



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

913 WRIT PETITION NO. 15072 OF 2025

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| 1. | Dr. Ravindra Vasant Badgujar | |
| 2. | Dr. Sharda W/o Ravindra Badgujar | ...PETITIONERS |

VERSUS

- | | | |
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| 1. | Union Of India
Through Its Secretary
Ministry of Road Transport and Highways
Transport Bhavan, New Delhi. | |
| 2. | The State of Maharashtra
Through its Secretary,
Public Works Department,
Mantralaya, Mumbai. | |
| 3. | The Sub Divisional Engineer,
Sub Divisional Engineer Office,
Sub Division No. 1 of National Highway Authority,
Jalna. | |
| 4. | The Sub Divisional Engineer,
Public Works Department Sub Division Office,
Jamner. | |
| 5. | The Executive Engineer,
Public Works Department Office,
Jalgaon. | |
| 6. | The Collector,
The Collector Office, Jalgaon. | ...RESPONDENTS |

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Mr. Sachin S. Randive, Advocate for the Petitioners
Mr. Nandkishor Yadav, Central Government Counsel for Respondents No.
1 and 3
Mr. A.M. Phule, AGP for Respondent/State

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**CORAM : SMT. VIBHA KANKANWADI &
HITEN S. VENEGAVKAR, JJ.**

DATE : 04th FEBRUARY 2026

ORDER :

1. Leave to correct.
2. Present petition has been filed for following relief:

“B. To hold and declare that the notice dated 08.10.2025 issued by respondent no. 3 is illegal and without lawful authority, and further, to declare that the action of the respondent authorities in increasing the width of the road from 10 meters to 15 meters from the center of the roadway without the requisite acquisition of the affected properties, constitutes a violation of the fundamental rights guaranteed under Articles 14, 19(1)(f), and 300-A of the Constitution of India.”
3. Heard the learned advocate for the Petitioners.
4. Petitioners contend that Pune- Aurangabad -Pahur- Jalgaon is not a State Highway till 1967, however, after the official notification in the Gazette dated 19.04.1967 it was declared as State Highway No. 186, however, there was no acquisition of land at that time. Thereafter, the State Highway was converted into National Highway, yet there was not acquisition of the land for the expansion of National Highway.

Respondent No. 4 had issued notice dated 18.11.2009 under Section 21(1) of the Bombay Highway Act, 1955 stating that construction within 10 meters from the center of the road should be removed within seven days otherwise appropriate action would be taken. According to the Petitioners, Respondent No. 4 removed the construction within 12.5 meters from the center of the road at that time and said removal has been confirmed under the orders of this Court earlier in Writ Petition No. 4778 of 1995 filed by one Ajgar Shakha Razzak Shakha and Others Vs. State of Maharashtra and Others. Affidavit in reply was filed by Respondent No. 4 before this Court wherein it was stated that total width of the road is 82 Feet and it is 41 Feet from the center of the road. Thereafter, in Writ Petition No. 5487 of 2009 filed by one Nitinkumar Lodha and Others Vs. State of Maharashtra, again, Respondent No. 4 had filed affidavit stating that portion of the premises specifically the staircase of petitioner was within the encroached area and therefore, petition was filed in which petitioner had appeared by filing Civil Application No. 2294 of 2010. It was then stated by Respondent No. 4 that staircase of the petitioner as well as the urinal constructed by the Grampanchayat has been demolished and therefore said petition as well as Civil Application filed by the petitioner was disposed of. According to the Petitioners, due to the local politics, Grampanchayat, Pahur had issued notice to them and

then at that time petitioners had knocked the doors of Civil Court by filing R.C.S. No. 129 of 2010. At that time, Court Commissioner was appointed to measure the petitioners' property. According to the petitioners, petitioners' structure is situated behind the drainage constructed by the respondent and does not pose any obstruction to the National Highway No. 753-F. Yet the Respondent No. 3 has issued notice dated 07.09.2025 for removal of encroachment and the structure which is coming within 15 meters width area from the center of the road.

5. Learned Advocate for the Petitioners has taken us through all documents which have been referred above and statements. When the fact which was brought by way of affidavit by Respondent No. 4 that the road at the relevant place is 82 feet and as per the land plan from the center of the road it is 41 feet in Writ Petition No. 4778 of 1995, now the act of issuing notice for total width of 30 meter and 15 meter from the center of the road is contrary and highhanded act. Learned Advocate for the Petitioners also tries to submit that Respondent No. 3 again issued such notices without undertaking action of acquisition and the land for the road and without adopting due procedure of law.

6. Here we would say that the prayer clause of the petitioner is not as per the last submission of learned Advocate for the Petitioners. In fact, Petitioners seek declaration that the notice dated 8.10.2025 is illegal

on the count that action of Respondent/Authority in increasing width of the road from 10 meters to 15 meters from the center of the road without requisite acquisition of the affected properties constitutes violation of fundamental rights. First of all, in the injunction suit i.e. R.C.S. No. 129 of 2010, wherein the decree has been passed by learned 3rd Joint Civil Judge, Senior Division, Jalgaon, present Respondent No. 3 i.e. National Highway Authority was not party and notice dated 17.05.2010 given by Respondent/Grampanchayat was under challenge in the said suit. From the pleadings itself, it can be seen that at the time of declaring said road as National Highway, certain notifications would have been issued. Those were never challenged even in the Civil Application filed by the present petitioners in the Writ Petition No. 5487 of 2009. Copy of Civil Application has been annexed wherein apart from the prayer to add petitioner as party to the proceeding, the direction was sought against the Grampanchayat for the removal of urinary tried to be constructed by the Grampanchayat in front of hospital of the petitioners. Said Civil Application was filed on 17.02.2010. Petitioner has also filed true copy of notice dated 18.11.2009, wherein Sub Divisional Engineer, Public Works Department, Sub Division, Jamner had asked the petitioner to remove encroachment in respect of staircase. However, it appears from the pleadings as well as the order passed by this Court on 22.02.2010 that

petitioners therein (not the present petitioners) were satisfied with the demolition action taken by the authorities and as regards present petitioners are concerned, a statement was made that urinal which was tried to be constructed by Grampanchayat in front of the hospital of the applicants has been removed and therefore, applicants i.e. present petitioners had not pressed the application. That means, said notice dated 18.11.2009 was not challenged before this Court even in the said Civil Application, which was subsequently filed. Now, the notice has been given on 07.09.2025, wherein it is stated that width of the National Highway in total (ROW) is 30 meter and from the center of the road it is 12 meters and then it has been asked that encroachment within that area should be removed. If the petitioners intend to take help of certain statements in another petition, then it would be the disputed question of fact, which cannot be entered into under the writ jurisdiction and statements which have been relied from the affidavit of Respondent No. 4 cannot be said to be in connection with the property of the petitioners, because the distances those were quoted in the affidavit in reply were in respect of the property belonging to those petitioners.

7. In view of the fact that, disputed questions of fact have been raised and there is absolutely no document on record to show that the construction which is addressed as encroachment in the impugned notice

dated 07.09.2025 is illegally constructed, we cannot consider the matter further and this is not a fit case for exercise of powers under Article 226 of the Constitution of India.

8. The Writ Petition stands dismissed.

[HITEN S. VENEGAVKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

Bhagyawant Punde