

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

PUBLIC INTEREST LITIGATION NO.188 OF 2022

Shrihari S/o Anant Shidore ...Petitioner
Versus
The Commissioner/Administrator ...Respondent

**WITH
INTERIM APPLICATION NO.16240 OF 2024**

GVPR Engineers Ltd Through
the Senior Manager Projects,
G. Mahender s/o Sri. G. Somla ...Applicant
Versus
Shrihari S/o Anant Shidore ...Respondent

Mr. Amit A. Mukhedkar for the Petitioner.

Mr. Sachin Deshmukh Amicus Curiae.

Mr. A.B. Girase, GP a/w. Mr. M. M. Nerlikar, Addl.G.P., Smt. G.R. Rahuwanshi, AGP for the Respondent Nos.5, 8 to 10/State.

Mr. S. S. Tope, Advocate for the Chchatrapati Sambajinagar Municipal Corporation-Respondent Nos.1 to 4.

Mr. Rajendra Deshmukh, Senior Advocate i/b. Mr. Vinod Patil, Adv. Kunal Kale and Mr. Amol G. Vasmatkar for Respondent-MJP.

Mr. S. B. Deshpande, Senior Advocate a/w. Ms. Sulakshana Ghule, i/b. Mr. D. S. Manorkar, Advocate for the Respondent-NHAI.

Mr. Ajay Talhar, the Assistant Solicitor General for Union of India.

Mr. R. N. Dhorde, Senior Advocate h/f. Mr. S. N. Suryawanshi, Advocate for Respondent No.15.

Mr. A. S. Bajaj, Advocate for Respondent No.10.

**CORAM : RAVINDRA V. GHUGE &
ASHWIN D. BHOBE, JJ.
DATE : 31st JANUARY, 2025**

P.C. :-

PAITHAN ROAD LAID ABOVE THE PIPELINE

1. The learned Senior Advocate Mr. Deshmukh appearing on behalf of the MJP has tendered an additional affidavit dated 30th January, 2025 along with certain annexures (beginning from page 291-A to 439). The said affidavit along with the annexures is taken on record and marked as 'Y-66' for identification.

2. Mr. Deshmukh draws our attention to the contents of the said affidavit which indicates several challenges insofar as the unfortunate overlapping of the pipeline by the Highway constructed from Chhatrapati Sambhaji Nagar to Paithan by the NHAI, for a distance of about 18 to 20 kms. We have extensively heard the learned Senior Advocates and the learned Advocates for the appearing parties.

3. The learned Senior Advocate Mr. Dhorde has placed on record a brief summary of the potential hazards and challenges that the new pipeline project will have to face and tackle, on account of the road having been laid above the land beneath which the

pipelines have already been laid. The potential hazards, as tendered through a note, are reproduced verbatim hereunder :

- 1. Every future maintenance or repair activity would require specialized and very heavy machineries, which would disrupt traffic and would potentially lead to long congestions and delays.*
- 2. The presence of heavy traffic over RWRM Pipes poses very high safety risks, owing to which additional safety measures are necessary, which is very high in cost.*
- 3. Each future maintenance, excavation work of RWRM pipes would substantially weaken the road bed, potentially causing settlement or damage to carriage-way, increasing cost for restoration of road after every routine round of maintenance.*
- 4. Due to carriage-way over RWRM Pipes, Air valves have to be installed vertically, which are more susceptible to damage from vehicular impact.*
- 5. Highways often have heavy vehicular traffic flow making it difficult to find access to pipeline for repairs. Further, adequate working space will be very difficult to make available and the entire road will have to be closed/blocked/shut at the time of maintenance works.*
- 6. Air valves require regular inspection and maintenance to ensure proper and undisturbed operation, having them at 500 mts interval vertically installed makes access for maintenance very challenging during high traffic or at night.*

7. Due to heavy traffic over carriage-way, there is increased risk of leakage as air valves are potential leakage points and if not maintained properly, there would be resulting damage to the road surface and other complications such as water pooling under mining of the road base, sub base, sub grade (foundation of road), etc.

8. The chambers for isolation valves (which are 8 nos) will have to be covered at road top level because of which the chambers are susceptible to get filled with rain water causing corrosion of operating gears, which may result in jamming of opening/closing of gears.

9. Without closing isolation points, draining of large section of pipeline for repair can be time consuming and costly.

10. Over a period, as there will be an increase in vehicular axel load on road, compaction of road settlement could stress pipeline joints and air valves & isolation valves, further leading to hazardous situation.

11. Carriage-way over RWRM Pipes poses a great hazard for vehicles and any possible rupture would cause tremendous loss and damage to life and property.

4. The Chief Engineer of the MJP Mrs. Manisha Palande has addressed us on the importance of the 'L' Section, which are a type of air valves. She has referred to certain full sheet designs and graphic presentation (two compilations of six pages each). She has apprised us of the importance of the air valves, butterfly valves,

scour valves and the locations of the surge tanks and air cushion valves. She has, therefore, summarised in stating that these are extremely significant components which would decide the optimum and safe functioning of the pumping of the water and the project.

5. An extensive hearing of more than 60 minutes was devoted with reference to the challenge to the project that has cropped up on account of the Highway to Paithan having been laid on the land beneath which the pipeline under the new project was already laid. We are informed that the asphaltting of the road has already occurred over a distance of almost 18 kms. which is a huge distance.

6. Naturally, we questioned the MJP as to what were their Officers doing since the pipeline was already laid beneath the ground as per the approved plans and designs, and the asphaltting of the Paithan road was undertaken later. Though the learned Senior Advocate Mr. Deshmukh has tried to convince us that the NHAI may have done this, we are not satisfied with the answer for the reason that the MJP could not have shut its eyes and gone into deep slumber when the road was being laid right above the pipeline, in

broad day light.

7. It is immaterial as to which Authority has faulted since the effect of what has happened is like a dark heavy cloud hovering over this project having the potential of blocking the further progress of this project. A blame game is not in the interest of the project. Neither a fact finding at this stage would advance the project. In fact, it would be consumption of enormous time and energy in finding out as to who is at fault. If this mindset is to lead to the assessment of a mistake or inadvertent act committed by any Body, the project would come to a standstill.

8. The residents of the Chhatrapati Sambhaji Nagar are reminiscent of the debacle of the samantar pipeline 20 years ago. As was expressed by this Court [Coram : Dipankar Datta (as His Lordship then was as the Chief Justice of this Court) and Ravindra V. Ghuge, J.], in the order dated 22nd July, 2022, wherein it was observed that it is a tragedy for the residents of Chhatrapati Sambhaji Nagar that they are supplied drinking water once in 8 to 9 days. This Court had recorded with great pain that they were treated shabbily.

9. As we advert to the above issue in retrospect, we need to record our appreciation to the efforts of the Government of Maharashtra which sanctioned this project and is extending the funds amounting to Rs.2700 Crores. So also, the NHAI needs to be complemented for having avoided any confrontation with the MJP in this project, since it was a coincidence that the laying of the new Highway coincided with the laying of the new water project pipeline. In such a project of a huge magnitude, being a once in a lifetime project, there are bound to be several challenges and issues. Avoiding confrontation and avoiding a blame game would be a pragmatic approach in the larger interest of the 18 lakhs plus population of the Chhatrapati Sambhaji Nagar. It would cause a great damage to the project if a pedantic approach is adopted at this stage.

10. We are informed that the Hon'ble Chief Minister of this State had conducted an urgently convened meeting in the Hon'ble Chief Minister's War Room on the 7th Floor in Mantralaya on 9th January, 2025. The minutes of the meeting were cited before us, which are a part of the progress report of the High Court Constituted Committee (HCCC), which were placed before us in the respective

affidavits of the MJP as well as the project contractor. In a well thought of decision taken by the Hon'ble Chief Minister, it has been suggested to the NHAI to acquire land on the patch on which the Highway has mounted above the pipeline laid beneath it.

11. The learned Senior Advocate Mr. Deshpande, representing the NHAI, has been very fair in suggesting that NHAI would do its best for ensuring the success of the project as well as its road. He, however, cannot make a statement as regards the decision of NHAI to acquire the land for overcoming this peculiar problem. The learned Senior Advocate Mr. Dhorde informs, on instructions, that the Hon'ble Cabinet Minister of Surface Transport, Government of India, has already conveyed through a letter to the Hon'ble Chief Minister of the State of Maharashtra and the issue is being worked out.

12. We appreciate this gesture since it would only be through the intervention of the Hon'ble Cabinet Minister of the Government of India and the Hon'ble Chief Minister of the State of Maharashtra, to ensure that the land is acquired and the alignment of the Paithan road is shifted for about 4 meters away from the pipeline

which is already laid beneath the ground. The learned Advocates appearing on behalf of the litigating parties convey their gratitude and expect the learned Senior Advocate Mr. Deshpande to convey their feelings to the Hon'ble Cabinet Minister of Surface Transport, Government of India.

SURGE TANKS

13. With regard to the four surge tanks which actually are safety measures for ensuring the control of the water flow in the pipeline. A peculiar feature is that the flowing water can suffer a returning effect, which is defined in technical terms as 'the water hammering effect'. We are informed that there are four locations which are selected by the MJP for erecting these surge tanks, which are designed to be at the height of 20 meters for this project. There are two locations at Farola and Dhorkin, where government land is available and it is stated that the Chhatrapati Sambhaji Nagar Corporation has already made a commitment to the MJP for allotting land at the location of Frigorifico Allana factory.

14. Insofar as the land at sub-station chainage 3270, located at Isarwadi Paithan, under the jurisdiction of 132kV station, the

learned Advocate Mr. Bajaj has placed on record a copy of the report dated 30th January, 2025, generated by the Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL). The same is marked as ‘Y-67’ for identification. Mr. Bajaj submits that a three members committee had carried out the inspection in view of the earlier order of this Court and it is noticed that the said land is under the control of Maharashtra State Electricity Transmission Company Limited (MSETCL). 4 gunthas are required for each surge tank.

15. Mr. Bajaj informed this aspect to the standing counsel for MSETCL Mr. Anil Gaikwad. We appreciate that Mr. Anil Gaikwad, on a single call from Mr. Bajaj, has presented himself in the Court and has addressed us through the video conferencing mode from Aurangabad. He submits that he would take instructions and address the Court on the next date. We express that MSETCL would render its wholehearted co-operation for the success of this project by agreeing to let 4 gunthas of land be utilised for erecting a surge tank at 33kV sub-station chainage 3270 located at Isarwadi Paithan.

16. With regard to the spot located near the Frigorifico Allana (a private leather factory), the learned Senior Advocate Mr. Dhorde submits that it is informed that the Municipal Corporation would be pursuing a private owner to offer his 4 gunthas of land for such a project. We are conscious that the said owner is likely to ask for compensation and we are sure that Mr. Tope, learned Advocate for the Corporation would apprise his client, in order to arrive at a decision with promptitude so as to be conveyed to the Court in the next hearing.

OBSTRUCTION NEAR SAIBABA TEMPLE

17. Mr. Deshpande, the learned Senior Advocate submits, on instructions that near the location of the Saibaba Temple, there are two properties which are an obstruction. One is the Anand Hotel and a private owner by the name Mr. Reddy. Mr. Deshpande submits that both these properties are actually on the Right of Way (ROW). Hence, there is no question of compensation to be paid. Nevertheless, this problem will have to be resolved.

18. Mr. Dhorde, the learned Senior Advocate has suggested and we find the said suggestion to be appropriate, that the learned

Government Pleader Mr. Girase along with the learned Advocate for the Corporation Mr. Tope, as well as the NHAI, would carry their records and their personnel from the concerned department in order to measure the said road as per the old documents. If the obstruction is within the ROW, we permit the Authorities to initiate appropriate steps for clearing the said obstruction. If it is beyond the ROW, then we see no problem for progressing the pipeline project work on the space/land as is available. While undertaking this exercise of measurement, the proprietors/owners of the two properties would be permitted to be a witness to the measurement and the available records would also be shown to them in order to maintain transparency and to ensure that they do not carry an ill feeling of any act of injustice.

19. We expect Mr. Girase, Mr. Tope, Mr. Deshpande for the NHAI and Mr. Deshmukh representing MJP to visit the spot near the Saibaba Temple to deal with the obstructions of Anand Hotel and Mr. Reddy, on 3rd February, 2024/4th February, 2024 and resolve the issue by 7th February, 2025.

ELEVATED STORAGE RESERVOIRS

20. Insofar as the ESR are concerned, we have considered the submissions of the learned Amicus Curiae Mr. Sachin Deshmukh. He has expressed concern about the ESR being delayedly handed over to the Corporation taking into account the earlier orders that have been passed by this Court. On several occasions, the timeline has been extended. Mr. Tope quickly joins Mr. Deshmukh in support of the concern voiced and submits that the sooner the better that the ESR are handed over to the Corporation. Mr. Dhorde submits that the project contractor has been concentrating on such issues which require immediate attention. The work of the Jackwell as well as the ESR and Ground Storage Reservoir (GSR), is progressive. These issues will be addressed to the HCCC in the meeting scheduled on 5th February, 2025.

CONTRADICTORY STATEMENTS PUBLISHED

21. The learned Amicus has brought to our notice, the publication of various contradictory statements being made by some social workers. He submits that the public at large gets confused due to such statements and there is a growing feeling that this project

would suffer the same fate like the Samantar Pipeline 20 years ago. We express our displeasure and we request the residents of the Chhatrapati Sambhaji nagar residents to show restraint and avoid making any statement on this water project.

22. We are listing this Public Interest Litigation for further hearing on 14th February, 2025 at 3.00 p.m.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)