

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6911 OF 2022**

Dilip Pandurang Koli & Ors ...Petitioners
Versus
State of Maharashtra & Ors ...Respondents

Mr Zaman Ali, for the Petitioner.
Mr KS Thorat, AGP for State/Respondent No.1.
Mr GS Hegde, with Ms Pinky Bhansali, for the CIDCO.
Mr AS Khandeparkar, with Niranjan Shimpi, for Respondent No.10
(UoI).

**CORAM G.S. Patel &
Gauri Godse, JJ.**
DATED: 29th July 2022

PC:-

1. Our order of 5th July 2022 reads thus:

“1. The 134 Petitioners are all traditional fishermen (Kolis) from the fishing village of Uran Koliwada in Uran Taluka of Raigad District. The principal concern in this Petition is that the proposed 11-metre wide Uran Bypass Road at Uran Koliwada will materially affect the Petitioners’ traditional fishing rights. We are not today accepting or rejecting the case as canvassed by the Petitioners. That will fall for determination at a later date. It

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is sufficient to note that the Respondent authorities contest the Petitioners' assertions.

2. Exhibit "G" at page 96 is a Google Earth map on which are overlaid indicators showing Uran Koliwada, the Uran Creek, the alignment of the Uran Bypass Road and, represented by three yellow circular marks, the Uran Koliwada fish landing and boat maintenance area. Mr Zaman Ali, learned Advocate for the Petitioners, clarifies that the complaint of the Petitioners is as regards the Uran Koliwada fish landing and boat maintenance area and that these will be affected by the Uran Bypass Road. If this is in fact so, and we do not know as a matter of fact whether it is in fact so, there may arise a question both of compensation as also the of the provision of an alternative site for the fish landing and boat maintenance areas.

3. There may be other and possibly broader issues to examine but we will defer those for the time being. We do so because otherwise the entire Petition will lose focus.

4. At this stage, we require Mr Thorat for the Government and Mr Hegde for CIDCO (which is constructing the road) respectively to take instructions as to what is the policy in regard to both aspects, i.e. compensation where there is a community affected by a public project, and, second, the policy if any in place in regard to providing an alternative location or site where the original site is shown to be affected by the project.

5. After we have considered the Respondents' preliminary response, we may consider calling for a more detail report (including suggesting alternative sites), as also other measures.

6. Leave to amend to add additional Respondents. Reverification is dispensed with. The newly added Respondents are to be served by 13th July 2022.

7. List the matter for further orders on 26th July 2022.”

2. Since then, all that we have had from the State Government are repeated applications for adjournments. CIDCO, represented by Mr Hegde, has maintained that it is only executing or implementing the bypass project required by the State Government.

3. Today we are told by Mr Thorat on instructions that the Fisheries Department will make a survey. Then there will be a report. Then there will be an assessment of compensation.

4. This is not what we expect to be told. We do not see how the project alignment could have been decided *before* doing a survey and before assessing the possible impact on persons such as the Petitioners. It surely stands to reason that any such survey would have had to be done first, whether by the Fisheries Department or some other department. Further, if the statement is that the Petitioners will be given “compensation”, then that necessarily implies that there is in fact an adverse impact on the Petitioners as a result of the project. The State Government cannot simultaneously say in one breath that there is no impact and also say that compensation will be given.

5. We find it astonishing that no thought has been given to the plight of persons directly affected by this project, even though the livelihoods of the Petitioners are said to be adversely affected, and that too permanently. Simply throwing money at people is not an answer to what is evidently a displacement problem, a question

involving the livelihood of the poor and the marginalized, and essentially a question about the human condition of persons who depend on fishing for their daily earnings. The implicit suggestion that the alignment of this bypass is somehow written in stone and no other alignment is possible is also questionable. We do not understand either why there is no mention of alternative sites for either the bypass or for the petitioners' traditional fishing landing locations. These are surely matters that should have been considered, and that should have been done before a project was simply put into execution. More importantly, in any such project some process of public awareness, information dissemination and perhaps even public consultation was, we prima facie believe, desirable and possibly even necessary. We do not believe that the koli fishermen have ever been consulted nor have their objections or suggestions being invited since 2018. They are simply supposed to quietly accept a complete eradication of their centuries-old traditional fishing landing sites and are supposed to somehow manage for the rest of their lives and through future generations. No principle of development planning or environmental law allows us to accept such a stand.

6. We note that it is not the stand of the State Government that there was prior public consultation, a public hearing or that suggestions and objections were invited or even that a survey was carried out before the project was finalised. All this is now proposed to be done ex-post-facto.

7. Mr Ali tells us that apart from some preliminary excavation work, nothing has been done and work is at standstill since June 2022. The CIDCO Affidavit says that bypass construction work has been awarded to JM Mhatre Infra Private Limited, the lowest tenderer. Now this is an additional complication and surely both the State Government and CIDCO should have thought of this before. If the work is now inevitably delayed — and only because the State Government did not care to carry out a proper survey and assess the impact on the Petitioners — the contractor is bound to raise a dispute about the delays. There are bound to be claims for compensation for the delay and perhaps even escalation claims. The result will be a second level impact of an increased cost per kilometre and that will have to be borne from the public exchequer.

8. Viewed from any perspective, this entire approach of the State Government towards planning *prima facie* appears to us *prima facie* to be faulty.

9. We do not propose to stay the ongoing work indefinitely. But we do insist that in its own interest the State Government informs us what positive steps it proposes to do and on what schedule. If a survey is to be carried out (and we are now not requiring the State Government to go back to a process of public consultation at this late stage) then we must at least know within what time the survey will be carried out, by whom and what it is that will be assessed. Inevitably, until we are told that, we are constrained to direct that no further work should be carried out on the project for a limited period.

10. Mr Thorat seeks some time. Realising the urgency that presents itself, he states that he will take the necessary instructions at the earliest.

11. List the matter on supplementary board on 5th August 2022.

12. An officer of the State Government from the department responsible for the project and from the Fisheries Department must be present in Court on the next date to answer any queries and to assist Mr Thorat.

(Gauri Godse, J)

(G. S. Patel, J)