

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 8113 of 2017

- (1) Mukund s/o. Subhash Pande,
aged about 53 years, Occupation -
Service
- (2) Mahadevrao s/o. Govindrao Borulkar,
aged about 56 years, Occupation -
Agriculturist
- (3) ~~Sou. Radhabai Krishnarao Kadam,
aged about 54 years, Occupation -
Agriculturist~~
- (4) ~~Ganesh s/o. Digambar Kadam,
Aged about 47 years, Occupation -
Agriculturist~~
- (5) ~~Baburao s/o. Digambar Kadam,
aged about 53 years, Occupation -
Agriculturist~~
- (6) Vilas s/o. Avdhutrao Kadam,
aged about 51 years,
Occupation – Agriculturist.
- (7) ~~Nitin s/o. Devidas Kadam,
aged about 27 years,
Occupation – Service.~~
- (8) Satish s/o. Suresh Kadam,
aged about 33 years, Occupation -
Agriculturist.
- (9) ~~Nagorao s/o. Govindrao Borulkar,
aged about 70 years, Occupation -
Agriculturist.~~

Names of
petitioner nos. 3,
4, 5, 7, 9, 12 and
13 are deleted as
per Court's order
dated 7-1-2022

- (10) Sharad s/o. Devidas Kadam, aged about 30 years, Occupation – Agriculturist.
- (11) Sou. Radhabai Eknath Kadam, aged about 65 years, Occupation - Agriculturist.
- (12) ~~Sou Vimal Avdhut Deshmukh, aged about 50 years, Occupation - Agriculturist.~~
- (13) ~~Pramod s/o. Nagorao Borulkar, aged about Adult, Occupation - Agriculturist.~~
- (14) Sachin s/o. Eknath Kadam, aged about Adult, Occupation - Agriculturist.

All petitioners are R/o. Village Hiwra,
Tahsil – Mahagaon, Dist. Yeotmal.

.... Petitioners

..VERSUS..

- (1) Union of India through its Secretary,
Ministry of Road Transport and
Highways, New Delhi.
- (2) National Highways Authority of India,
through the Project Director, PIU-Yeotmal,
Bungalow No. 28, Datani Developers, Behind
FCI Godown, Dhamangaon Road,
Yeotmal-1.
- (3) The Competent Authority, Sub-Divisional
Officer – Special Land Acquisition Officer,
Umarkhed, District Yeotmal.
- (4) Shri Punjab Dhondirao Kadam,
aged about 49 years.

Names of
respondent nos.
4 to 32 are added
as per Court's
order dated
7-1-2022

- (5) Shri Dhondirao Dattarao Borulkar,
aged about 53 years.
- (6) Shri Deorao Bhimrao Kadam,
aged about 65 years.
- (7) Shri Manik Bhimrao Kadam,
aged about 62 years.
- (8) Shri Shrikrishna Bhimrao Kadam,
aged about 60 years.
- (9) Smt. Shubhangi Dhondirao Borulkar,
aged about 45 years.
- (10) Shri Narayan Vishwasrao Deshmukh,
aged about 70 years.
- (11) Smt. Shakuntala Dattarao Deshmukh,
aged about 50 years.
- (12) Shri Subhash Chandrabhag Andge,
aged about 45 years.
- (13) Shri Bhagwanrao Govindrao Borulkar,
aged about 65 years
- (14) Shri Shirish Bhagwanrao Borulkar,
aged about 53 years.

All the Respondent Nos. 4 to 14 have
the Occupation-Agriculturist and residents
of At Post-Hiwara (Sangam), Tq. Mahagaon,
Dist. Yevatmal.

- (15) Bhagwan Maruti Falke, aged
about 48 years, Occu. Cultivator.
- (16) Rajendra Bapurao Kadam, aged
about 42 years, Occ. Cultivator.

- (17) Mahesh Bhimrao Kamarkar,
aged about 27 years, Occu. Cultivator.

All the Respondent Nos. 15 to 17 residents
of At Post-Hiwara, Tq. Mahagaon,
Dist. Yevatmal.

- (18) Vaibhav Digambar Kottabondawar.

- (19) Prabhakar Duttarao Wankhede.

- (20) Shaikh Kalim Shaikh Abdul.

- (21) Mukind Punjaji Jamkar.

- (22) Sau. Shital Pradeep Ghatole.

- (23) Bihari Shambhulal Jaiswal.

- (24) Ganesh Dadarao Kadam.

- (25) Gajanan Kisan Thakre.

- (26) Kishor Bhujangrao Ghatole.

- (27) Dyaneshwar Ambadas Kadam.

- (28) Sudhir Dadarao Kadam.

- (29) Bhimrao Anandrao Diyalwad.

- (30) Ramesh Anandrao Diyalwal.

- (31) Sunil Sadashiv Kamble.

- (32) Jagdish Punjaji Jamkar.

All the Respondent Nos. 19 to 33 are
aged - Major, Occ. Cultivators,
R/o. Village – Hiwara
Tahsil – Mahagaon, Dist. Yevatmal.

.... Respondents

Mr. B. G. Kulkarni, Advocate for the petitioners
Mrs. Mugdha Chandurkar, Advocate for respondent 1
Mr. Anish Kathane, Advocate for respondent 2
Mrs. K. R. Deshpande, A.G.P for respondent 3

CORAM : ROHIT B. DEO AND
Y. G. KHOBRAGADE, JJ.

DATED : 2-2-2023

JUDGMENT : (Per : Rohit B. Deo, J.)

Rule. Rule made returnable forthwith. Heard finally with consent of learned counsel appearing for the parties.

2. Petitioners are residents of Village Hiwra, Tahsil Mahagaon, District Yavatmal and are questioning the acquisition of their agricultural land for the bypass road on National Highway 361 Nagpur-Tuljapur passing through Village Hiwra. According to the petitioners, government land is available on both sides of the existing highway and acquisition of the agricultural land of the petitioners was wholly unnecessary.

3. Petitioners contend that some of the land owners to whom the National Highway Authority of India (NHAI) issued notices objected to the acquisition and invited the attention of the authority to the alternate land available on both sides of the existing highway.

4. The petitioners claim that while they were under the impression that the procedure envisaged under the provisions of Section 3-A to 3-D of the National Highways Act, 1956 (Act) would be followed, the authority proceeded to issue the Notification under Section 3-A dated 3-4-2017.

5. The petitioners contend that in view of the opportunity granted to raise objections, the petitioners filed objections on 20-4-2017 and reasonably hoped that the same shall find favour with the NHAI.

6. The petitioners were heard by the Sub Divisional Officer. The petitioners claim to have made the authority aware that the proposed acquisition shall render the land owners landless and that acquisition of the fertile land would unnecessarily burden the State exchequer.

7. As on the date of the filing of the petition, the stage of issuance of Notification under Section 3-D of the Act had not reached. However, during the pendency of the petition, Notification under Section 3-D of the Act was published in the daily newspapers. The petitioners amended the petition and incorporated challenge to the Notification issued under Section 3-D(1) of the Act. The petitioners contended that the hearing was an empty formality and there was no justification for rejecting the objections.

8. Respondent 3 – Competent Authority has filed affidavit in response dated 7-7-2018 asserting that the objections raised by the petitioners were duly considered and decided, *inter alia* after scrutinizing the consultation report of the NHAI. Respondent 3 then referred to the instructions of the Collector, Yavatmal and stated that spot inspection of the proposed bypass was conducted. The competent authority submitted his report dated 18-11-2017 to the Collector, Yavatmal. It appears from the affidavit in response, that while the competent authority did opine that the proposed bypass can be considered through the existing road passing through Village, Hiwra, in the affidavit in response, the competent authority qualified the opinion by asserting that ultimately it was for the NHAI to take an appropriate decision.

9. Respondent 2 - NHAI filed affidavit in response dated 23-7-2018 asserting that the acquisition is not vitiated either by arbitrariness or mala fides. We may extract the relevant portion in the affidavit in response filed by the NHAI.

“The present respondents through its competent authority i.e. Respondent No. 3; are carrying out the acquisition proceedings in respect of construction of National Highway No. 361 – Nagpur – Tuljapur Highway passing through village Hiwra, Distt. Yavatmal. The present respondent i.e. National Highways Authority of India (hereinafter for brevity read and referred as NHAI) is an expertise body of the Central Government for construction of National

Highways. That, the consultant of NHAI has carried out the detailed study of the lands to be acquired and also for the proposed construction of National Highway which is being constructed in public interest and which a project of national importance. It is after the said detailed study, the lands of the respective land owners have been acquired for construction of said National highway by the Respondent No. 3 i.e. the competent authority; by following the procedure contemplated under the National Highways Act 1956. The decision of construction of bypass to the said National Highway is owing to the fact that as per standards and applicable MORTH Guidelines, the minimum of 60 mtrs. of ROW is required for construction of any National Highway. The construction of bypass has been proposed by the NHAI as the original alignment of National Highway passes through the living areas/dense habitat areas of Hiwra village which is having ROW of approx only 85 fts. That, the NHAI cannot compromise with the road width while constructing the said National Highway as the same would be in breach of applicable MORTH Guidelines. That, looking at the demolition of construction/structures which will be required to be done for acquiring ROW of 60 mtrs. through the village Hiwra by expansion of original alignment of National Highway; the proposal for construction of bypass to village Hiwra has been taken by the NHAI. The said decision has been taken by the NHAI to avoid mass demolitions and to avoid public unrest. That the NHAI has extensively relied on the consultant's report for construction of bypass to village Hiwra. Therefore, the entire action of NHAI is lawful and proper."

10. Mr. Mukund Pande filed counter affidavit dated 20-8-2018 claiming that the consultant, who was appointed by the State Government did not visit the spot nor did he ascertain the wishes of the owners of the property adjacent to the existing highway. Broadly, the thrust of the

counter affidavit is that the NHAI should revisit the decision of acquiring the land of the petitioners. Mr. Mukund Pande, who is the petitioner 1, further emphasized on the report submitted by respondent 3 and claimed that the affidavit in response filed by respondent 3 admits the petitioners' contentions.

11. Respondent 1 - Union of India filed affidavit in response dated 29-1-2019 which is on the lines of the affidavit in response of the NHAI. The relevant portion of the affidavit is extracted below.

“The contents of this paragraph are matter of record. As stated supra the present respondent i.e. Union of India declared its intention for construction of the National Highway No. 361, Nagpur - Tuljapur Highway (Butibori to Tuljapur); which is main national highway stretch under which the subject stretch is being made; wherein in the Wardha - Yavatmal Warang Fata section (subject stretch) the decision of construction of bypass to village : Hivra, Tq. Mahalgaon, District Yavatmal was taken. Accordingly, after detailed studies, the acquisition of the lands for the bypass to village Hivra was undertaken. That the present road has been entrusted for construction by the present respondent i.e. Union of India to the respondent no. 2 i.e. NHAI which is an expertise body of the Central Government for construction of national highways. That, the consultants of the NHAI had carried out detailed studies of the land which was to be acquired for the said construction of bypass which is a public project and same is of national importance. The decision for construction of bypass to said village Hivra was owing to the fact that as per standards and applicable “MORTH” guidelines the minimum of 60 mtrs Right of Way (hereinafter for brevity read and referred as ROW) is required for construction of said National Highway. The construction of bypass

has been proposed by the NHAI i.e. respondent no. 2; as the original alignment of the said N.H. No. 361 passed through living areas / dense habitat areas of village Hivra, which is having ROW of approximately only 85 fts. That, the NHAI being central body, whenever is entrusted with the works of construction of national highway, and particularly when acquisition of land is involved in the said process, follows the applicable MORTH guidelines of having minimum 60 mtrs. ROW in particular stretches of national highways. That looking to the mass demolition & rehabilitation which would occur due to construction of 4 laned roads; if at all the original alignment of road is widened; the NHAI has taken the decision to construct the bypass to village Hivra. The said decision is taken after detailed studies by the NHAI, wherein it was particularly found that the said bypass is economically and as well as socially viable, as it involved less mass demolition of existing structures. Therefore, the decision of NHAI of construction of bypass to village Hivra is totally proper and justified and same is also correct in view of the present respondent i.e. Union of India.”

12. An additional affidavit dated 4-2-2019 sworn by Mr. Mukund Pande is filed which attempts to demonstrate that several agriculturists whose land is situated on both sides of the existing highway are ready and willing to surrender their land to facilitate the expansion of the existing road.

13. Respondent 2 - NHAI filed an additional affidavit dated 9-4-2019 in response to the order dated 27-3-2019 which formulated two questions. The relevant portion of the said affidavit reads thus :

“2. That vide order dated 27.3.19; this Hon’ble court has specifically raised 2 questions :

- a. What is the date of the report of the consultant on page 44 of the petition ?*
- b. Whether there is a decision on the objections raised by the petitioners to the notification under Section 3-A of the National Highway Act 1956 ?*

*3. That; the present respondent most respectfully submits that the report of the consultant on pg.44; as filed by the petitioner in petition is prepared by the consultant of National Highways Authority of India (hereinafter for brevity read and referred as NHAI) i.e. M/s aarvee associates; before the publication of 3-A notification under the National Highway Act 1956, which is submitted to NHAI, vide communication dated 10.10.16. The copy of the said communication is annexed herewith as **ANNEXURE-R-2-1**. That; the said page is comparative statement of Alternative Alignments of village : Hiwra Sangam. Also; a Google image map submitted by said consultant with the DPR, showing all the three alternatives studied by him is annexed herewith as **ANNEXURE-R-2-2**.*

4. The NHAI has selected the Alternative No. 1 for the construction of By-pass as the said alternative is socially and economically viable and in public interest.

5. As far as the second question raised by this Hon’ble court, pertaining to; whether there is a decision on the objections raised by the petitioners to the notification under Section 3-A of the National Highways Act 1956; the present respondent No. 2 submits the following.

6. That; the Respondent No. 3 is the competent authority appointed by the Government of India for conducting the acquisition of land of the subject stretch project. That; the competent authority has followed the procedure of law as contemplated under the National Highways Act 1956 and has

conducted the acquisition proceedings in respect of village : Hiwra Sangam, Tal : Mahalgaon, Dist : Yavatmal.

7. *That; the Government of India published the 3-A notification under the National Highways Act 1956 for the construction of subject stretch i.e, National Highway No. 361 – Nagpur – Tuljapur Highway dated 28.2.17. The copy of said 3-A notification is annexed herewith as **ANNEXURE-R-2-3.***

8. *As per provisions of the National Highways Act 1956; the competent authority has received the objections from the interested persons as per section 3-C of the National Highways Act 1956.*

9. *Thereafter, the competent authority has followed procedure of law and forwarded the present respondent the draft 3-D notification under National Highways Act 1956 ; wherein it was mentioned that the objections received have been considered and disallowed by the said competent authority. The copy of said letter dated 24.11.17 is annexed herewith as **ANNEXURE-R-2-3-A.***

10. *That; thereafter the said draft 3-D notification has been forwarded by the present respondent to the NHAI (Hq). The same has been again been forwarded to the Government of India for publication in gazette notification.*

11. *Thereafter; the gazette notification under Section 3-D of the National Highways Act 1956 has been published on 22.12.17. The copy of said 3-D notification is annexed herewith as **ANNEXURE-R-2-4.** Thus; the land under said 3-D notification has vested with Government of India.*

Hence this affidavit.”

14. Petitioner 1 - Mukund Pande has filed further affidavit dated 3-5-2019 reiterating that the objections raised are mechanically rejected.

15. We note that respondents 15 to 32, who are supporting the acquisition, have filed an affidavit in response dated 27-6-2022. Respondents 15 to 32 assert that since the work of the bypass is not complete, accidents have occurred often. The relevant averments in the affidavit filed on behalf of the respondents 15 to 32 read thus :

“7. It is submitted that; the present respondents are constrained to participate in the present proceedings as several facts as mentioned above are not the part of the proceedings, though the petition was being projected in the interest of the villagers. Therefore, the writ petition needs to be dismissed.

*8. It is submitted that, due to the incompleteness of the strip of the work of the bye pass at Hiwara, every other day there are accidents. In the last 2 years around 30 persons have met with an accident, out of which 2 succumbed to the death, while others have suffered injuries. True extracts of the newspaper with other relevant documents are collectively filed herewith and same are marked as **Annexure-RB**. It is further surprising that, the NHAI is looking reluctant in completing the work, despite the fact of the final award and payment to the land owners. This Hon’ble Court at no point of time passed any interim order in the matter.*

9. It is further pertinent to note that, the petitioners have made very vague statements in the petition. One such statement that the petitioners may be rendered landless and they would be required to lose the income. However, perusal of the award would show that, none of the petitioners is going to be rendered landless and the portion of the land holding is being acquired. It is surprising that, if the road is constructed through the agricultural lands, it would be rather convenient for the agriculturist to cultivate their lands as they can very well use the highway, not only that, valuations of their properties are also appreciated only because of the acquisition of their lands. As such, it is beyond understanding

that, the petitioners are anyway adversely affected by the acquisition. Therefore, the writ petition needs to be dismissed.

Hence this submission.”

16. We have heard learned counsel for the petitioners Mr. B. G. Kulkarni. The challenge to the acquisition is not founded on the allegation of mala fide or malice, factual or legal. The submission canvassed on behalf of the petitioners is that the decision to acquire their agricultural land is flawed in as much as alternate land is available on both sides of the existing highway, and the owners of the said land are willing to surrender their land to facilitate the expansion of the existing highway, and therefore, the acquisition of the land of the petitioners is wholly unnecessary. We have extracted supra, the stand of the authorities. In exercise of writ jurisdiction, it would be impermissible to test the correctness of the decision of the expert body, which has considered and rejected the objections raised by the petitioners to the acquisition of their land. It is trite law that the jurisdiction of the writ court is limited to scrutinizing the decision making process. We have not come across any material to suggest, and indeed no such case is pleaded, that the decision of acquisition is actuated or motivated by any extraneous consideration.

17. We may note the observations of the Hon'ble Apex Court in ***Union of India Vs. Kushala Shetty and others [(2011) 12 SCC 69]*** which

emphasized that scope of judicial review is extremely limited and acquisition can be nullified in rarest of rare cases if found *ex facie* contrary to law or tainted due to mala fides. Paragraph 28 of the said decision reads thus :

“28. Here, it will be apposite to mention that NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of National Highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and maintenance of National Highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The Courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited. The Court can nullify the acquisition of land and, in rarest of rare cases, the particular project, if it is found to be ex-facie contrary to the mandate of law or tainted due to mala fides. In the case in hand, neither any violation of mandate of the 1956 Act has been established nor the charge of malice in fact has been proved. Therefore, the order under challenge cannot be sustained.”

18. The sequitur of our finding that there is no demonstrable flaw in the decision making process or arbitrariness or malice vitiating the

decision impugned, the petition must be rejected, and we order accordingly.

19. The petition is rejected with no order as to costs.

(Y. G. Khobragade, J.)

(Rohit B. Deo, J.)

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