



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

WRIT PETITION NO. 2857 OF 2022

(Zaheer Abdul Razzaque Shete and others vs. The State of Maharashtra and others)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Mr.N.B.Bargat, Advocate for petitioners.
Mr.J.Y.Ghurde, Assistant Government Pleader for respondent
Nos.1 to 6.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE : JULY 19, 2024

The petitioners claim to be the owners of the land bearing Survey No.81 admeasuring 6.34 H.R. (15.67 Acres) through their ancestors.

2) The land according to the petitioners was resurveyed and bifurcated into Survey No.81/1 – area 2.70 H.R., Survey No.81/2 – area 2.02 H.R. and Survey No.81/3 – area 1.62 H.R.

3) Out of the aforesaid land, viz. Survey No.81/1 – area 2.70 H.R. was sold to one Narayan Anandrao Ikhar and petitioners' possession is informed to be continued on land Survey No.81/2 and 81/3. Accordingly, mutation entries in the revenue record came to be carried out.

4) The petitioners claim that land bearing Survey No.81/2 in consolidation Scheme was re-numbered as Gat No.123 and Survey No.81/3 was re-numbered as Gat No.120. It is further claimed that re-survey was carried out and Survey No.123 is shown as admeasuring 1.80 H.R. and Survey No.120 is shown as 1.10 H.R. As a sequel, 0.74 H.R. land is shown as encroached by the respondents for construction of the road.

5) In this background, it is the contention of the petitioners that they are entitled for compensation from the respondent Public Works Department, which has constructed the road by encroaching the land of the petitioners.

6) In order to substantiate the claim, Mr.Bargat, learned Counsel for the petitioners, would invite our attention to the revenue record including measurement report produced at Annexure-11(page 26), measurement map produced at Annexure-17(page 37), the communication issued by the Deputy Commissioner (Rehabilitation), Nagpur Division, Nagpur to the respondent Collector produced at Annexure-22(page 43) and various inter se communications between the Department.

7) According to the learned Counsel for the petitioners, once, holding of the land of the petitioners is reduced by 0.74 H.R., the only inference that could be drawn is that the respondents have constructed the road through the land of the petitioners as it is not that the holding of adjoining landholders has reduced and the road is passing through the land of the adjoining landholders.

8) As against above, Mr.Ghurde, learned Assistant Government Pleader would invite our attention to the reply of the respondent No.5 – Deputy Director of Land Records so also that of respondent Nos.1 and 2 i.e. State and the Executive Engineer. The reliance is placed on the renumbering of the Survey numbers after implementation of the consolidation Scheme and reassigning the area to each of Gat/Survey numbers. It is claimed that the respondents have never encroached on the land of the petitioners.

9) We have considered the rival contentions.

10) From the measurement map, which is relied on by the petitioners, it cannot be inferred that the respondents have constructed the road, thereby encroaching to the extent of 0.74 H.R. land from Gat No.37. What is pointed out by the Deputy Commissioner (Rehabilitation) in the communication dated 15/07/2020 addressed to the Collector is the allegation of the petitioners about encroachment on their land to the extent of 0.74 H.R. As such, from the available record, the petitioners are not able to demonstrate that the respondents have encroached on the land owned by the petitioners to the extent of 0.74 H.R.

11) Apart from above, in the reply placed on record by the respondents not only the details about the implementation of the Consolidation Scheme, but also the realignment of the measurement of each Survey/Gat number is mentioned. In that view of the matter, in our opinion, the petitioners have failed to demonstrate before us that their land to the extent of 0.74 H.R. is encroached by the respondent Public Works Department.

12) In view of above, we are not inclined to cause indulgence, thereby directing initiation of acquisition proceedings. The petition lacks merit and as such, the same stands dismissed.

13) The dismissal of the petition shall not come in the way of the petitioners in seeking appropriate relief from the Civil Court.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)