

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1331 OF 2022

|                                      |                 |
|--------------------------------------|-----------------|
| Babaso Rangrao Patil And Ors         | ....Petitioners |
| V/S                                  |                 |
| The Competent Authority Dy Collector |                 |
| Land Acquisition, Kolhapur And Ors   | ....Respondents |

WITH  
WRIT PETITION NO. 1535 OF 2022

|                                       |                  |
|---------------------------------------|------------------|
| Manik Baburao Shinde And Ors          | .... Petitioners |
| V/S                                   |                  |
| The Competent Authority Dy. Collector |                  |
| (land Acquisition), Kolhapur And Ors. | ....Respondents  |

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WITH  
INTERIM APPLICATION NO. 3996 OF 2023  
WITH  
INTERIM APPLICATION NO. 30359 OF 2022  
WITH  
INTERIM APPLICATION NO. 16671 OF 2022  
IN  
WRIT PETITION 1331 OF 2022

|                          |              |
|--------------------------|--------------|
| Tejaswini Rajendra Patil | .. Applicant |
|--------------------------|--------------|

In the matter between:

|                                      |                 |
|--------------------------------------|-----------------|
| Babaso Rangrao Patil And Ors         | ....Petitioners |
| V/S                                  |                 |
| The Competent Authority Dy Collector |                 |
| (Land Acquisition), Kolhapur And Ors | ....Respondents |

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Mr. Surel Shah i/b Mr. Rahul Kasbekar for the Petitioners in both petitions.

Mr. Anil Singh, Senior Advocate with Mr. Rakesh Singh a/w Ms. Heena Shaikh, Mr. Adarsh Vyas and Ms. Ruchita Verma i/b M.V. Kini& Co. for the Respondent No.2

Ms. Nisha Mehra, AGP for the State-Respondent

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**CORAM : NITIN JAMDAR AND  
M.M. SATHAYE, JJ.**

**DATE : 5 APRIL 2024**

**Judgment (Per M. M. Sathaye J.) :**

. Heard Mr. Shah, learned counsel for the Petitioners, Ms. Mehra, learned AGP for the State and Mr. Singh, learned Senior Advocate for Respondent No.2/National Highways Authority of India.

2. Writ Petition No. 1331 of 2022 is filed seeking direction to Respondent/Authorities (Competent Authority/ Deputy Collector, Land Acquisition No.6, Kolhapur and National Highways Authority of India) not to disturb possession of the Petitioners, 58 in number, over the subject matter lands, challenging the notifications dated 7 December 2020, 25 March 2022, declaration that Respondent No.1 Competent Authority has not followed the procedure under Section 3-C of the National Highways Act, 1956 ('the said Act' for short) by not affording personal hearing to the Petitioners, challenging the consequential notifications under Section 3-D of the said Act, alternatively seeking direction to the Respondents to widen existing

State Highway (SH-194) instead of acquiring parallel lands of the Petitioners for the purpose of constructing National Highway No. 166.

3. Writ Petition No. 1535 of 2022 is filed by the Petitioners, 74 in number, challenging the impugned notification dated 6 December 2021, declaration that Respondent No.1 Competent Authority has not followed procedure under Section 3-C of the said Act by not affording personal hearing to the Petitioners and therefore, also challenging consequential notification under Section 3-D of the said Act, seeking direction to Respondents to scrupulously follow the process of law under Sections 3-A to 3-D of the said Act. The Petitioners in this petition, by way of amendment have again prayed for same reliefs in respect of notification of the same dated 6 December 2021 issued in respect of another set of lands and seeking identical declaration that in respect of this notification, the Respondent No.1 Competent Authority has not followed procedure under Section 3-C of the said Act, by not affording personal hearing to the Petitioner and subsequently challenging the consequential notification under Section 3-D of the said Act.

4. Interim Application No. 30359 of 2022 is filed by only Petitioner No. 2 - Tejaswini Rajendra Patil, praying to amend Writ Petition No. 1331 of 2022, in view of 3-D notification dated 2 September 2022 and placing on record its copy along with copy of

objection raised by one of the affected persons, contending that for the sake of convenience only one copy is annexed for the reference of the Court.

5. Interim Application No. 3996 of 2023 is filed by same Petitioner No.2 in WP No. 1331 of 2022 praying for following reliefs.

*“A) The present Interim Application may kindly be allowed.*

*B) This Hon’ble Court be pleased to appoint Court Commissioner in order to ascertain factual location regarding the construction of National Highway No. 166 which is being proposed to be constructed in the lands (Exhibit-F to the Petition) belonging to the Petitioners situated in villages Bhuye and Bhuyewadi in Taluka Karveer, District-Kolhapur in consonance with newly suggested and accepted alignment in meeting dated 13.02.2019, which alignment has been reiterated in the affidavit in reply, filed by the Respondent Authority dated 21.06.2022 in paras 4 to 7 & 12 to 14 and forms part of Section 3D notification no. 1332(A) dated 25.03.2022.”*

6. The above two Interim Applications are being considered and disposed of together with above Writ Petitions.

7. The case of the Petitioners in both the Writ Petitions is same except for lands involved covered in common notification. For convenience we are narrating the case in Writ Petition No. 1331 of 2022. The Petitioners claim to be owners of various lands at village Bhuye, Bhuyewadi, Belgavi, Sagav, Karve, Bahirewadi, Yedenipani,

Pargaon, Devarde at Taluka Karveer, District-Kolhapur, of which details such as survey number, area etc. are given in Exhibit-F to the petition. The Petitioners contend that in the year 2017 a notification was issued under Section 3-A of the said Act thereby declaring the intention to acquire Petitioners' land. It is contended that there was outrage and large scale objection raised by the Petitioners due to which the said notification was withdrawn and it was decided to only expand existing said Highway instead of proposed plan of National Highway No. 166 (Ratnagiri-Nagpur National Highway). It is contended that on 13 February 2019 a meeting was held in the presence of local representative of the constituency and the concerned member of Parliament recommended change of proposed alignment of State Highway. It is contended that the proposed change in alignment was such that it saved the funds of the Central Government and it would also save large number of highly fertile agricultural lands belonging to the Petitioners. It is contended that National Highways Authorities were directed to take necessary action for design of new alignment. It is contended that the minutes of the said meeting were communicated to the National Highways Authority (Respondent No.2). It is contended that Grampanchayat Bhuyewadi and Bhuye made representations to Respondent No.2 that acquisition of Petitioners' lands should be carried out as per the newly suggested directions and the existing State Highway be broadened on both sides. It is contended that thereafter, a notification under Section 3-A of the said Act was issued on 7

December 2020 thereby declaring intention to acquire lands belonging to the Petitioners without considering the recommendations and suggestions made. It is further contended that the Petitioners themselves through their respective Grampanchayats made representation to the Hon'ble Central Minister for Road Development thereby expressing their displeasure and objections. A request was made to expand existing State Highway on both sides. It is contended that these representations were also forwarded to the concerned Ministers and representatives. It is further contended that pursuant to notification under Section 3-A, notification under Section 3-C of the said Act was issued calling for objections which was published in local newspaper Pudhari on 4 January 2021. It is contended that the Petitioners thereafter raised their objections. It is contended that the *sarpanch* of the local Grampanchayat Bhuye and Bhuyewadi further made representation to the Hon'ble Minister for Urban Development and PWD to cancel the project of National Highway No. 166. It is contended that the concerned member of Parliament also made communication to the Central Minister of Road Transport and Highway suggesting expansion of existing State Highway. It is further contended that several representations were given. It is thereafter contended that a notice was issued to the Petitioners to remain present for hearing in the office of Respondent No.1. A copy of the said notice dated 9 November 2021 is annexed by the Petitioners themselves. It is contended that the Petitioners made representation raising objection

for proposed plan of construction of National Highway No.166 pointing out loss of Petitioners' lands, through one respectable local representative. It is contended that the Petitioners appeared before Respondent No.1 (Competent Authority) and raised objection. The objection raised by Petitioner No.1 is annexed for ready reference. It is contended that Respondent No.1 rejected the Petitioners' objection stating that acquisition of land, is necessary as proposed. It is then contended that without measurement a notification under Section 3-D of the said Act was issued on 6 December 2021, thereby declaring that the lands have vested in Central Government. It is contended that in the notification dated 6 December 2021, the lands of the Petitioners have been excluded, but the officers of the Respondents are trying to take forcible possession without carrying out measurements.

8. This petition was amended in September 2022 adding following averments. It is contended that now fresh notification under Section 3-A has been issued on 28 January 2022. It is contended that pursuant to said notification, a public notice is issued in daily 'Lokmat' on 15 February 2022 calling for objections. It is then contended that the Petitioners have raised written objections. It is contended that objections of all the Petitioners are same. It is then contended that Respondent authorities have issued notices dated 9 March 2022 to Petitioners under Section 3-C(1) of the said Act calling upon them to remain present for hearing in the office of the

Competent Authority. It is contended that the Petitioners have received those notices on the day of hearing. It is contended that the Petitioners have appeared before Respondent No.1 (Competent Authority) on 11 March 2022 thereby raising their written objections. It is contended that no personal hearing was given. The written objection of Petitioner No.2 is annexed for ready reference. It is then contended that Respondent No.1 Competent Authority again rejected the objections without personal hearing and without making further inquiry. It is then contended that a notification under Section 3-D of the said Act was then published on 25 March 2022 in daily Lokmat dated 16 June 2022 in which Petitioners' lands have been included. It is contended that procedure has not been followed.

9. The Petitioners in companion Writ Petition No. 1535 of 2022 have made similar averments. Only subject lands are different but covered by same notification dated 7 December 2020. Rest of the contentions are same.

10. Learned Senior Advocate Mr. Singh has invited our attention to the affidavits-in-reply filed by the Project Director of the National Highways Authority in both petitions dated 9 May 2022. The Project Director has contended at the outset that Petitioners have legal remedy of challenging the award if the Petitioners are aggrieved by the same. It is contended that the concerned Land Acquisition

Officer (Competent Authority) has followed the procedure and all the persons who have lost or are going to loose their lands were given an opportunity of filing their objections and hearing. It is contended that Section 3-D notifications have already been issued and the lands have vested absolutely in the Central Government. It is contended that determination of amount payable as compensation under Section 3-G is already done and thereafter notice of possession after depositing the award amount with Competent Authority is issued. It is contended that notice under Section 3-E of the said Act is served upon the land losers and time of 60 days is given to vacate and handover the possession of the land to Competent Authority and therefore, apprehension expressed by the Petitioners is not correct. It is further contended that in case of some villages, through which the concerned national highway is passing, the Competent Authority is in the process of declaration under Section 3-D and award is awaited. So far as the lands of the Petitioners are concerned, it is contended that the National Highway No. 166 passes through certain stretches having sharp bends which are vulnerable from the traffic point of view. It is submitted that feasibility study and preparation of detail project has been carried out through DPR Consultant. It is contended that the stretch is divided into 3 packages and pre-construction activities like land acquisition, preparation of estimates for utility shifting, forest clearance etc. are in advanced stage. It is contended that the present alignment of the National Highway has been approved by Ministry of Road Transport and Highways. A

letter to that effect has been annexed to the affidavit in reply. It is submitted that initially notification under Section 3-A was issued, however due to strong opposition of the local villagers, the joint measurement was not done and 3-A notification lapsed. It is contended that local people approached the then Minister with their grievances. It is submitted that the public representatives and local people have objected the subject matter stretch of national highway since beginning. It is submitted that the concerned Minister of the State Government intervened and convened meetings to resolve the issue and accordingly, series of meetings were conducted on 30 January 2018, 12 April 2018 and 13 February 2019 wherein local people, public representatives, National Highways Authority, PWD and revenue officials and DPR Consultant were present. The alignment of road was broadly accepted and finalised in the said meeting. It is then submitted that the Project Consultant was requested to offer comments about suggestions/directions of the people's representative/Minister. The Project Consultant submitted its comments, comparative statements were given. It is submitted that various project affected persons have already given consent for the new suggested alignment. The Grampanchayat Bhuye has informed that although some persons are getting affected, the affected peoples have been allotted plots by the Grampanchayat. It is further submitted that finally it is decided to follow the newly suggested alignment. It is submitted that since the project affected people, public representatives, representatives of National Highway

Authority, PWD and Revenue Officials agreed with the suggested alignment, a letter dated 3 May 2019 was issued. It is further submitted that regional office Mumbai recommended land acquisition proposal to the National Highway Authority for approval of revised alignment. A copy of letter dated 19 June 2019 is produced on record. It is further submitted that the alignment was approved by the National Highway Authority and a copy of letter dated 3 January 2020 issued by the National Highway Authority of India is produced on record.

11. It is contended that although the Petitioners are seeking to challenge the notifications on the ground that they are issued without offering an opportunity of hearing to the Petitioners, it is baseless because, the concerned Minister of the Government of Maharashtra had intervened and meetings were convened and thereafter, the alignment as agreed in the meetings, have been taken forward.

12. It is contended that the expert team of Project Consultant has prepared report about technical feasibility including alignment, considering topography, geometrical design of terrain, traffic study, black spot etc. It is submitted that once detail project report is prepared and approved, the same cannot be changed or modified. It is submitted that new alignment of the National Highway is approved after holding various meetings with local representatives

and State Minister and accordingly, notification under Section 3-A has been issued. The objections have been considered under Section 3-C and notifications under 3-D are published. It is submitted that necessary notifications are published in local newspapers in Marathi and English language. A covering letter of the Land Acquisition Officer is produced on record, showing that various objections raised by the Petitioners are sent to the Project Director for consideration way back in September 2021. The details of notices issued and joint measurements carried out as well as dates of hearing etc. are summerised in paragraph nos. 17 and 18 of the affidavit in reply, which are reproduced below for ready reference.

*“17. I say that the Joint Measurement (JMS) for Kolhapur Bypass was carried out by Dy. SLR, Kolhapur. The notice for the same had given to the land losers details are as follows -*

| <b>Village</b> | <b>Date of Notice issued</b>           | <b>Date of JMS carried out</b>                             |
|----------------|----------------------------------------|------------------------------------------------------------|
| Shiye          | 13.08.2021                             | 31.08.2021                                                 |
| Bhuye          | 13.08.2021<br>17.11.2021<br>17.01.2022 | 30.08.2021<br>25.11.2021<br>to<br>28.11.2021<br>24.01.2022 |
| Bhuyewadi      | 13.08.2021<br>17.11.2021<br>17.01.2022 | 30.08.2021<br>25.11.2021<br>to<br>28.11.2021<br>24.01.2022 |
| Nigave         | 13.08.2021                             | 30.08.2021                                                 |
| Padawalwadi    | 13.08.2021                             | 23.08.2021                                                 |

|            |            |                                |
|------------|------------|--------------------------------|
| Kerli      | 13.08.2021 | 27.08.2021                     |
| Jatharwadi | 13.08.2021 | 30.08.2021                     |
| Kerle      | 13.08.2021 | 25.08.2021                     |
| Kushire    | 24.08.2021 | 30.08.2021<br>to<br>04.09.2021 |

*The number of trees, standing crops, structure, well, Boar etc. also counted in JMS.*

*18. I say that the under section 3C of the Act, the competent authority (CALA) gives hearing to the objections raised from the land losers in 3A Notification. The office of this Respondent had submitted replies on the objection to the CALA i.e. Dy. Collector, LAO No.6, Kolhapur. Details are as Follows -*

| <i>Village</i>   | <i>Application received from land losers</i> | <i>Notice issued</i> | <i>Date of hearing for objection</i> | <i>Judgment Date</i> |
|------------------|----------------------------------------------|----------------------|--------------------------------------|----------------------|
| <i>Shiye</i>     | <i>From 15.02.2022 to 08.03.2022</i>         | <i>09.03.2022</i>    | <i>11.03.2022</i>                    |                      |
| <i>Bhuye</i>     | <i>From 15.02.2022 to 08.03.2022</i>         | <i>09.03.2022</i>    | <i>11.03.2022</i>                    |                      |
| <i>Bhuyewadi</i> | <i>From 15.02.2022 to 08.03.2022</i>         | <i>09.03.2022</i>    | <i>11.03.2022</i>                    |                      |

*The competent authority (CALA) has rejected the objections. Hereto annexed and marked as **Exhibit - "E"** is the copies of replies."*

13. It is therefore urged that the petitions should not be entertained at the behest of these handful of Petitioners. It is submitted that since 3-D notifications have been issued, the lands

proposed to be taken/already taken, have vested in the Central Government and therefore, no restraint order should be passed.

14. We have carefully considered the submission of both the sides and perused record.

15. Perusal of the affidavits in reply filed by the National Highways Authority coupled with submissions made on its behalf indicates that, the sum and substance of its contention is that present alignment of National Highway is finalised after due consultation with representatives of the land losers and after minuting the decisions. Its case is that the present alignment is duly considered by Highways Authority and it is based on expert advise of the Project Consultant, considering various technical, financial and other aspects. It is obvious that the proposed work of National Highway affecting the Petitioners, is being constructed in the larger interest of public at large and it is for greater public good of infrastructure development. Respondent No.2 National Highways Authority has placed on record communications as stated above which indicate that the construction at the proposed alignment of the National Highway is being carried out after considering various minutes of meetings which have taken place with the local villagers and their representatives and after taking due approvals from the authorities. But Petitioners insist that they were not heard before deciding their objections. There are hundreds of lands included in the impugned

notifications out of which handful of Petitioners are opposing whole process.

16. From the aforesaid narration, it is overwhelmingly clear that these petitions are full of disputed questions of facts, which cannot be adjudicated Petitioner wise, in the writ jurisdiction of this Court under the Article 226 of the Constitution of India; this is not a civil suit. What is also clear is that these petitions are a desperate attempt by a handful of villagers who are not happy with the final decision taken after various meetings with their own representatives (Hon'ble Ministers etc). A bare perusal of the prayers shows that these Petitioners wish to block the construction of a public project of National Highway.

17. The writ jurisdiction of this Court hearing challenge to land acquisition is not akin to appeal. This is not a case where no notice is given or where the award is vitiated by mala-fides, perversity or fraud. This is not even the case alleged. The case of the Petitioners as propounded, is not clearly emerging from the available record. It is an admitted position that lands in different notifications issued under Section 3-A of the said Act are different. It is clear from assertions in the reply affidavit paragraph 10 that the Award has already been declared under Section 3-G of the said Act for 15 villages. The Project Director of the National Highways Authority of India, in his affidavit-in-Reply has taken a clear stand that as per the

project consultant, given the technical constraints in the present case, it is not possible to change the alignment, meaning thereby that avoiding the Petitioners' lands is not possible. There is no reason to disbelieve the stand taken by the Project Director based on the opinion of the project consultant.

18. Perusal of various notifications in local newspapers as discussed above shows that due procedure is followed of declaration of intention of acquisition under Section 3-A, calling for objection and decision thereon under Section 3-C and declaration of vesting under Section 3-D of the said Act. For our satisfaction, we have perused following notifications viz. notifications dated 6 December 2021 published in daily 'Pudhari' on 22 December 2021, notification dated 25 March 2022 published on 16 June 2022 in daily 'Lokmat' and notification dated 2 September 2022 published in daily 'Lokmat' on 19 September 2022. They all are issued under Section 3-D of the said Act. For all these 3-D notifications there are corresponding 3-A notifications. The said 3-D notifications specifically state that objections received by the Authorities have been considered and disallowed/rejected and lands vest in Government.

19. In such circumstances, we do not deem it appropriate to hold up the construction of a National highway which is a public project. It is settled position of law that the acquisitions under various Acts

including the said Act are compulsory by the operation of Law. There is no flagrant deviation from the procedure of law or mala fides seen and therefore, impugned land acquisition proceedings can not be interfered with.

20. In that view of the matter, there is no merit in the petitions and therefore the petitions and pending interim applications are dismissed. No order as to costs.

21. However, we direct that the Respondent/Authorities shall disburse the amounts under the Award/s to the Petitioners subject to due verification of their entitlement and further subject to statutory arbitration etc. as expeditiously as possible.

22. At this stage, the learned counsel for the Petitioners seeks extension of the ad-interim order, which is opposed by the learned counsel for the Respondent/National Highways Authority. Considering the reasoning given in the Judgment, we are not inclined to grant extension of time which will not only affect the public project, but will also escalate the cost. Even otherwise, the learned counsel for the Respondent/National Highways Authority states that the procedure to be followed now is that the intimation will be given to the Petitioners to hand over the possession to the Respondent. We expect the intimation would entail the time period

of 10 to 15 days. That would be sufficient protection to the Petitioners.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)