

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2841 OF 2020

PRAKASH GANGARAM DHAGE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for the Petitioners : Shri Mohekar Ganesh V.
AGP for Respondents 1, 2 and 3 : Shri N.T.Bhagat
Advocate for Respondent 4 : Shri G.K.Thigle h/f Shri D.D.Deshmukh

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 28th February, 2020

Per Court:

1 The petitioners are aggrieved by the order dated 09.04.2019 passed by the learned Trial Court by which, their application below exhibit 5 in Special Civil Suit No.1/2019 for seeking injunction, has been rejected. They are also aggrieved by the order dated 13.02.2020 passed by the learned District Judge-1, Biloli by which, their Miscellaneous Civil Appeal No.17/2019 has been rejected.

2 This matter was extensively heard on 27.02.2020 and posted today for enabling the learned AGP to collect further instructions and make a statement.

3 Today, the learned AGP submits, on the basis of the communication dated 28.02.2020 received by him from the Assistant

Engineer, Public Works Sub Division, Naigaon, as under :-

- (a) The State Highway No.261 has been undertaken for improvement by the State of Maharashtra and the segment involved in this case is from Mudkhed upto Gadaga in Nanded district.
- (b) This segment is about 50 kilometers. More than 70% of the work has been completed.
- (c) The dispute raised by the petitioners, original plaintiffs in Special Civil Suit No.1/2019, is over a patch of only 1.4 kilometers. On either side of this 1.4 kilometers patch, the road is almost complete and this patch is an obstruction to a public project.
- (d) No compensation has been paid to any land owner under the State Highway 261 since the said road and land having width of 80 feet, has been in the possession and ownership of the State Government since 1972 i.e. since the water scarcity/ drought period in this part of the State.
- (e) It is since 1972 that the said land is owned and possessed by the State Government.

4 The learned advocate for the petitioners submits, on instructions, that notwithstanding the decision in their pending suit or

Miscellaneous Civil Appeal No.17/2019, these petitioners desire to approach the learned Division Bench of this Court for pressing their demand for framing a policy for compensation as it is their firm belief that the 80 feet road, which is being laid, has led to these petitioners losing their substantial lands without any acquisition process having been undertaken. All contentions of the petitioners, therefore, be kept open to be considered by the learned Division Bench.

5 The learned advocate for the petitioner further submits, in the light of the judgment of the Honourable Supreme Court in the matter of the *Commissioner, Bangalore Development Authority vs. K.S.Narayan, AIR 2006 SC 3379*, that the civil court cannot decide the entitlement of the plaintiffs for compensation and cannot decide the issue whether, the Government should have resorted to the acquisition process. As such, the petitioners desire to approach the learned Division Bench of this Court only to test the statement of the Government in paragraphs 8, 9 and 10 set out in the affidavit in reply dated 30.01.2020 in the disposed off Writ Petition No.1945/2020. In short, the petitioners would pray to the learned Division Bench for a direction to the State Government to frame a policy and whether, the Government is justified in refusing to resort to the acquisition proceedings on the basis of the Public Work Department having taken the alleged possession of their lands in 1972 for the State Highway.

6 The learned advocates for the respective parties as well as the learned AGP point out the earlier order passed by the learned Division Bench of this Court dated 22.12.2018 in Writ Petition No.13632/2018.

7 In view of the above, this Writ Petition is disposed off.

8 Since there is no injunction in favour of these petitioners and the respondent authorities would be at liberty to proceed with the laying of the improved road over the disputed 1.4 kilometers stretch, the learned advocate for the petitioners makes a request that the trial in the 2019 suit may be expedited as a rare and peculiar case. These petitioners would be losing their lands on account of improving the existing road and therefore, the suit will have to be decided expeditiously as the lands would be lost and once the road is ready and if the suit gets delayed, the petitioners would suffer hardships.

9 In view of the above, the Trial Court, as a rare and peculiar case, shall decide Special Civil Suit No.1/2019, as expeditiously as possible and preferably on or before 31.03.2021. All litigating parties shall cooperate in the expeditious disposal of the said suit.