



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

21 WRIT PETITION NO. 3792 OF 2024

Anjum Parveen Nahadi Abdul Ajij
& anotherPetitioners

VERSUS

The State of Maharashtra & othersRespondents

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Mr. P. P. Uttarwar, Advocate for the Petitioners.
Mr. S. B. Jadhav, AGP for the State.

AND

WRIT PETITION NO. 4166 OF 2024

Mohammad Waseem M Faheem Farooqui
& othersPetitioners

VERSUS

The State of Maharashtra & othersRespondents

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Mr. P. P. Uttarwar, Advocate for the Petitioners.
Mr. S. B. Jadhav, AGP for the State.
Mrs. S. S.. Chintamani, Advocate for Respondent Nos. 3 and 4.

AND

24 WRIT PETITION NO. 6100 OF 2024

Mohammad Ahemad Hussain GureshiPetitioner

VERSUS

The State of Maharashtra & othersRespondents

Mr. P. P. Uttarwar, Advocate for the Petitioners.
Mr. B. A. Shinde, AGP for the State.

AND
WRIT PETITION NO. 6107 OF 2024

Ashabee Syed Mahemood SyedPetitioner

VERSUS

The State of Maharashtra & othersRespondents

Mr. P. P. Uttarwar, Advocate for the Petitioners.
Mr. B. A. Shinde, AGP for the State.

CORAM : R. M. JOSHI, J.

DATE : 21st APRIL, 2025.

PER COURT :

1. Learned counsel Mrs. S. S. Chintamani makes a statement that she has wrongly caused appearance on behalf of Respondent Nos. 3 and 4. Learned AGP appears for those Respondents.

2. In view of this, learned counsel Mrs. Chintamani stands discharged.

3. Heard finally at the stage of admission by consent of both sides.

4. Since all these petitions involve similar facts and same question of law, they are decided by this common judgment.

5. These petitions take exception to the order passed by the Collector under Section 24 of Maharashtra Highways Act whereby the appeal preferred by the Petitioners against issuance of notice for removal of encroachment came to be rejected.

6. Petitioners claim to be owners of different structures situated at Biloli and further claim to have either constructed house/structure or purchased the same from erstwhile owner. One of the Petitioners has claimed that she had purchased the property from her father and that her father was the owner of the said property since long i.e. from 1954. It is also claimed that construction permission was obtained from the Municipal Council and construction has been done as per the plan sanctioned. On 14.04.2012, highway authority issued notice under Section 23 of the Maharashtra Highways Act alleging that the properties possessed by the Petitioners is an encroachment on the land of the authority. Petitioners, therefore, filed appeal before the Collector. On 09.05.2012, the Collector passed order disposing of the appeals with

observations that as there is already removal of encroachment, nothing survives in the appeal.

7. Petitioners claim that the notices were issued to them for expansion of highway. It is the case of the Petitioners that without acquisition of land, there cannot be expansion of the width of the said highway. Since Petitioners had claimed themselves to be the owners of the structure and the land thereunder, appeals came to be filed under Section 24 of the Act before the Collector. The Collector by the impugned order rejected the appeals. Hence, these petitions.

8. Learned counsel for Petitioners submits that the notices were issued by the authority for the purpose of expansion of the highway and as such without acquiring the land, no such work would be possible to be done. It is his submission by relying upon the sale-deeds that Petitioners are the owners of the structures and without there being any ascertainment of the exact position of the said structures and without causing measurement, it is not open for the authority to remove the said structures. In order to support his submission, he has placed reliance on judgment of the Hon'ble Supreme Court in case of Sukh Dutt Ratra and others vs. State of

Himachal Pradesh and others, **MANU/SC/0424/2022**. Similarly, reference is made to the judgment of the Hon'ble Supreme Court in the petition of Manoj Tibrewal Akash, **MANU/SC/1194/2024**. It is his further submission by referring to the judgment of this Court in case of Kshinath vs. Purushottam Tulshiram Tekade and others, **2006(37)AIC 707** that unless the measurement is carried out, it is not open for the authority to determine the encroachment.

9. Learned AGP supports the impugned orders.

10. There is no dispute about the fact that the Petitioners were issued notice in the year 2012 in respect of encroachment on the said highway. Further order dated 09.05.2012 passed by the Collector indicates that the said encroachment was removed. It is for this reason of removal of encroachment, appeals came to be disposed of. There is no challenge to the fact that there was removal of encroachment caused by the Petitioners. It is thus clear that Petitioners were issued the notices previously in respect of encroachment carried out prior to the year 2012 and now notices are issued for encroachments done after 2012.

11. In the light of these facts, initial burden would be on the Petitioners to prima facie show that their structures are on the private land and not on the area of State highway. In this regard specific query was raised to the learned counsel for the Petitioners in order to show that the Petitioners are the owners of the land which is not covered by the said highway. In this regard though reference is made to the sale-deeds executed in favour of the Petitioners, but said sale-deeds only indicate that there was a sale transaction in respect of the structure. Except for these sale-deeds, there is absolutely no evidence on record to indicate that Petitioners are the owners of land other than the land belonging to the highway authority. In this backdrop, if the notices issued to the Petitioners are considered, perusal of the same indicates that the same are not issued for the purpose of expansion of highway. The notices are issued for removal of encroachment for the reason that the concretisation of the said road was to be done. Thus, this is not case wherein any additional land would be required and acquisition thereof is necessitated.

12. At this stage, it would be relevant to take note of the judgment of the Hon'ble Supreme Court in case of Manoj (supra). The Hon'ble Supreme Court was dealing with a letter received by the

Supreme Court complaining of unlawful demolition of the houses and shops by the authority of the State. It is observed therein that no notices were issued to the party and that demolition has been done in utter disregard of the principles of natural justice. As far as present case is concerned, admittedly, notices are issued under Section 23 of the Act and an opportunity was given to the Petitioners to substantiate their case. Petitioners, however, have failed to substantiate their case before the authority. In so far as judgment of Kashinath is concerned, dispute therein pertains to the determination of boundaries of private properties. In the light of the facts of the said case, it was observed that the appointment of City Surveyor or Cadastral Surveyor for taking joint measurement is necessary. As far as State Highway is concerned, width of the highway is determined by the provisions of the act and notifications issued from time to time. There is no dispute about the fact that in the instant case, the highway in question is of 30 meters width. Since this is no case of expansion of width of highway, question of determination of area of said highway on the basis of measurement does not arise.

13. In any case, prima facie, it was for the Petitioners to point out the appellate authority or atleast this Court in this petition that they are having any right, title or interest in the lands on which structures are situated or atleast it should have been pointed out that the structures are beyond the area of highway. Since the Petitioners have failed to make out any such case, question of calling upon the Collector to undertake exercise of carrying out measurement etc. does not arise.

14. It would not be out of context to record that owing to inaction of Authorities, Highways/roads are encroached upon by unscrupulous persons. This leads to occurrence of accidents involving loss of lives. Thus, in case where it is found that there is encroachment upon highways/roads, it would be open to the Authorities to remove the same. When due procedure as laid down by the law has been followed and the person who alleged to have done encroachment on road is not able to show any right in the structure, would not be entitled to seek protection of the same. No such illegality can be allowed to be perpetrated by taking sympathetic view.

15. For the above reasons, this Court finds no justification to cause any interference in the impugned order. Hence, the petitions are dismissed.

16. Learned counsel for Petitioners at this stage seeks extension of interim relief granted by this Court for a further period of eight weeks.

17. Learned AGP opposes the said request.

18. Ordinarily, this Court would be justified in rejecting the request made. However, since there is relief in favour of the Petitioners for over a period of one year, the same is extended for a period of eight weeks from today.

(R. M. JOSHI)
Judge

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