

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 535 OF 2023

Shivaji Ganpati Gaikwad & Ors. ... Petitioners

Versus

The State of Maharashtra & Ors. ... Respondents

Mr. Y. B. Lengare, a/w. Aditya K. Gaikwad, for the Petitioners.

Ms. M. S. Bane, AGP, for the Respondent-State.

Mr. Amar Bodke, i/b. M. V. Thorat, for Respondent Nos. 7 & 8.

Mr. Sukumar Ghanvat, for Respondent No.9.

Mr. Vilas B. Tapkir, for Respondent No.11.

CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

DATED: 14 NOVEMBER 2024

P.C.

1. We have heard learned counsel for the parties.
2. This petition under Article 226 of the Constitution of India is filed praying for the following substantive reliefs:

“(a) Rule nisi be issued.

(b) That this Hon’ble Court by way of appropriate writ, order or direction be pleased to direct the Respondents to acquire land and houses / shops of the petitioners and pay the compensation and provide alternate accommodation to the Petitioners as per the provisions of Maharashtra State Highways Act, 1955 and Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement and Act, 2013.

(b) That this Hon’ble Court by way of appropriate writ, order or direction be pleased to direct the Respondents to acquire land and houses / shops of the petitioners and pay the compensation and

provide alternate accommodation to the Petitioners as per the provisions of Maharashtra State Highways Act, 1955 and Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement and Act, 2013.

- (c) *That this Hon'ble Court by way of appropriate writ, order or direction be pleased to direct the Respondent No.2 and 5 to decide the Proposal dated 21.9.2020 and pay the compensation and provide alternate accommodation to the petitioners as per the order dated 17.9.2020 passed by this Hon'ble Court in Writ Petition St. No.92800 of 2020.*
- (d) *That this Hon'ble Court by way of appropriate writ, order or direction be pleased to direct the Respondent No.7 and 8 to decide the Complaint dated 21.9.2020 for initiating the departmental enquiry of the Respondent No.9 and punish in accordance with law within the stipulated period.”*

3. At the outset, we may observe that the case of the petitioners is that their structures were illegally demolished for the purpose of the widening of State Highway No. 153 which passes through village Shetfale, Taluka-Aatpadi, District-Sangli where these structures were situated. The grievance of the petitioners is that due process of law to acquire the land and to demolish the structures was not followed qua their land. Hence, the petitioners ought to be held entitled to reliefs as prayed for.

4. We may observe that earlier the petitioners had approached this Court in the proceedings of Writ Petition (Stamp) No. 92800 of 2020, which came to be disposed of by an order dated 17th September 2020 by the coordinate bench of this Court. The said order reads thus:

“1. At the outset, Mr.Patil for petitioner stated that petitioner has no objection to the road widening project but at the same time, his structures

have been demolished or going to be demolished without payment of compensation. There are no averments in the petition to show that petitioner produced documents of title for the land or the structures and the competent authority has rejected. Mr.Patil states that they will apply to the concerned authority for compensation and prove to the concerned authority their legal entitlement and ownership of the structures. The concerned authority shall consider the representation and documents in accordance with law and take appropriate decision.

2. Petition accordingly stands dismissed as withdrawn. We hesten to add that we have not made any observation on the merits of the matter and we have not granted any stay to petitioner with regard to the structures.”

5. It is clear from the observations of the Court that the petitioners case in the said Writ Petition was to the effect that the petitioners had documents of title of the land or documents qua the structures, and that the competent authority has rejected such documents. It is in these circumstances, the Court accepted the request on behalf of the petitioners and they be permitted to move a representation to the concerned authority alongwith the documents in accordance with law. We are informed by Mr. Lengare that accordingly a representation was made by the petitioners dated 21st September 2020 to the Collector, Sangli as also Executive Engineer, Public Works Department (“**PWD**” for short), Taluka-Miraj, District-Sangli. It is stated that the said representation is pending and has not been decided, although the present petition was filed.

6. Reply affidavit is filed on behalf of the State Government of Shri Santosh Bholaji Rokade, Executive Engineer, PWD, Sangli. In paragraph 12 of

the said affidavit, the deponent has stated there was a joint meeting which was held with respondent No.2-Collector Sangli on 7th October 2020 in which respondent No.2 had directed the deponent to decide the proposal dated 21st September 2020 made by the petitioners and to take appropriate action. He has stated that accordingly he had issued a letter dated 29th January 2021 to the petitioners by RPAD for submission of the relevant documents in respect of the land and Commencement Certificate and other related documents qua the construction which was undertaken by the petitioners on such land *inter-alia* to prove the title of the petitioners in respect of the said land in regard to which grievances are made. However, it appears that the said letter as addressed by the Executive Engineer, PWD, Miraj, District-Sangli was not replied and the present petition was filed.

7. Mr. Lengare, learned counsel for the petitioners has sought to rely on the documents which are annexed to this petition in support of the prayers as made in the petition to contend that the petitioners have title to the lands in question.

8. We have perused the documents. It is difficult for us to record any finding on these documents, on whether the petitioners were at all the owner of any land and/or any structure to be constructed thereon. This more particularly considering the fact that the case of the respondents that the

petitioners were encroachers on the land in question which was removed for the purpose of widening of the State highway.

9. Be that as it may, it appears that the representation as made by the petitioners is still pending. Let the same be decided in accordance with law on materials submitted and further intended to be submitted by the petitioners within a period of 10 days from today. All contentions of the parties in that regard are expressly kept open.

10. We may also observe that the contentions as urged by the petitioners are in fact in the realm of evidence to be led and appreciated by the Court which is certainly not the jurisdiction of this Court under Article 226. In the event, for any reason, the representation of the petitioners as made by the petitioner is rejected, it is always open to the petitioners to resort to remedy of a civil suit, as the law may so permit. All contentions of the parties in that regard are expressly kept open.

11. We are therefore not inclined to interfere in the present proceedings, petition is accordingly disposed of, however in terms of the above observations. No order as to costs.

(ADVAIT M. SETHNA, J.)

(G. S. KULKARNI, J.)

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