



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

**CONT. PETITION NO. 629 OF 2022
IN WP/5069/2019**

1. Kashinath Sopan Istalkar
 2. Narayan Santram Chavan
 3. Sanjay Nagnath Istalkar
 4. Sushila Manohar Motegaonkar
- ...Petitioners

VERSUS

1. Prithviraj B. P
Collector And District Magistrate, Latur.
2. Avinash Kamble,
SDO-Competent Authority, Ausa-Renapur
Dist. Latur.
3. Dhammapriya Gaikwad,
Tahasildar, Tq. Renapur, Dist. Latur.
4. Baswaraj Pandhare,
Chief Engineer,
Public Works Dept., Latur Division, Latur.
5. Santosh Shelar,
Chief Engineer, National Highway,
Konkan Bhavan, New Mumbai.
6. Varsha Thakur-Ghuge,
Collector and District Magistrate, Latur.
7. Avinash L. Korde,
SDO-Competent Authority,
Ausa-Renapur, Dist. Latur.
8. Pravin Sumant,
Executive Engineer,
PWD (National Highway), Ambajogai Road,
Latur.

...Respondents

WITH

CONT. PETITION NO. 594 OF 2023
IN WP/5041/2019

Subhash @ Suhas s/o Trimbak Jadhav

...Petitioner

VERSUS

1. Prithviraj B. P.
Collector And District Magistrate, Latur
Presently posted as CEO, NSSCDEL, Nagpur.
2. Varsha Thakur-Ghuge,
District Collector, Latur.
3. Avinash Kamble,
SDO-Competent Authority, Ausa-Renapur
Dist. Latur.
4. Avinash L. Korde,
SDO-Competent Authority,
Ausa-Renapur, Dist. Latur.
5. Dhammapriya Gaikwad,
Tahasildar, Tq. Renapur, Dist. Latur.
6. Baswaraj Pandhare,
Chief Engineer,
Public Works Dept., Latur Division, Latur.
7. Pravin Sumant,
Executive Engineer,
PWD (National Highway), Ambajogai Road,
Latur.
8. Santosh Shelar,
Chief Engineer, National Highway,
Konkan Bhavan, New Mumbai.

...Respondents

AND

CONT. PETITION NO. 684 OF 2022
IN WP/5042/2019

1. Limbaji s/o Gundaji Yelale

2. Suman w/o Limbaji Yelale
 3. Premlal w/o Shivaji Yelale
 4. Abhay s/o Shivaji Yelale
- ...Petitioners

VERSUS

1. Prithviraj B. P.
Collector And District Magistrate, Latur.
 2. Avinash Kamble,
SDO-Competent Authority, AUSA-Renapur
Dist. Latur.
 3. Dhammapriya Gaikwad,
Tahasildar, Tq. Renapur, Dist. Latur.
 4. Baswaraj Pandhare,
Chief Engineer,
Public Works Dept., Latur Division, Latur.
 5. Santosh Shelar,
Chief Engineer, National Highway,
Konkan Bhavan, New Mumbai.
 6. Varsha Thakur-Ghuge,
Collector and District Magistrate, Latur.
 7. Avinash L. Korde,
SDO-Competent Authority,
AUSA-Renapur, Dist. Latur.
 8. Pravin Sumant,
Executive Engineer,
PWD (National Highway), Ambajogai Road,
Latur.
- ...Respondents

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Advocate for the Petitioners in CP-629/2022 and CP-684-2022 : Mr. Panale Sachin S.

AGP for Respondents/State: Mr. G.A. Kulkarni

Advocate for Respondent No.4 and 8 in CP-594-2023 : Mr. Deve S.S.

Advocate for Respondent No.5 in CP-629/2022 and CP-684-2022 : Mr. Deve S.S.

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**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 18 JANUARY 2024

PER COURT :

. Heard both the sides.

2. The petitioners herein together with several other villagers were before this Court by filing separate writ petitions with a common grievance about their lands having been adversely affected by the transformation of the village road into the state highway/national highway. Considering the fact that the issue essentially was regarding widening of the road and possible use of the petitioners' lands, one writ petition no.4022/2019 was disposed of on 20.01.2022 with following observations :

“13. In this backdrop, upon perusal of the record, we find that the short controversy regarding the exact width of the subject road, is purely factual dispute. Nothing is on record to establish with any amount of exactitude, the actual width of the subject road. This question of fact cannot be satisfactorily resolved on the basis of the documents available on record. The substratum of the matter is the exact extent of the width of the subject road and whether the respondents can undertake the construction /upgradation of the said road without acquiring the lands of the petitioners. It is trite that no person can be deprived of his property except by following due procedure established by law. Therefore, in case, the respondent authorities arrive at the conclusion that the lands of the petitioners are affected, they must forthwith take up acquisition proceedings as per the law.

14. In the circumstances, to resolve the issue of the exact width of

the subject road, we consider it appropriate to direct the respondent authorities to take effective steps to carry out a joint measurement of the subject road at the concerned villages through appropriate authority in presence of the both the sides and under the supervision of the Collectors of Osmanabad and Solapur districts after following due procedure of law as expeditiously as possible and preferably within two months. It is also ordered that in case, after the measurement it is found that the lands of the petitioners are affected by the proposed work, the respondent authorities shall commence the process of acquisition immediately.”

3. In the present matters, the petitioners’ writ petitions were disposed of by reproducing the aforementioned two paragraphs with following observations :

“3. In view of the above, we intend to follow the same course and as the coordinate bench has not mentioned as to who would make the payment of charges for the joint measurement, we initially would direct the acquiring body to bear the fees for the measurement of the road since the widening of the road is almost completed.

4. As such, all these petitions are disposed off in terms of the reproduced paragraph nos. 13 and 14.

5. Needless to state, after the joint measurement of the writ lands, if any dispute occurs or if the petitioners are of the view that the measurement may not be acceptable to them, they would be at liberty to take recourse to the remedies as are available before the Civil Court for getting their rights adjudicated.

6. It goes without saying that these petitioners would participate in the joint measurement and would be ready with their land records/revenue records for assisting the authority while measuring the land.

7. We make it clear that we have not passed any order staying or stalling any project.”

4. After going through the affidavits-in-reply filed by the Chief Engineer, National Highway, P.W. Region, Maharashtra, Konkan Bhavan, New Mumbai and one filed by Avinash Korde who is the Competent Authority, it transpires that there is no dispute about the fact that pursuant to the directions of this Court, a joint measurement was conducted in the last week of January 2023 and the report was prepared on 30.01.2023.

5. In the affidavit filed by the Chief Engineer, Santosh Gajanan Shelar in Contempt Petition No.629/2022, after narrating the facts even he has stated about the joint measurement as per the directions of the Court having been carried out and the report was submitted on 30.01.2023 and petitioner's grievance would stand resolved and the matter would become infructuous.

6. Since, as has been mentioned by the respondent no.1/Collector in the affidavit-in-reply filed in Contempt Petition No.629/2022, her predecessor having noticed some discrepancy in the joint measurement carried out on 22.04.2019 and the one carried out on 30.01.2023, again directed a re-measurement which was apparently conducted by the Executive Engineer of the National Highway Division and Tahasildar, Renapur and the report was prepared on 29.03.2023.

7. Perhaps in view of such an event, the Chief Engineer in his affidavit filed in Contempt Petition No.594/2023 after repeating all the

earlier averments from his affidavit filed in Contempt Petition No.629/2022 has added paragraph no.11 and has referred to the subsequent joint measurement report dated 29.03.2023. Obviously there is variance in the joint measurement reports dated 30.01.2023 and 29.03.2023.

8. In fact, none of the affidavits filed by either the Collector or the Chief Engineer or the Special Land Acquisition Officer expressly deal with the aspect as to why the Collector could have taken some initiative and directed re-measurement, once the joint measurement dated 30.01.2023 was already in place and was not objected to by any of the parties.

9. Pertinently, the joint measurement was conducted by the land record officers in presence of the Talathis, Villagers and the Executive Engineer of the PW-1. Whereas the measurement that was carried out subsequently as per report dated 29.03.2023 ex-facie shows that only the Executive Engineer of the National Highway and the Tahasildar who are the signatories of that report. There is also no record to show that anybody else was intimated about such re-measurement to be conducted at later point of time.

10. Be that as it may, once we have noticed that the joint measurement pursuant to the directions was carried out and report was submitted on 30.01.2023 to which there was no objection, the further

steps should have been taken pursuant to the directions of the Court for taking appropriate steps for acquisition of these lands by following due procedure of law.

11. We expect the respondents, the acquiring body and particularly the Competent Authority to expedite the process for acquisition of the land taking into consideration the joint measurement report dated 30.01.2023, as expeditiously as possible and in any case within six weeks.

12. Contempt Petition No.629/2022; Contempt Petition No.594/2023 and Contempt Petition No.684/2022 are disposed of.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]

Najeeb