

Ashvini Narwade

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 15157 OF 2024

Shri. Yogesh Subhash Nalawade ... Petitioner

Versus

Project Director National State Highway & Ors. ... Respondents

Ms. Pushpa Ganediwala a/w. Mr. Balwant V. Salunkhe, Mr. Ankit B. Rathod, Ms. Anshu Agrawal for the Petitioner.

Mr. Sagar Ladda for Respondent No.1.

Ms. Sushmita Gandhi a/w. Ms. Anamika Singh, Mr. Hushal Bhoolchandani i/b. India Law for Respondent No.3.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.

Date : 24 OCTOBER, 2024

PC:

1. We have heard learned Counsel for the Petitioner and learned Counsel for Respondent No.1.
2. This Petition under Article 226 of the Constitution of India is filed assailing notice dated 28 August 2024 issued to the Petitioner whereby the Petitioner is informed that the Petitioner is an encroacher on the land which is actually covered by the National Highway No.65.
3. Learned Counsel for the Petitioner has contended that the impugned notice has been issued by Respondent No.3 who is not a statutory authority and hence Respondent No.3 would not have jurisdiction to issue such

notice. It is hence her contention that no action of any eviction or coercive action in regard to the Petitioner's premises ought to be taken under the impugned notice.

4. On behalf of Respondent No. 1 it is however pointed out to us that the contention as urged on behalf of the Petitioner, that the land is not acquired, is not correct. It is also his contention that the case of the Petitioner that he has a legal right to put up the tin shade/temporary structure in question where the Petitioner is conducting a restaurant, is also untenable. It is his submission that in fact this is an encroachment by the petitioner on the acquired land. Learned counsel for respondent no. 1 has submitted that a notice is already issued to the Petitioner under Section 26 of the Control of National Highways (Land and Traffic) Act, 2002 ("the Act"), the hearing of which is already scheduled on 29 October 2024. It is his submission that the notice was refused to be accepted by the Petitioner and for such reason it was required to be pasted on the structure of the Petitioner.

5. In the aforesaid circumstances, as to whether the Petitioner is an encroacher or not, whether the land of the Petitioner was actually acquired or not and whether some portion of the land where the structure is put up would fall in the acquired portion, are factual disputes which cannot be gone

into the Writ Petition filed under Article 226 of the Constitution of India. In the event the Petitioner is asserting rights in respect of the land on which the Petitioner's structure is standing, the Petitioner has an legal appropriate remedy to assert such right and title in respect of the land.

6. Be that as it may, in so far as the Petitioner's structure is concerned, notice under Section 26 of the Act is already issued and hearing is scheduled on the same on 29 October 2024. In this view of the matter we are inclined to dispose of this Petition directing Respondent No.1 to hear the Petitioner and pass appropriate orders under Section 26 of the Act in accordance with law.

7. Till such orders are passed no coercive action be taken in regard to the structure of the Petitioner.

8. All contentions of the parties on Section 26 proceedings are expressly kept open. No costs.

9. Parties to act on an authenticated copy of this Order.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)