminating at NH-44 junction near Butibori (Nagpur – Maharashtra).

10. The learned counsel appearing for the Respondent No.4 further canvassed that after following the due procedure of law and after initiating proceeding for acquisition, the required land from Survey No.4/1, 4/2 Gut No.1 situated at Rahimpur, Tq. & Dist. Nanded has been acquired for construction of NH-361. Accordingly, the learned Special Land Acquisition Officer passed an award on 06.02.2018 and the Respondent No.4 deposited entire amount of compensation before the Civil Court as per Award.

11. The main grievance of the Petitioner is that on 14.08.2023 the Respondent-Competent Authority/S.D.O. and Land Acquisition Officer, Nanded issued a notice stating therein that since there is a dispute about ownership of the portion of land, between the owners of the acquired land, therefore, the amount to the tune of Rs. 3,40,42,999/- towards compensation of construction + Rs.2,93,71,310/-, a total of Rs.6,34,14,309/-, has been deposited with the Competent Civil Court.

12. The Petitioner further prayed for declaration that the notice dated 14.08.2023 issued by the Respondent No.1 is disobedience and contrary to the order dated 05.11.2020 passed in Civil Application No.5935/2020 in Writ Petition No.12133/2017. Section 2(b) of the Contempt of Courts Act provides that, Civil Contempt means willful disobedience to any judgment, decree, direction, order, writ or other process of a Court or willful breach of an undertaking given to a court. Section 12 of the Contempt of Courts Act provides for punishment for the breach of the order of the Court, but no such proceeding has been initiated.

13. It is needless to say that, a subsequent Writ Petition under Article 226 of the Constitution of India does not lie for breach / violation of any order passed by this Court in a previous proceeding or in any Civil Application in previous proceeding. Sub Section 4 of Section 3-H of the National Highways

Act, 1956 provides that, if any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the Competent Authority shall refer the dispute to the decision of the Principal Civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated. Since the Respondent No.1 issued a notice dated 14.08.2023 about existing dispute between the owners of acquired land in respect of their share and entitlement of compensation share, therefore, as per the provisions of Section 3H(4) of the National Highways Act, 1956, entire amount of compensation deposited with the Civil Court.

14. The Petitioner has not denied about passing of Award dated 06-02-2018 by the learned Special Land Acquisition Office in respect of acquisition of the land under Notification dated 06-04-2017 and Respondent No.4 having deposited the entire amount of compensation before the Civil Court as per Award i.e. Rs. 3,40,42,999/- towards compensation of construction + Rs.2,93,71,310/-, total Rs.6,34,14,309/-. Therefore, it does not appear that the impugned notice dated 14.08.2023 is illegal and violative of Article 300-A of the Constitution.

15. Since the Petitioner alleged about breach of order dated 05.11.2020 passed in Civil Application No.5935/2020 in Writ Petition No.12133/2017, in our view, a second petition under Article 226 and 227 of

the Constitution of India is not maintainable and it deserves to be dismissed.

Accordingly, **the petition is dismissed.** Parties to bear their own costs.

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]