



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 6028 OF 2021  
WITH  
INTERIM APPLICATION NO. 20397 OF 2022  
(FOR STAY)  
IN  
WRIT PETITION NO. 6028 OF 2021

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signed by  
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1. Sudhir Madhavrao Kudale  
Since deceased through LRs  
1/A. Maya Sudhir Kudale  
Age : Adult, Occ : Homemaker,

1/B. Omkar Sudhir Kudale  
Age : Adult, Profession : Advocate

1/C. Riya Sudhir Kudale  
Age : Adult, Occ : Service

R/at : Room No.1, Vishal Chawl,  
Khedshivapur, Tal- Khed,  
Dist. Pune 412 205

2. Mr. Nitin Madhavrao Kudale,  
Age : 50 years; Occ : Business;  
Residing at : Room-1, Vishal Chawl,  
Khed Shivapur, Taluka- Khed, Pune 412 205

3. Mrs. Sujata Sanjay Ladkat  
Age : Adult, Occ : Homemaker  
R/at : Lodha Paradise, Thane

...Petitioners

4. Mrs. Rohini Kiran Borawake

Age : Adult, Occ : Homemaker  
R/at : Hadapsar, Pune – 411 013

Versus

1. Union of India  
Through Secretary,  
Ministry of Road Transport & Highways  
Government of India
2. National Highways Authority of India  
(Ministry of Road Transport & Highways  
Government of India)  
Through Project Director-PIU (MC)
3. State of Maharashtra  
Through the Secretary,  
Department of Urban Development,  
M.S. Mantralaya, Mumbai – 400 001.
4. Special Land Acquisition Officer No.17
5. Special Land Acquisition Officer No.2
6. Competent Authority /  
The Dy. Collector (Land Acquisition)
7. The Collector, Pune
8. The Sub-Division Officer,

9. Public Works Department  
Through Executive Engineer

...Respondents

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**Mr. Nikhil Dongre, a/w Omkar Kudale, for Petitioners.**

**Mr. Ashutosh Misra, for Respondent No.1-UoI.**

**Mr. S.S. Varma, i/b Sandeep S. Ladda, for Respondent No.2.**

**Mr. R.M. Shinde, AGP, for Respondent No.3-State.**

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**CORAM : G. S. KULKARNI & &  
SOMASEKHAR SUNDARESAN, JJ.**

**Reserved on : July 04, 2024**

**Pronounced on : October 15, 2024**

**JUDGMENT: (Per Somasekhar Sundaresan, J.)**

1. Rule. Rule made returnable forthwith. Learned Counsel for the Respondents waives service. By consent of the parties, this Writ Petition was taken up for final hearing and disposal.

2. This Writ Petition has been filed by landowners who claim to have owned a building called *Shantiniketan* located in Gat / Survey number 336 adjoining National Highway No. 4 (“**NH-4**”) in Village Shriramnagar, Khed

Shivapur, Taluka Haveli, District Pune, which they claim was acquired and demolished at the behest of the National Highways Authority of India (“*NHAI*”) without following due process of law in the course of widening the NH-4, with no compensation having been paid to the Petitioners for the acquisition of the building.

3. According to the Petitioners, *Shantiniketan* comprised four stories and has been in existence since 1973-74<sup>1</sup>. Originally, Mr. Madhavrao Laxmanrao Kudale and Mrs. Nalini Madhavrao Kudale owned the property. The Petitioners are the offspring of this couple. In the course of the proceedings, Petitioner No. 1 expired and his three offspring came to be substituted as legal heirs in his place.

4. At the time of filing the Petition (July 2020), the Petitioners brought to bear evidence that *Shantiniketan* building had been demolished, and it was the specific pleading of the Petitioners that they had been rendered homeless. However, an Interim Application No. 20397 of 2022 (“*Interim Application*”)

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<sup>1</sup> Annexure ‘W’ to the Writ Petition is a Valuation Report dated February 12, 2007 issued by SRM Associates which indicates ground and first floor of *Shantiniketan* building was constructed in the year 1973-74 and subsequently it was developed by another two floors in the year 1988-89.

was filed in December 2022 stating that the Respondents would “further demolish” the structure on the premise that it is an encroachment. The Petitioners pleaded that the earlier demolition had been a partial demolition, and earlier only the commercial structure on Gat No. 336 had been demolished, and that now the residential structure was being demolished. Since on December 5, 2022 the Learned Counsel representing NHAI sought time to take instructions to adjust equities, a Division Bench of this Court directed that no further demolition should be undertaken by the Respondents, and no further construction should be undertaken by the Petitioners. That arrangement has continued till date.

5. We have heard Learned Counsel for the parties, who have taken us through the record. It is a matter of record that a notice for land acquisition was issued on August 1, 2003 under the National Highways Act, 1956 (“**NH Act**”) inviting objections from landowners in connection with widening of NH-4, which connects Pune with Satara. Eventually an award came to be passed on December 10, 2004 covering acquisition for widening of the highway by 37.5 metres from left side of the road (towards Pune) and 22.5 metres from the right side of the road (towards Satara).

6. The Petitioners state that they filed objections on January 25, 2005 and multiple owners of structures made representations and that it was decided to curtail the acquisition to a width of 30 metres on each side from the centre of the road. On this basis, it is the averment of the Petitioners that such curtailment covered another structure owned by them, namely, *Sudhir Automobiles*, but not the *Shantiniketan* building.

7. According to the Petitioners' claim, thereafter, for the first time, on May 12, 2015, a notice came to be issued under Section 3D of the NH Act, after a lapse of 10 years since the acquisition of Gat No. 336. After this stage, the Petitioners state, they were driven from one Special Land Acquisition Officer to another, without clarity on which officer was responsible for the acquisition being undertaken. According to the Petitioners, *Shantiniketan* was demolished in 2016 in front of their eyes and they were rendered homeless, and that till date, nothing has been paid for the acquisition of *Shantiniketan*.

8. Strangely, the Petitioners have pleaded that since the acquisition in 2015 was being proceeded with, along with other landowners, they filed a

Civil Suit being Spl. C. S. No. 1531/2015 before the Hon'ble Civil Judge, Senior Division, Pune. However, this suit came to be dismissed in default.

9. An affidavit in reply dated March 9, 2022 on behalf of the NHAI points out that the land acquired under the award dated December 10, 2004 squarely covered Gat No. 336. According to the NHAI, the Petitioners have brought up unauthorised constructions on the land that had already been acquired by NHAI, and these are encroachments on the land owned by the NHAI. No further acquisition was warranted in 2016, according to the NHAI. In 2016, the NHAI sought to demolish such structures that the Petitioners appear to have developed after encroaching upon the land already acquired in 2004, and the NHAI was entitled to demolish such encroachment.

10. Having gone through the record, we are not convinced that the Petitioners have made out a case for exercise of our discretion to wield the extraordinary jurisdiction under Article 226 of the Constitution of India to intervene in the matter. A perusal of the award would show that Gat no. 336, shown as land in the non-agricultural residential sector, was indeed the subject matter of the acquisition. The schedules to the award would also

show that description of the structure of *Sudhir Automobiles* acquired under the award is referred to as including *pakke* structure, compound wall, and an *ota*. Another entry in the name of Madhavrao Laxmanranrao Kudale is shown as just “compound wall” without the property being identified as *Shantiniketan*. It is seen that in respect of every property acquired, the name of the enterprise or the residential unit or commercial establishment is also set out along with the name of the owner.

11. What is also clear is that the “spent life” for each of the properties acquired shows that the structure and the compound wall for *Sudhir Automobiles* was 22 years old (Item 23 in the Schedule of Valuation of Buildings, annexed to the award), while the “spent life” of just the compound wall shown in the name of Mr. Kudale without any name of residential unit (Item 22 in the Schedule of Valuation of Buildings) was shown as five years.

12. The Petitioners, also filed a Civil Suit before the Civil Judge, Senior Division, Pune, way back in 2015, when they say the acquisition continued after ten years. However, admittedly this Civil Suit was dismissed for default. In a civil suit, it would have been possible to lead evidence and to have a trial



of the facts to ascertain whether *Shantiniketan* stood since 1973-74 or whether there was only a five-year old compound wall at the time when the award was passed in December 2004. It would have been possible to examine if the structure was an illegal encroachment or otherwise. Not only did the Petitioners not prosecute the suit, they also did not approach this Court in the writ jurisdiction right until July 2020 – a good four years later. With this approach, the ascertainment of facts and the evidence involved gets more ambiguous. Inexplicably, the GramPanchayat, Shriramnagar, which had originally been arraigned as a party – Respondent No. 10 – on the ground that land records of the Panchayat would show that *Shantiniketan* was in existence since 1973-74, was deleted voluntarily by the Petitioners on November 23, 2021, with an oral prayer for amendment. With this deletion by the Petitioners, even the Panchayat is not available before this Court for clarifying the factual position. What is noteworthy is that the stance of the Petitioners is that the acquisition of *Shantiniketan* had not been effected in 2004, and since it was demolished in 2016, compensation ought to be paid under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2015, a legislation which intervened in between the award and the encroachment clearance.

13. Another facet that is evident from the record is that the notice dated May 12, 2015 which was issued by the Respondent No. 5 Special Land Acquisition Officer-2 does not at all refer to Gat No. 336. Indeed, it refers to another extension of NH-4, but the Petitioners have used that notice as a peg to hang their theory about a fresh acquisition being undertaken in 2016. What happened on the ground in 2016 was an encroachment clearance exercise by the NHAI. Since no acquisition of land in Gat No. 336 was being effected by any land acquisition officer, the Petitioners correspondence led to different land acquisition officers stating that they were not handling any acquisition of such land.

14. There is one other facet of the matter. The Petitioners have explicitly pleaded in the Petition that *Shantiniketan* stood demolished, without payment of a single rupee towards their compensation, and yet in the Interim Application, in 2022, they have prayed that further demolition must be stopped. If the structure according to the Petitioners' own case had been demolished, which they have demonstrated with date-stamped photographs annexed to the Petition, it would only follow that the Interim Application did not really make out a case of demolition being effected without due process of

acquisition. This is why the Division Bench of this Court adjusted equities by maintaining status quo – prohibiting any further demolition and also prohibiting any further construction by the Petitioners.

15. The Petitioners have stated that they were rendered homeless by the demolition effected in 2016. In the Writ Petition, the Petitioners have annexed a purported valuation report dated February 12, 2007, which they claim to have commissioned for their internal use, determining the value at close to Rs. 98,14,424/- with a variation of 5% either way. This report states that the building was occupied by tenants.

16. In these circumstances, the factual thesis propounded by the Petitioners does not inspire confidence. Considering that the Petitioners did not even pursue the Civil Suit that they filed in 2015, and instead chose to come to the writ court four years later, with the depiction of facts being riddled with inherent contradictions, in our opinion, the Petitioners have clearly not made out a case for any judicial intervention.

17. In the result, Rule is discharged and the Writ Petition is dismissed. Consequently, this Writ Petition and any connected interim application would stand finally disposed of. We have persuaded ourselves not to impose costs.

(SOMASEKHAR SUNDARESAN, J.)

(G.S. KULKARNI, J.)