
IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.389 OF 2024

Vidyadhar Gajanan Mote & Ors. Petitioners

Vs.

The State of Maharashtra & Ors. Respondents

Mr. A.V. Anturkar, Senior Counsel a/w. Mr. Paresh Mote i/b. Ranjit D. Shinde for the Petitioners.

Mr. Vijay D. Patil for Respondent No.4.

Mr. A.I. Patel, Addl.GP a/w. Ms. M.S. Bane, AGP for the Respondent-State.

CORAM : G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.

DATE : 01 AUGUST, 2024

P. C.

1. We have heard the learned counsel for the parties.
2. This Writ Petition under Article 226 of the Constitution of India has been filed for the following reliefs :-

[A] That this Hon'ble Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction and order under Article 226 of the Constitution of India, 1950, quashing and setting aside Notice bearing No. JA.KRA.bhusam/ringroad/SR/24/2021 which have been given by the Respondent under the provision

of Section 19B (2) of the Maharashtra Highway Act of 1955 in the month of June 2023 (Actually served on 19th July 2023) as having given, illegally and be pleased to direct them to consider the representations of the Petitioner and give a proper offer after considering the various judgments of the Supreme Court and after considering the factually correct position pointed out by the Petitioner in the Application dated 4th August 2023 and the prior and the subsequent Applications referred to in the memo of the Writ Petition within the such time as the Hon'ble Court may deem fit.

[B] That considering the urgency in the matter the Hon'ble Court be pleased to direct that until such proper offer/Notice is given and the reasonable time is given to the Petitioner to consider the same, the Respondent should not close the matter of the Petitioner so far as the provision of Section 19 B (2) of the Maharashtra Highway Act of 1955 is concerned and should not compel the Petitioner to submit themselves to the provision of Section 19B (3) of the Maharashtra Highway Act of 1955.

[C] That this Hon'ble Court pending the hearing and the disposal of the writ petition be pleased to issue a Writ of Mandamus or a Writ, Order and or direction in the nature of Writ of Mandamus staying the declaration of the Award u/s 19B (3) of the Maharashtra Highways Act, 1955.

[D] Ad interim relief in terms of prayer Clause (B) and (C) be awarded in favour of the Petitioner.

[E] That the costs of this Writ petition be awarded in favour of Petitioners against Respondent, by this Hon'ble Court.

[F] For such other orders as justice and convenience may demand from time to time be passed in favour of the Petitioners by this Honorable Court.

3. The proceedings were heard by the Co-ordinate Bench of this Court of which one of us (Somasekhar Sundaresan, J.) was a

member on 15th February, 2024, when considering the contentions as raised on behalf of the Petitioners, following order was passed :-

1. In order to enable Ms.Bane, learned AGP to take instructions, especially on three issues namely, the multiplier factor; the classification whether it is irrigated land; and whether belting can be applied within the same land; we stand this matter over to 26th February, 2024.

2. Since, this appears to be an acquisition by private negotiation under Section 19B(2) of the Maharashtra Highways Act, 1955, until the instructions are received, the concerned officer shall not initiate acquisition proceedings under Section 19B(3) of the said Act (compulsory acquisition).

3. Stand over to 26th February, 2024 before the Regular Bench under the caption for ad-interim relief.

4. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order."

4. Today Mr. Anturkar's contention is that the Deputy Collector, Haveli Sub-Division, Pune has concluded the proceedings under Section 19B of the Maharashtra Highways Act, 1955 (**"the Act"**) on the erroneous factual basis that the Petitioners' land is of the description of a *Jirayat land*'. It is his submission that there are several documents on record with the said officer to point out that the land is an agricultural land (*Barmahi/Bagayat*). It is submitted that there are crops existing on the Petitioners' land and hence the description in the notice which was issued and subject

matter of challenge, itself is not correct.

5. Mr. Anturkar would submit that in the light of his grievances which were also considered by this Court in the order dated 15th February, 2024, now a fresh notice has been issued which is annexed to the affidavit-in-reply filed on behalf of Respondent No.2 dated 29th April, 2024 which has again repeated the same mistake to describe the Petitioners' land as dry-crop land. It is Mr. Anturkar's contention that by such faulty description of the Petitioners' land, it is not possible for the said authority to take an appropriate view under Section 19B of the Act inasmuch as the compensation arrived at would never be the correct compensation.

6. We have perused the fresh notice issued dated 29th April, 2024. *Prima face* we find substance in the Petitioners' contention, as we see that again there is an inclusion of the description of Petitioners' land as Jirayat in such notice issued to the Petitioners.

7. In this view of the matter, we are of the opinion that the Deputy Collector, who has issued the notice, is required to re-examine the issue and issue a fresh notice to the Petitioners in accordance with law with an appropriate description and on the basis of documents which would be available with the Revenue Department of the Respondents and also as furnished by the

Petitioners. Let such notice be issued within two weeks from today. The same be responded and further appropriate proceedings in accordance with law under 19B(2) of the Act be undertaken.

8. In the event, the Petitioners' grievances about the description of the land are resolved, the authorities are free to proceed in accordance with law and to pass such appropriate orders under Section 19B of the Act and complete the acquisition of land by a settlement.

9. All contentions of the parties are expressly kept open.

10. The Writ Petition is disposed of in the aforesaid terms. No costs.

[SOMASEKHAR SUNDARESAN, J.]

[G. S. KULKARNI, J.]