

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6228 OF 2022**

1. Sukumar Arvind Kale Patil,
Age: 38 Years, Occu: Agriculture
2. Kameshwar Arvind Kale Patil
Age: 34 years, Occu: Agriculture
3. Pralhad Narayan Kale Patil
Age: 55 years, Occu: Agriculture
4. Hansraj Pralhad Kale Patil
Age: 30 years, Occu: Agriculture
5. Deepakraj Pralhad Kale Patil
Age: 27 years, Occu: Agriculture
6. Arvind Narayan Kale
Age: 64 years, Occu: Agriculture
7. Santosh Narayan Kale
Age: 50 years, Occu: Agriculture

All residing at Village Vizori
Taluka Malshiras, District Solapur

...Petitioners

Versus

1. The Union of India
2. The State of Maharashtra
3. The Chief Engineer
Pradhan Mantri Gram Sadak Yojana
Pune Maharashtra Road Development
Corporation, Annasaheb Magar Building,
Gate No. 2 Market Yard, Gultekdi,
Pune - 411 037
4. The Superintendent Engineer
Pradhan Mantri Gram Sadak Yojana
Pune Maharashtra Road Development
Corporation,
Annasaheb Magar Building, Gate No. 2
Market Yard, Gultekdi, Pune - 411 037

5. The Executive Engineer
Pradhan Mantri Gram Sadak Yojana
Pune Maharashtra Road Development
Corporation, Annasaheb Magar Building,
Gate No. 2 Market Yard, Gultekdi,
Pune - 411 037
6. The Deputy Engineer
Pradhan Mantri Gram Sadak Yojana
Pune Maharashtra Road Development
Corporation, Zilla Parishad Compound,
Solapur
7. The Junior Engineer
Pradhan Mantri Gram Sadak Yojana
Pune Maharashtra Road Development
Corporation, Public Works Department,
Akulj – 413 101

...Respondents

Mr. Avinash B. Avhad for the Petitioners.

Mr. Parag Vyas a/w Mr. Ashutosh Mishra for Respondent No.1-UOI.

Mr. R. S. Pawar, AGP for the Respondent-State.

CORAM : M. S. Sonak &
Jitendra Jain, JJ.

DATED: 28 March 2025

ORAL JUDGMENT (Per M. S. Sonak, J.):

1. Heard learned counsel for the parties.
2. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.
3. The Petitioners claim to own the property described in paragraph No.1 of the petition.
4. In 1971, the Petitioners or their predecessors in title instituted Special Civil Suit No.112 of 1971 in the Court of Civil Judge, Senior Division at Solapur, seeking a permanent injunction, *inter alia*, against the State of Maharashtra from carrying out any road construction on

the Petitioners' lands without following due process of law. The trial Court dismissed this by its order dated 31 July 1976.

5. The Petitioners or their predecessors in title instituted First Appeal No.675 of 1976 before this Court challenging the Trial Court's judgment and decree dated 31 July 1976 dismissing Special Civil Suit No. 112 of 1971. This Court disposed of First Appeal No.675 of 1976 vide judgment and order dated 19 September 1987 (Exhibit-B at pages 41 to 49) of the paper book.

6. This Court rejected the Petitioners' contentions that the State had trespassed into the Petitioners' properties because the Court found that the Petitioners had consented to the road project. However, this Court made the following observations in paragraphs 10 and 11 :-

“10. Plaintiff No.1 in his evidence has categorically admitted that he along with the other villagers, on the 20th August 1971 had consented to the construction and the widening of the old road. It, however, appears that when the road progressed up to his land, he raised an objection by sending the telegram (Exhibit 81). The further progress stopped between the 3rd and the 17th September, 1971. During this period, with the intervention of the local leaders and the concerned Government Officers, it was decided to reduce the width of the road from 42 feet to 32 feet and after the plaintiffs had issued his writing (Exhibit 69) dated the 3rd September 1971 and (Exhibit 70) dated the 8th September 1971 the further work of road widening progressed. Having considered the aforesaid evidence, I am inclined to hold that the plaintiffs did accord consent for the aforesaid project of road-widening and hence their case that the defendants had forcibly trespassed into his land will have to be negated. However, the fact that the possession of the said land was taken by the defendant No.1 without resorting to any proceedings under the Land acquisition Act cannot be disputed. Similarly, the fact that certain crops and standing trees in the land of the plaintiffs was found to be destroyed is reflected in the report (Exhibit 75) made by the P.S.I. to the Tahsildar. With the evidence led at the trial, It is not possible to arrive at any specific finding as to the extent of the land belonging to the plaintiffs that has been utilised for the construction of the road. Similarly, the extent of the damage, sustained by the plaintiffs to the crop and standing trees

cannot be determined. However, it shall be the duty of the defendant No.1, the State of initiate proceedings under the Land acquisition Act for the purpose of acquiring that portion of the land which has been utilised for the widening of the said Vijori-Khudus Road. In the said proceedings, it would be open to the parties to lead evidence regarding the market value of the land as also the value of the crops and the trees which were damaged or destroyed. Since the construction of the road had been undertaken by obtaining the consent of the plaintiffs, it would, not be open to the plaintiffs to claim back the possession of that land.

11. In the result, the decree of the trial Court will have to be confirmed though on grounds different from the ones that commended themselves to the learned Judge of the trial Court. In the result, the impugned judgment and decree is confirmed and subject to the observations made hereinabove, the appeal is dismissed. In the facts and circumstances of the case, there shall be no order as to costs.”

7. The present petition was instituted because the Respondents have now commenced the work of road widening on the Petitioners' properties. The learned counsel for the Petitioners submits that despite this Court's judgment and order dated 19 September 1987, no proceedings have been taken to acquire the property occupied by the original road. Now, the Respondents are proceeding with road widening works. He submitted that such an approach is high-handed and arbitrary, thereby violating Article 14 of the Constitution of India. He submitted that the right to property is now recognised as a constitutional and human right and, therefore, the State cannot deprive the Petitioners of such right without following the due process of law. He relied upon ***Kolkata Municipal Corporation & Anr. vs. Bimal Kumar Shah & Ors.***¹, ***Tukaram Kana Joshi & Ors. Vs. MIDC & Ors.***² in support of his submission.

8. Mr. Pawar, learned Assistant Government Pleader, submits that the present project was not for road widening but only for upgradation

1 (2024) 10 SCC 533

2 (2013) 1 SCC 353

of the existing road. He referred to the affidavit-in-reply filed by Vilas Vitthal Dhere, Deputy Engineer, Maharashtra Road Development Corporation, Pune in this regard. This affidavit refers to upgrading and maintaining the existing 32 feet road. This affidavit also refers to a Government Circular dated 26 October 2010, which, according to the affiant, contemplates that there are no provisions for payment of any compensation.

9. Along with the affidavit, a communication dated 6 December 2020 is annexed. In this communication, the officials of the Maharashtra Road Development Corporation sought information from the Executive Engineer, Building Division, Zilla Parishad, Solapur, about the status of compensation payment to the Petitioners. The learned Assistant Government Pleader submitted that since the Zilla Parishad provided no information, no compensation has been paid to the Petitioners.

10. The pleadings on either side in this matter are blissfully vague. Even the prayer clauses are blissfully vague. The Petitioners have sought only the following substantive relief in this petition:-

“(b) That this Hon'ble Court may be pleased to issue a writ, order or direction to the Respondents to construct the village road Kudus - Paniv - Vizori as per the alignment shown in the Village Map and only after completion of the process of acquisition of lands.”

11. However, notwithstanding the state of pleadings, it does transpire that the Respondents utilised the Petitioner's property for road works based upon some consent given by Petitioners or their predecessors in title. However, there is nothing to show that this consent was for the State using the Petitioners' property without compensation. In any event, this Court's judgment and order dated 19

September 1987 in First Appeal No.675 of 1976 binds the State and the Respondents herein. This Court observed that the State should initiate acquisition proceedings and pay suitable compensation to the Petitioners. To date, neither have any proceedings been initiated nor has any compensation been paid to the Petitioners.

12. Based upon some vague Circular dated 26 October 2010, the State cannot deny compensation to the Petitioners after using the Petitioners' properties for road works. On one hand, the affidavit on behalf of the State Government seeks to deny compensation. On the other hand, the State makes enquiries about the status of the compensation with the Zilla Parishad by making specific reference to the directions issued by this Court in its judgment and order dated 19 September 1987 disposing of First Appeal No.675 of 1976. Merely, the Zilla Parishad has not bothered to give particulars; the State cannot avoid its duty of following the due process of law and acquiring the Petitioners' properties, which are being used for road purposes and paying compensation to the Petitioners.

13. In *Tukaram Kana Joshi (supra)*, the Hon'ble Supreme Court held that the right to property may not be a fundamental right, but it is a constitutional and human right. Such a right cannot be defeated on technical grounds by citing delay. To the same effect, the observations in *Sukh Dutt Ratra & Anr. vs. State of Himachal Pradesh & Ors.*³. Here, fortunately, the State has not raised any objections based on delay and laches. The argument on delay and laches was rejected by the Hon'ble Supreme Court and, by the Division Bench of this Court in the case of *Rajeev Kumar Damodarprasad Bhadani & Ors. vs. The Executive Engineer and Ors.*⁴

3 (2022) 7 SCC 508

4 Writ Petition No.1430 of 2022 decided on 5 January 2024.

14. In *Kolkata Municipal Corporation (supra)*, it is reiterated that while after the 44th Constitutional Amendment, the right to property drifted from Part-III to Part-XII of the Constitution, there continuous to be a safety net against the arbitrary acquisitions, hasty decisions making and unfair redressal mechanism. Despite its spatial, Article 300-A of the Constitution of India, which declares that “*no person shall be deprived of his property save by authority of law*”, has been characterised both as a constitutional and human right. The Court has held that this constitutional or human right to property comprises *inter alia* of seven sub-rights or the strands, albeit non-exhaustive. This includes the duty of the State to restitute and rehabilitate – the right of restitution or fair compensation, the duty of the State to conduct the process of acquisition efficiently and within prescribed timelines of the proceedings – right to an efficient and expeditious process, and conclusion of proceedings leading to vesting and right of conclusion.

15. Accordingly, by following the above precedents, and having regard to the order made by this Court on 19 September 1987 disposing of First Appeal No.675 of 1976, we direct the Respondents to demark the precise extent of the Petitioners’ land that is being used for road and road works within three months from today. The Respondents must refer to the village maps and other relevant material for this purpose. The Petitioner can also supply such relevant material within 15 days to assist the Respondents in undertaking this exercise. After such demarcation is completed, Respondents are directed to initiate and complete acquisition proceedings for this demarcated portion within one year of such demarcation. The conclusion of these proceedings would mean payment of compensation in accordance with law to the person interested. This entire exercise must be completed within an outer limit of 15 months from the uploading of this judgment and order.

Suppose the persons interested are not satisfied with the compensation amount, they may accept it under protest or without prejudice, and seek enhancement under land acquisition legislation by complying with the requirements prescribed by the law.

16. The Rule is made absolute in the above terms without any cost order. All concerned to act on an authenticated copy of this order.

(Jitendra Jain, J.)

(M. S. Sonak, J.)