



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9 OF 2026

ULHAS BALASAHEB NIKALJE

VERSUS

THE UNION OF INDIA AND OTHERS

...

Mr. A.T. Jadhavar, Advocate for petitioner

Mr. K.S. Solanke, Central Government Counsel for respondent Nos.1 to 3

Miss. Neha B. Kamble, AGP for State

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

DATE : 11th FEBRUARY, 2026

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

. Present petition challenges the notice dated 29.12.2025 issued by respondent No.5 regarding removal of alleged encroachment by the petitioner.

2 Heard learned Advocate Mr. A.T. Jadhavar for petitioner, learned Advocate Mr. K.S. Solanke for respondent Nos.1 to 3 and learned AGP Miss. Neha B. Kamble for State.

3 The petitioner contends that he is the owner and in possession of plot bearing CTS No.1245 admeasuring 117.6 sq.mtrs., within the limits of Grampanchayat, Ashti, Tq. Ashti, Dist. Beed. He runs a grocery shop by name "Rohan Kirana Stores". He is a member of Scheduled Caste. The said plot is in fact his ancestral property and entry to that effect is also taken in the Property Registered Card. He is regular tax payer to the Nagar Panchayat, Ashti. Petitioner states that he has taken all the permissions while running the grocery shop, but all of a sudden respondent No.3 had issued notice dated 02.06.2021 stating that petitioner has made unauthorized construction on right/left side of National Highway No.561. Respondent No.3 had directed him to remove the unauthorized construction. This Court by order dated 16.11.2021 disposed of Writ Petition No.6979 of 2021 by giving opportunity to respondent No.3 to issue fresh notice and petitioner therein should be given an opportunity to contest the said notice and then respondent No.3 should take the decision on its own merits. However, since 16.11.2021 no action has been taken by those authorities. Now, respondent No.5 issued notice dated 29.12.2025 giving reference to the letter / notice issued by respondent No.3. When, in fact, the said authorities had not acted pursuant to the orders passed by this Court, there was no question of making any unauthorized construction or encroachment by petitioner upon the National Highway No.561. It is the ancestral property and further as per

Section 3(1)(g) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, interference in the peaceful possession of the property or land or house of members belonging to Scheduled Castes is an offence. Procedure has not been followed by respondents and, therefore, the petitioner has approached this Court.

4 Respondent No.3 has filed affidavit-in-reply through Mr. Ajit Madhav Gayke, wherein it is stated that the order passed in Writ Petition No.6979 of 2021 was forwarded to Chief Officer, Nagar Panchayat, Ashti, Dist. Beed on 18.12.2025 regarding removal of encroachments falling within the jurisdiction of Nagar, as National Highway No.561 from Ahilyanagar to Jamkhed and from Ahilyanagar to Sabalkhed was approved for reconstruction and widening. It was the duty of the Chief Officer to remove the encroachment within stipulated time. The State Government vide Government Resolution dated 02.04.2009 issued guidelines regarding removal of encroachment. Further guidelines have been issued on 05.08.2019 and the duty is cast on Chief Officer and, therefore, the notice has been issued.

5 Both the sides have made submissions supporting their contentions.

6 The first and the foremost fact to be noted is that petitioner has filed certain revenue documents, wherein it is seen as per the Proper Registered Card that the predecessors of petitioner are shown to be the owners of CTS No.1245 since at least 1984 and it is also mentioned as the ancestral property. Even the property is subject to tax and receipts of tax payment for the year 2022-03, 2017, 2008 have been produced. He has also annexed the earlier notice dated 02.06.2021. Certainly, it can be seen that the present petitioner had not approached this Court for any relief, but it appears that one Walmik Sajanrao Nikalje had approached this Court, to whom also similar notice was issued on 02.06.2021 itself. Whatever the decision that was given in that matter would be *qua* the said petitioner, but a statement appears to have been made on behalf of respondent No.3 that respondent No.3 is ready to withdraw the impugned notice and then would issue fresh notice of prescribed format under Rule 11 of Schedule III of the Highways Administration Rules, 2004. It was, therefore, observed by this Court that since impugned notice is withdrawn, the Court will not adjudicate regarding the notice. Respondent No.3 was permitted to issue fresh notices permissible under the law and rules. Now, even in the affidavit-in-reply on behalf of respondent No.3 there is no mention that the notice issued to the petitioner on 02.06.2021 was withdrawn and communication to that effect was given to petitioner. Admittedly, pursuant to the said notice dated

02.06.2021 no action was taken. Now, respondent No.5 has issued the notice on 29.12.2025 which appears to be in pursuant to the communication to respondent No.2 dated 18.12.2025. Respondent No.5 has used the word 'encroachment' (अतिक्रमण), however, we find the notice is as vague as possible. Even if we accept that respondent No.5 is now saddled with the responsibility of issuing notices, respondent No.5 will have to see that the said notice is given as per the procedure of law. If respondent No.3 as well as respondent No.5 are of the opinion that it is the encroachment that has been made by the petitioner, then the dimensions of the portion which amounts to encroachment has not been given in the notice itself. That description is mandatory. Further, if the said portion was in existence prior to National Highway No.561 came into existence, then unless that portion is acquired, respondent Nos.3 and 5 cannot go ahead with the removal. When it is the question of widening of the road, then the existing structure within the area to be widened will not amount to encroachment and, therefore, we find that the notice dated 29.12.2025 is illegal. At the same time, we are also conscious of the fact that petitioner has not produced any documentary evidence to show that the structure which is in existence that CTS No.1245 is authorized, because he has not produced the requisite sanctions from the appropriate authority. Mere payment of tax will not make the structure legal. Under such circumstance, we are of the opinion that respondent Nos.3 and 5

can go ahead with the action subject to issuance of fresh legal notice to petitioner as to how much area is going to be affected by the widening of the road and they should give an opportunity to petitioner to put forth his say subject to producing documents regarding sanction for construction from the appropriate authority. Thereafter only respondent Nos.3 and 5 can go ahead.

7 In view of these observations, we pass following order.

ORDER

- i) The Writ Petition stands partly allowed.
- ii) The impugned notice dated 29.12.2025 stands quashed and set aside.
- iii) Respondent No.3 / respondent No.5, as the case may be, are at liberty to issue fresh notice to petitioner, specifically mentioning as to how much area is going to be affected by widening of road and they should give an opportunity to petitioner to put forth his say subject to producing documents regarding sanction for construction from appropriate authority.

(HITEN S. VENEGAVKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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