



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

957 CIVIL APPLICATION NO. 2304 OF 2024
IN RAST/4321/2024
WITH
REVIEW APPLICATION (STAMP) NO.4321 OF 2024
IN WRIT PETITION NO.3058 OF 2019

THE STATE OF MAHARASHTRA AND OTHERS
VERSUS
MACHHINDRA JIJA SHINDE AND ANOTHER

...
Shri P.K. Lakhotiya, AGP for the Applicants/State.
Shri N.J. Pahune Patil, Advocate for the Respondents/ original
Petitioners in WP.

...
CORAM : RAVINDRA V. GHUGE
&
R.M. JOSHI, JJ.

DATE :- 01st March, 2024

Per Court :-

(a) Civil Application No.2304/2024:-

1. After considering the submissions of the learned Advocates for the respective sides, on the condition that the Review Application would be considered today, **the Civil Application is allowed.** Delay is condoned.

(b) Review Application (stamp) No.4321/2024:-

2. The Review Application is heard by the consent of

the parties.

3. We have considered the strenuous submissions of the learned AGP on behalf of the Applicants/ State and we have perused the grounds formulated at clauses I to X. We quite see that the issue that was before this Court in Writ Petition No.3058/2019, had certain disputed issues with regard to the original existing width of the road and the side margins. Nevertheless, the said petition was entertained by this Court [Coram : S.V. Gangapurwala (as His Lordship then was) and Shrikant D. Kulkarni, JJ.] and it was held in paragraphs 13 to 23 as under:-

“13. The petitioners have not disputed the existence of 10 meter wide road since 1971-72. The respondents cannot be restrained from carrying on the improvement i. e. the black top of 10 meter. In para 6 of the affidavit in reply, the respondents have accepted that track since 1971-72 is 10 meter and that black top is laid on 10 meter and 01 meter murum filling on either side of B.T. for protection of B.T. width. The respondents in para Nos. 8 and 10 of same affidavit in reply have narrated different case. It is said that the road has attained width of 16 meters and same is in possession of the State Government. Clarification is given that, road is constructed within available ROW i. e. 7 meter carriage way plus 2.5 meter side shoulders in addition to slope on either side which extending to 16 meters. The respondents have also placed reliance on map prepared by the

Revenue Department.

14. *As per the geometric design and general feature of the manual of specification and standards produced by the respondents along with the affidavit in reply, the width of carriage way is 3.5 meter i. e. 7 meters and the width of shoulder is 2.5 meters on either side. The same would be 12 meters. In the present matters, it is not the case of the respondents that, service road exists.*
15. *As discussed above, 10 meters wide road is admittedly in existence since 1971-72 and there would be no impediment for respondents to carry on the work on said 10 meter wide road. In para 6 of the affidavit in reply, it is contended that, on going improvement is for black top of 10 meter and 01 meter murum filling on either side i. e. 12 meter wide. Whereas in para 8, it is clarified that, road is constructed within ROW, which is 7 meter carriage way plus 2.5 meter side shoulder, which would be 12 meters. We can accept the case of respondents that the respondents are in possession of 10 meter wide road plus 1 meter murum filling on either side. However, there is nothing on record to conclude that the width would extend to 16 meter i. e. additional slope on either side.*
16. *It appears that, only on paper the respondents upgraded the road constructed under the E.G.S. in the year 1971-72 as major district road in 1981 and major district road into a State Highway in 2001. For State Highway ROW is 30 meters. The respondents do not contend that, at the time of declaring the road as District major road since 1981-2001 and State Highway since 2001-2021, the respondents carried out further construction or expanded the width of the road. The width of the road constructed under E.G.S. in 1971-72 remained the same, though same was declared as District major*

road 1981-2001 that require width of 24 meters and State Highway 2001-2021 requiring width of 30 meters.

- 17. The respondents if desirous of carrying the construction of road beyond 12 meter (10 meter plus 1 meter on either side murum filling), they shall have to acquire the property of the petitioners.*
- 18. The respondents in their affidavit in reply have not disputed ownership of the petitioners over the lands. The right to property is an inviolable right. Though the right to property is not a fundamental right, still the same is protected under Article 300-A of the Constitution. Article 300-A of the Constitution provides that, no person shall be deprived of his property save by the authority of law. Now right to property is brought within the contour of human right.*
- 19. The respondents are the State and its instrumentality. They are expected to be model litigants. It is not expected of the respondents to usurp their power in denuding the petitioners of their property and that too their source of livelihood. The respondents cannot construct the road beyond 12 meters width without resorting to due procedure of law viz acquiring the property under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and/or by private negotiation. The respondents are supposed to nay required to adhere to the rule of law. Action defiant to the rule of law is arbitrary. Arbitrariness has no role in a society governed by rule of law. Arbitrariness is an antithesis to rule of law, justice, equity, fair play and good conscience. The Courts in such cases would step in exercising the extraordinary powers under Article 226 of the Constitution of India to restrain an arbitrary*

action.

20. *The judgment delivered by the Division Bench of this Court at the Principal Seat in Writ Petition No. 8057 of 2018 with connected writ petitions dated November 01, 2018 and relied by the learned A. G. P. would not be of much assistance to the respondents. In the said case, the petitioners contended that, MSRDC cannot maintain uniform width of 24 meters unless the land of the petitioners is acquired. The case of MSRDC was that, the width of ROW is over 24 meter and up-gradation on 24 meters wide road is done. It was further case of MSRDC that, where ever the requirement of land is exceeded proper procedure to acquire the land would be adopted by respondents therein.*
21. *In the present cases, undisputed fact emerging from the pleading are that, 10 meter road was constructed under E.G.S. in the year 1971-72 and thereafter no further work was carried and only on paper the roads were declared as District major road and State Highway.*
22. *In the light of the above, the writ petitions are partly allowed.*
23. *The respondents are allowed to carry out the work on writ road to the extent of 10 meter wide plus one meter on either side i. e. 12 meter wide. The respondents shall not carry out construction of writ road beyond 12 meter without following due procedure of law. The respondents in that case shall acquire the affected property from the legitimate owner in accordance with the provisions of law or by private negotiations.”*

4. The submissions of the learned Advocates for the respective sides were recorded in paragraphs 13 to 15 and it has been recorded in the further paragraphs that only on paper the

Respondents upgraded the road constructed under the Employment Guarantee Scheme (EGS) in the year 1971-72 as major district road in 1981 and converted the same into a State Highway in 2001. For the State Highway, Right of Way (ROW) is 30 meters.

5. Considering the transition of the original road constructed under the EGS in 1971-72 to the State Highway, this Court recorded that the ROW has to be 30 meters and, therefore, if the State desires to lay a road more than 12 meters, they would have to acquire the land. This Court also recorded that the existing road was of 10 meters with one meter in addition on either side thereby, making it 12 meters.

6. We do not find that this Court has committed any error on the face of the record, in passing the said order.

7. **The Review Application is, therefore, rejected.**

kps (R.M. JOSHI, J.)

(RAVINDRA V. GHUGE, J.)