



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

WRIT PETITION NO. 3894 OF 2022

(Aatmaram s/o. Amarsing Rthod and another Vs. Union of India and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P.A. Deshpande, counsel for the petitioners,
Mr. N.S. Deshpande, DSGI for respondent No. 1,
Mr. S.R. Loney, counsel for respondent No. 2,
Mr. N.S. Rao, AGP for respondent Nos.3 to 6.

**CORAM : NITIN W. SAMBRE &
ABHAY J. MANTRI, JJ.**

DATED : 14-06-2024

We have heard learned senior counsel Mr. R.L. Khapre yesterday on the merit of the matter and since we expressed our opinion that we are not inclined to grant interim relief, a request was made to adjourn the matter for today so as to enable the instructing counsel to make a statement regarding withdrawal of the petition.

2. The instructing counsel after the matter is called out, informed that the client has instructed for non withdrawal of the matter and invited order from this Court.

3. In the present Writ Petition, the petitioners are claiming that their land to the extent of 41R, out of Survey/Gat No. 31, situated at Jogaldari, Tahsil Mangrulpir, District Washim and land 51R from Survey/Gat No. 32 situated at the very same place is affected by the alignment of the national highway for which no compensation is awarded.

4. Learned counsel Mr. R.L. Khapre has invited our attention to the revenue document so as to establish the ownership and also the measurement map so as to claim that the alignment of the national highway which was admittedly a State Highway has affected the land of the petitioners'. According to Mr. Khapre, the National Highway is constructed from the land of the petitioners' thereby illegally encroaching upon the same without paying any compensation. In this background, it is clear that appropriate directions needs to be issued to the respondent NHAI so as to initiate the acquisition proceedings.

5. As against above, the learned AGP Mr. N.S. Rao and the learned counsel Mr. S.R. Loney appearing for NHAI have claimed that the existence of the State Highway passing through the land of the petitioners' being State Highway No. 273 was not a fact in dispute. It is claimed that the said State Highway was constructed almost a century back and the improvement in the same are made by the NHAI by notifying the same. It is as such claimed, that there is no change in the alignment so as to infer that the petitioners' land is encroached.

6. The fact remains that passing of the State Highway from the land of the petitioners' as referred above is not a fact in dispute. What is claimed by the petitioners is that the respondent NHAI have changed the alignment of the existing State Highway and then caused improvement to the National Highway which is numbered as 161-A thereby encroaching upon additional

land of the petitioners’.

7. As far as aforesaid contentions are concerned, it was for the petitioners to demonstrate that when the State Highway was constructed century ago from his land, the alignment was changed and additional land was encroached by the NHAI. We hardly see any material to that effect rather for want of time, the counsel for the petitioners states that the State Highway was constructed a century ago illegally thereby encroaching upon the land of the petitioners’ without paying any compensation.

8. We failed to understand as to what prompted the petitioners not to initiate the proceedings when he was already aware that a century ago the authorities of the Public Works Department has constructed the State Highway from his land as referred above.

9. Apart from above, the petitioners have initiated two civil suits bearing RCS No. 99/2019 and 98/2019 in which not only the relief of declaration of ownership is claimed but also declaration is sought that the land of the petitioners’ was affected by the alignment of the National Highway and they should be enjoined from constructing the National Highway from land of the petitioners’. The fact remains that in the suit, there was no injunction in operation and the suits were withdrawn by the petitioners for the reasons best known to them.

10. From the rival contentions it can be inferred that

not only the petition involves disputed question of facts, but also the petitioners failed to demonstrate that the respondents acted high heartedly thereby encroaching upon their lands.

11. The petition being sans merits, stands dismissed.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

Belkhede