

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4522 OF 2023

Vijay Shivram Zagade and Ors.

...Petitioners

Versus

State of Maharashtra and Ors.

...Respondents

Mr. Ravindra Pachundkar for the Petitioners.

Ms. Rupali Shinde, AGP a/w Ms. Neha Bhide, 'B' Panel Counsel for the Respondent Nos. 1 to 5/State.

Mr. Chandan Athani i/b Hinge & Deshmukh Associates for Respondent No.7.

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

DATE : 5 MARCH 2024

P.C. :

. Heard learned counsel for the Petitioner, learned AGP for the Respondent Nos. 1 to 5/State and learned counsel for the Respondent No.7 - National Highways Authority of India. Perused the record.

2. As seen from the prayers in this petition filed under Article 226 of the Constitution of India, the Petitioners, 25 in number are seeking directions to the Respondent/Authorities to acquire lands equally from both sides of the middle of the original road as shown

in the map dated 17 July 2012 and to restore original acquisition position accordingly. The Petitioners are seeking direction to revoke subsequent new acquisition on the Northern side of the original road which is shown in the new map dated 17 January 2022, which is mentioned in Gazette bearing No. 1088 dated 23 March 2022 and Gazette bearing No. 3224 dated 17 August 2022. The Petitioners are also seeking to quash and set aside the impugned notice dated 23 January 2023 issued by Respondent/Deputy Collector, Land Acquisition Officer for National Highway No. 965. By way of amendment, the Petitioners have also prayed to quash and set aside impugned Government Notification dated 24 March 2022 and final Award dated 30 November 2022. The Petitioners are also seeking directions to Respondent/Authorities not to dispossess the Petitioners from their lands situated at Jejuri, Taluka-Purandar, District-Pune.

3. On hearing learned counsel for the Petitioners and perusal of the prayers as stated above, it is clear that in essence the Petitioners are challenging the acquisition proceedings initiated by Respondent/Authorities under the National Highways Act, 1956 (for short 'the said Act') for the construction of National Highway No. 965 from Pune to Pandharpur passing through Village Jejuri and Petitioners claim to have their properties on the northern side of the road.

4. The case of the Petitioners as borne out from the pleadings in the petition is as under. To avoid repetition we have also noted below

our observations on the documents produced in support of the case.

(i) The Petitioners are residents of village Jejuri having lands/residence/business on the North side of the old road, which is now being constructed as National Highway.

(ii) It is contended that in February 2010, the State Government sent proposal to the Central Government for expanding old State Highway No.61 and in the said proposal, details of the expansion were given. For this case, the Petitioners are relying upon two documents styled as notes/endorsements in which it is stated that 15 meters from both sides of the center of the road shall be the proposed road. The note records objections raised by the villagers that the aspect of diversion from outside should be taken into consideration and that flyover be planned on the left side of the present road which is the Northern Side. It is seen that these notes/endorsements are not signed by anybody and the documents are simply issued as true copies. It is not clear whether the proposals and objections in the said endorsements have resulted in any final decision, or otherwise.

(iii) It is further contended that on 17 July 2012, the State Government prepared map showing central line of the road in the middle of original road and showing acquisition equally on both sides except Government land and 89 houses /shops were shown as encroachments from both sides of the road.

(iv) It is further contended that on 16 July 2015, the Petitioners filed the first representation. It is stated that at this time itself demolition had taken place on the Northern side of the road.

The copy of the first representation as attached to petition is not addressed to any specific person and addressee is left blank and it is not clear from the said document whether that representation was even signed by the Petitioners or not.

(v) It is further contended that on 2 January 2017, the Petitioners filed second representation. A copy relied upon by the Petitioners of this representation also does not make it clear whether the representation was signed by anybody and it is apparently just a typed copy.

(vi) It is further contended that on 24 July 2021, a notification was issued under the said Act. Perusal of this notification shows that it is issued under Section 3-C of the said Act.

(vii) It is contended that on 3 August 2021, the Petitioners filed the third representation. Copy of this representation annexed to petition shows that it is apparently signed by only Petitioner No.16 and nobody else.

(viii) It is further contended that on 27 September 2021, the City Survey Officer of Purandar issued notices for measurement of lands on both sides of the original road and date for measurement was given as 4 October 2021.

(ix) It is further contended that on 8 December 2021, the concerned Deputy Collector decided the objection and representations submitted by the villagers and the Petitioners. The document relied upon by the Petitioners, in support of this contention, shows that it is a letter issued to only Petitioner No.16 in which it is noted by the Competent Authorities that his objection

was heard, wherein it is stated that he has no objection to the acquisition and therefore, he was informed that the appropriate compensation after due verification will be paid.

(x) It is further contended that on 17 January 2022, the City Survey Officer again took measurement. It is alleged that this time, the measurement was taken only on the Northern side of the original road. Perusal of map produced in support of this contention in fact belies the Petitioners. The map shows that measurement from both sides of road is taken for proposed National Highway No.965.

(xi) It is further contended that on 23 March 2022 further notification under the said Act was published. It is alleged that 40 Gat numbers from the South side of the road including Government land were deleted to protect illegal construction under political pressure. Notification copy produced in support of this contention shows that it is a notification under Section 3-C of the said Act. There is nothing to support alleged political pressure.

(xii) It is further contended that on 5 April 2022, the Petitioners filed fourth representation. The document produced in support of this contention in main petition and in rejoinder affidavit are typed letters with different names without any signatures.

(xiii) It is further contended that on 30 May 2022, it is contended that, without hearing the parties, the Deputy Collector sent representation to National Highways Authority. Perusal of document in support of this contention shows that it is a letter issued to only Petitioner No.2 and does not relate to all Petitioners.

(xiv) It is further contended that on 17 August 2022, the third

and last notification under the said Act, was issued. Perusal of document in support of this contention shows that it is a notification dated 26 July 2022 declaring that procedure under Section 3-A and 3-C of the said Act is completed and land vests in Government. It is specifically stated in the said notification that objections received by Authorities have been rejected.

(xv) It is further contended that on 30 November 2022, final award was passed and on 23 January 2023, the concerned Deputy Collector has issued notices calling upon the villagers to collect compensation amount within 60 days informing that possession will be taken by the Government Authorities.

(xvi) It appears that during pendency of the petition, the copy of award is brought on record.

5. Respondent No.7/National Highway Authority of India has filed an Affidavit-in-Reply affirmed on 12 June 2023 contending *inter alia* that the petition is filed by 25 Petitioners, however the petition does not disclose survey numbers of the lands held by each of the Petitioners and the petition is nothing but an attempt to confuse the issues and stall the work of public importance viz. construction of National Highway. It is contended that the Petitioners have come before the Court with incomplete facts. It is asserted that due procedure in accordance with the said Act and Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2023, has been followed. It is contended that no illegality is pointed out about the procedure

already followed. It is further contended that the grievance of the Petitioners (that the acquisition must take place on both sides of the road equally) is based on the wrong presumption that the Petitioners have vested right in demanding that land must be acquired from both sides and Authorities in all circumstances regardless of the technical constraints. It is contended that width to be acquired on either side of the roads depends on several factors such as alignment of the road, topography, geological conditions, curvature and bank of the Road and the decision is taken solely on the basis of the Expert's report. The covering letter under which the Detailed Project Report dated 13 October 2021 is submitted by the Project Consultant is produced on record. It is contended that it was not possible to acquire the land equally from both the sides of the road and in any event, realignment of Highway is not possible, in view of the current alignment having been determined by experts considering the case from techno-economic point of view. It is therefore, urged that there is no leeway in choosing which land to acquire. It is further contended that the petition is practically infructuous as the lands having been already acquired and compensation proceedings having been concluded by passing an Award. It is submitted that it is virtually impossible to set the clock back in view of monstrously expensive task to realign the whole stretch of the Highway. It is submitted that any delay in the process would gravely prejudice the national interest by delaying of infrastructure project of national importance and also resulting in significant cost over-runs. It is contended that the initial plan to construct Jejuri bypass road had

met with stiff resistance from the local villagers and therefore, in a high level meeting held on 28 November 2018, it was decided to widen the existing road from two lane to four lane and it was explained that the suggestions received from various quarters for construction of flyover was not feasible due to land availability constraint and also considering the fact that the road will be used by *warkaris* who travel on foot to Pandharpur each year in lakhs of numbers. It is submitted that Section 3-A notice was issued and thereafter the objections have been heard and disposed of under Section 3-C of the said Act and after receipt of report of the Competent Authority under section 3-D of the said Act, notification dated 24 March 2022 is issued declaring acquisition of land and thereafter, Award under Section 3-G of the said Act has been published on 30 November 2022.

6. The Petitioners have filed rejoinder affirmed on 17 February 2024 basically denying the averments in the reply filed by the National Highways Authority. Copy of purported representation by the Petitioners are annexed along with RTI applications filed in January 2024. The Petitioners have also sought to rely upon applications made by some of the Petitioners requesting rehabilitation in other lands and the meetings held with Respondent No.6/Jejuri Municipal Council.

7. The learned counsel for the Petitioners has argued as per the averments in the petition. The main contention raised is that

Petitioners' objections were not properly considered and that acquisition has been effected purposely on the Northern side of the road only, sparing Southern side due to political pressure. The learned counsel for the National Highways, has opposed this arguments contending that there is nothing on record to indicate any political pressure or bias as alleged and alignment of the National Highway is ultimately decided based on various factors stated in its reply and based on recommendation of the technical consultants. He submitted that the procedure under law does not contemplate that every objections raised to a particular acquisition has to be allowed. What is contemplated is consideration of said objection and in the present case due procedure has been followed.

8. We have carefully considered the submission of both the sides. In view of what is observed by us above during narration of the case in paragraph nos. 4(i) to 4(xvi), the documents produced on record do not clearly indicate that all the Petitioners had diligently raised objections. It is also borne out from the petition itself that way back in the year 2015, structures on the Northern side of the road were demolished. It is also not clear from the documents produced on record whether really all the Petitioners had given their objections. The Award has already been published under Section 3-G of the said Act on 30 November 2022. There is no concrete material to support the contention of political pressure as alleged. Also there is nothing worth the mention to support the case that purposely only North side properties are being targeted or South side properties are spared.

9. Considering the aforesaid facts and circumstances, this is a case where many disputed questions of facts are involved, which cannot be adjudicated in the writ jurisdiction of this Court under the Article 226 of the Constitution of India. 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. The case of the Petitioners as propounded, is not clearly emerging from the available record. Perusal of various notifications and public notices issued, as discussed above shows that due procedure of declaration of intention of acquisition under Section 3-A and calling for objection and decision thereon under Section 3-C under the said Act has been followed. The notification dated 26 July 2022 published in newspaper on 17 August 2022 in fact shows that it is specifically stated therein that objections received by the Authorities have been considered and rejected and land vests in Government. 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 acquire lands equally from both the sides of Highway. There is no reason to disbelieve the stand taken by the Project Director based on the opinion of the project consultant given under Detailed Project Report dated 13 October 2021.

10. In such circumstances, we do not deem it appropriate to hold up the construction of a National highway which is a public project

of national importance. 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 cannot be interfered with.

11. In that view of the matter, there is no merit in the petition to interfere with the ongoing acquisition proceedings and therefore the petition is dismissed. No order as to costs.

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

13. At this stage, the learned counsel for the Petitioner requests for extension of the ad-interim order, which is opposed by the counsel for the National Highways Authority. Once we have considered the facts and circumstances and have directed disbursal of award amount subject to Petitioners' entitlement etc, we find no reason to continue ad-interim order. Also because due to continuation of ad-interim, there would be escalation in the project costs.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)