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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13314 OF 2025

1. Dr. Balasaheb Kondiram Kolte,
Age: 55 years, Occu.: Medical Practitioner,
R.o. Kukana, Tq. Newasa,
District Ahilya Nagar. ... Petitioner

Versus

1. The State of Maharashtra,
Through the Principal Secretary,
Public Works Department,
Maharashtra State, Mumbai -32
2. The Principal Secretary,
Revenue Department,
Maharashtra State, Mumbai,
3. The District Collector,
Ahilya Nagar,
District Ahilya Nagar,
4. The Executive Engineer,
Public Works Department,
Ahilyanagar, Dist. Ahilya Nagar,
5. The Sub Divisional Engineer,
Public Works Department,
Sub Division, Newasa,
District Ahilya Nagar ... Respondents

.....
Mr. S.D. Jaybhar, Advocate for Petitioner
Mr. R.S. Wani, AGP for Respondents - State
.....

CORAM : SMT. VIBHA KANKANWADI AND
HITEN S. VENEGAVKAR, JJ.

DATED : 10 NOVEMBER, 2025

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ORDER [Per Hiten S. Venegavkar, J.] :-

1. The present petition has been filed under Article 226 of the Constitution of India, seeking directions to respondents Nos. 3 to 5 for removal of the encroachments made on Government land abutting State Highway No. 50, i.e., Shevgaon–Newasa State Highway, from village Kukana, Taluka Newasa, District Ahilyanagar. The petitioner further prays that directions be issued to the respondent authorities to conduct an inquiry into the encroachment and to take appropriate action to evict the encroachers within the stipulated time. In the alternative, he also prays that respondents Nos. 3 to 5 be directed to decide the representation dated 12.06.2024 and to take appropriate action within the stipulated time.

2. It is the case of the petitioner that he has purchased the land situated in Gut No. 94/4 of village Kukana, Taluka Newasa, by a registered sale deed, and thus he is the owner and possessor of the said land, on which he has constructed a hospital building that has been run by him for several years. He further submits that the subjected land is situated is next to State Highway No.44 and there is space left by the Government between the property of the petitioner and the State Highway. In the said open space, there has been encroachment by several persons due to which the petitioner is getting affected and is facing difficulties to approach his own Hospital as well as residential premises. The petitioner has approached the respondents authorities from time to time by way of making several

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representations, however no action has been taken by the respondents and hence the petitioner was constrained to approach this Court by way of Writ Petition No.974 of 2017, which came to be withdrawn with liberty to invoke appropriate remedy as available in law. It is the case of the petitioner that the Government Resolution dated 05.08.2019 clarifies that the width of the State Highway is 20 meters from the center line in urban and industrial areas, and 37 meters in non-residential areas. The petitioner states that, in the present case, the width of the road is 20 meters from the center of the road. Therefore, the stand taken by respondent No. 4 in the previous writ petition, contending that the width of the road is 50 feet and that there is no encroachment in the said area, is erroneous and contrary to the Government Resolution dated 05.08.2019. According to him, the said Government Resolution is squarely applicable to the present case, as the road in question is a State Highway.

3. Learned Advocate appearing for the petitioner relied upon the representation made by the petitioner dated 12.06.2024, wherein the petitioner has brought to the notice of the office of the Public Works Department about the encroachment existing on the Government land. It is the contention of the learned Advocate for the petitioner that the open space belongs to the Government and for the encroachment that has taken place on the Government land, the respondent authorities are responsible and duty-bound to remove the same.

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4. On the other hand, the learned Assistant Government Pleader appearing for the State has opposed the petition and has drawn attention to the proceedings in Writ Petition No. 974 of 2017 which had earlier been filed by the petitioner seeking substantially similar reliefs. In the said petition, a detailed affidavit was filed on behalf of the Public Works Department through the Sub-Divisional Engineer, Newasa, wherein it was categorically stated that as per official land records and survey maps, the total width of State Highway No. 44 (which is the Shevgaon–Newasa Highway) is 21.34 meters and that there is no Government land existing between the petitioner’s property and the State Highway. The affidavit further stated that the land alleged to be encroached is part of Gat No. 94/4 owned by private persons, including the petitioner himself, and therefore the Public Works Department has neither authority nor jurisdiction to remove such occupation. The affidavit was supported by the measurement sketches and road maps, copies of which were placed on record. After the filing of this affidavit and disclosure of the above facts, the petitioner withdrew Writ Petition No. 974 of 2017 on 19.12.2022 with liberty to pursue an appropriate remedy. The respondents therefore submit that the petitioner, having understood the factual position and having withdrawn his earlier petition, cannot maintain a second writ petition seeking identical reliefs merely by placing reliance on the Government Resolution dated 05.08.2019 which existed even at the time of the earlier proceedings. It is further contended that any dispute relating to the

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boundaries of private lands or encroachment thereon requires evidence, survey and adjudication by competent authorities under the Maharashtra Land Revenue Code or, if necessary, by a civil court, and is therefore not amenable to adjudication under Article 226 of the Constitution of India.

5. We have heard the both the parties and have perused the documents placed on record.

6. The petitioner has preferred Writ Petition No.974 of 2017 in the year 2016 seeking the following reliefs:

“B) This Hon’ble court by way of appropriate writ, order or direction in the like nature be pleased to direct the respondent authorities to take appropriate steps in respect of removal of encroachment on Newasa to Shevgaon State Highway no.44 and Kukana to Ghodegaon and on the Government land as per representations submitted by the petitioner.

C) Pending hearing and final disposal of this writ petition, this Hon’ble court be pleased to direct the respondents to take the steps for removal of encroachment as per the representations submitted by the petitioner.”

7. In response to the aforesaid petition, a detailed affidavit-in-reply was filed by the Sub Divisional Engineer, P.W.D., Newasa. In the said affidavit-in-reply, it has been categorically stated that the petitioner’s hospital is situated on certain part of Gut No. 94/4 admeasuring 1519 sq. meters. Gut No. 94/4 is owned by various persons, including the petitioner. According to the authorities, after verifying the land records and the map of the road/State Highway No. 44, it shows the limits of the width of the road and the position of Gut No.94/4, State Highway No. 44, and the

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hospital of the petitioner. According to the Sub-Divisional Engineer, the total width of State Highway No. 44 is 21.34 meters, and there is no encroachment on the said width of the State Highway. It is further stated that the allegation of the petitioner about the encroachment on Gut No.94/4 is owned by the other private persons and the Public Works Department has no authority or any powers to remove the encroachment made on the private land. It is further clarified by the said authority that as per the record, there is no government land adjacent to the hospital of the petitioner and in order to substantiate the said claim, a copy of the sketch map of the road and a map showing the State Highway No. 44 and Gut No. 94/4 was placed on record with the said reply. It was also pointed out by the authorities that there is no encroachment within the 50 feet area of the said road or any encroachment alleged by the petitioner is only on private property. After affidavit-in-reply was placed on record in Writ Petition No.974 of 2017, the petitioner chose to withdraw the petition, which was permitted by this Court on 19.12.2022 with liberty to invoke appropriate remedy as is available in law in view of the stand being taken by the respondents in their affidavit-in-reply. Once the petitioner has already withdrawn the earlier writ petition seeking similar reliefs from this Court with liberty to adopt an appropriate remedy, the subsequent writ petition seeking the same relief cannot be entertained. The petitioner in the present writ petition relying upon the Government Resolution dated 05.08.2019 issued by the Government of Maharashtra is trying to

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contravene the stand taken by respondent authorities. In its affidavit-in-reply filed in the earlier petition, the authorities have already taken a stand which, in our considered view, cannot be challenged by way of a fresh writ petition. If the stand of the authorities is that there is absolutely no encroachment on Government land, then the Government Resolution dated 05.08.2019 has no application at all. During the course of hearing, we enquired with the learned Advocate for the petitioner as to since when the alleged encroachment is in existence and who are the persons alleged to have encroached upon the land. The learned Advocate for the petitioner was unable to provide any such details and only relied upon the revenue records, which show that the petitioner has purchased the land forming part of Gut No. 94/4 situated at village Kukana, Taluka Newasa.

8. It is a settled position of law, as explained by the Hon'ble Supreme Court in ***Forward Construction Co. v. Prabhat Mandal (Regd.)***, (1986) 1 ***SCC 100***, that a litigant who withdraws a proceeding after being made aware of the factual position is barred from re-litigating the same issue by invoking the principle of constructive *res judicata*. Likewise, it is settled principal of law that disputes relating to alleged encroachment on private land or requiring adjudication of disputed title or boundary cannot be decided in writ jurisdiction and must be pursued before competent civil or revenue forums. In the present case, once the respondent authorities have

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stated that the land in question is not Government land but part of private land, any challenge to that position must be addressed before the competent authority and not in writ jurisdiction. The petitioner has not produced any independent survey or measurement to dispute the official maps nor has he taken recourse to proceedings under the Maharashtra Land Revenue Code which provide a specific mechanism for boundary disputes. Therefore, the attempt to re-open an issue already addressed in the earlier writ petition cannot be permitted.

9. In the light of the above, the petitioner once having withdrawn the earlier writ petition for similar relief with liberty to avail appropriate remedies from this Court, then the second writ petition for the similar relief cannot be entertained. Furthermore, once the clear stand has been taken by the respondent authorities that there is no encroachment on the Government land, then petitioner's reliance on the Government Resolution dated 05.08.2025 issued by the Government of Maharashtra is absolutely misplaced. The encroachment, if at all exists, is made on private land by private persons, and such dispute between the petitioner and the private persons over private land is not amenable to the writ of jurisdiction of the High Court; hence, we do not find any merits in the present writ petition; therefore, the writ petition is liable to be dismissed.

10. Accordingly, the writ petition stands dismissed.

11. The petitioner, having filed the present petition seeking the same relief for which an earlier writ petition had already been withdrawn by him, despite being fully aware of the stand of the respondent authorities and the fact that there is no encroachment on Government land, is liable to pay costs of Rs.10,000/–, which is to be deposited with the Legal Aid Services Sub-Committee, High Court, Aurangabad, within a period of four weeks from today. Failing which, the said amount shall be recovered as arrears of land revenue.

[HITEN S. VENEGAVKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE