
(1996) 12 BOM CK 0008
In the Bombay High Court
Case No : Writ Petition No. 220 of 1986

Yeshwant Tukaram Raut

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 12-12-1996

Acts Referred:

Constitution of India, 1950 — Article 14
Land Acquisition Act, 1894 — Section 5A

Citation : (1997) 3 ALLMR 35 : (1997) 4 BomCR 442

Hon'ble Judges : V.P. Tipnis, J; S.S. Nijjar, J

Bench : Division Bench

Advocate : M.D. Angal, for the Appellant; C.R. Sonawane, A.G.P. for respondent Nos. 1 and 2 and G.S. Hegde, for the Respondent

Final Decision : Dismissed

Judgement

V.P. Tipnis, J.—The petitioner is a resident of Virar and survey number 264/A/33 of village Virar is owned by the petitioner having 1/3rd share in the said land and 2/3rd belonging to the petitioner's deceased uncle Bhaskar Nana and after his death the sons of said Bhaskar Raut. Survey No. 264/A/1 of village Virar, Taluka Vasai, Dist. Thane admeasures about 25 gunthas and there is a well in the land. The said land belongs jointly to 15 persons including the petitioner. Survey No. 264/A/36 of village Virar admeasuring 11/2 gunthas belongs to Haribhau Govind Vartak and five others. Petitioner claims to be in possession of this land as a tenant. Ultimately tenancy proceedings were commenced and by an order dated 26-9-1985 passed by the Competent Authority the petitioner was declared to be tenant of the said land. All these lands are being acquired for a proposed State Road Transport Bus Stand. The petitioner submitted that he was served with a notice dated 9-11-1983 informing that Survey Nos. 264/A/33 and 264/A/1 are intended to be acquired for a public purpose viz. for construction of S.T. bus stand. The petitioner was invited to submit objections, if any. The petitioner says that along with other persons affected, he submitted his objections. The objections broadly were that Survey No. 266 which belongs to Haribhau Vartak is

specifically reserved for the purpose of construction of S.T. bus stand and the same ought to have been acquired and the petitioner and other small land holders like him should not be deprived of the lands which are bagayat lands. It was further pleaded that the schools which are situate nearby these plots will also be demolished and great hardship and inconvenience will be caused not only to the petitioner but also the villagers in general. It was contended that S.T. Corporation has already acquired Survey No. 290 for the purpose of construction of S.T. stand and there is no necessity of acquiring another land. The petitioner has stated that he was expecting a hearing to be given. However, no hearing u/s 5-A of the Land Acquisition Act was given to him. It is the contention of the petitioner that he came to know about the acquisition when on 23rd October, 1985 notice u/s 9 of the Land Acquisition Act was served on him. The petitioner has further stated that though he is a tenant in respect of Survey No. 264/A/36 of village Virar, no notice either u/s 4(1) or section 6 or section 9 of the Land Acquisition Act was ever served on him. It is further contended by the petitioner that under the Town Planning Scheme, Survey No. 290 having an area of about 25000 sq. mts. has been shown as reserved for the purpose of construction of S.T. bus stand. According to the petitioner, Survey No. 290 is abutting Agashi-Virar Road. The said road is more than 60" in width. The petitioner has further stated that State Government has also reserved Survey No. 266 as alternate plot for construction of S.T. bus stand. Said Survey No. 266 belongs to Haribhau Vartak and others. According to the petitioner, Haribhau Vartak is an influential political leader and has been a Minister for a long period and in order to favour said Vartak, respondent No. 1 i.e. the State has modified the development plan and released Survey No. 266 from the reservation. It is alleged that releasing the Survey No. 266 and issuing notification u/s 4 under the Act for the purpose of acquiring the lands of the petitioner and others is illegal. The petitioner has annexed a map to the petition and referring to the map it is stated that there is a narrow road of about 10" width abutting the land belonging to the petitioner and this road of 10" is not at all suitable for the purpose of running the traffic of the buses. It is further alleged that in Survey No. 264/A/1 there is a well. The well is considerably big and even for filling the well and making the road through it expenses will be more than Rs. 10 lakhs. It is reiterated that abutting the road there are Hindi and Gujarati schools. For all these reasons it is asserted that the acquisition of the suit land is not only inconvenient for the purpose of construction of S.T. bus stand but it is also mala fide and has been done with the sole intention to favour Shri Vartak. For all these reasons it is prayed that the acquisition proceedings including the notifications under sections 4(1) & 6 and notices u/s 9 be quashed.

2. Affidavit in reply has been filed initially by the Special Land Acquisition Officer. It is pointed out that notification u/s 4 was issued on 11-10-1983 and published on 27th October, 1983 in respect of several lands including the lands which are subject matter of this petition. Notices u/s 4(1) were served on the interested persons between 22nd to 24th November, 1983 and enquiry u/s 5-A was held on

29th November, 1983, that the objections of the interested persons were duly considered. Thereafter, after the publication of the notification u/s 6, notice u/s 9 of the Act was published on 4-11-85 and individual notices were also given on the very day. It is relevant to notice that it is asserted that the petitioner appeared before the authority on 8-11-85 and as per his application the date was extended to 25-11-85. It is stated in the affidavit that in the revenue records Survey No. 264/A/36 of village Virar does not show the name of the petitioner and it is for this reason there is no question of serving any notice on the petitioner.

3. Affidavit is also filed on behalf of the Maharashtra State Road Transport Corporation (M.S.R.T.C.) for whom the lands are being acquired for construction of bus stand. It is stated in the affidavit that the acquisition is for a public purpose of State Transport Bus Stand nearby Virar Railway Station. It is asserted that the lands acquired are more suitable for the purpose. It is pointed out in the affidavit that though initially survey Nos. 290 and 266 were shown as reserved for S.T. bus stand under development plan subsequently the present site has been reserved by the Government in the development plan of 1980 for the purpose of S.T. stand. It is categorically stated that the portion on which well is situate is not at all under acquisition. Similarly there is no school building which is included in the acquired lands, the fear of demolition of which is expressed by the petitioner. It is denied that Survey No. 290 is already acquired by the M.S.R.C. The affidavit categorically asserts that the lands proposed in the earlier development plan were not suitable for the purpose of the Transport Corporation as the lands were away and without proper access. Besides that there were large number of semi permanent structures in Survey No. 290 and for Survey No. 266 there is no approach road and it is for these reasons that the said survey numbers were deleted in the subsequent development plan of 1980. It is stated that moreover the Passenger Association also pressed for the present site as more suitable. It is asserted that the present land being nearer to the Virar Railway Station having an access of village panchayat road adjoining to the main road are more suitable for the purpose of acquisition. The allegation that the present acquisition is to favour Mr. Vartak is denied. It is stated in the affidavit that the possession of the adjoining land bearing Survey No. 264-A/22, 264-A/34, 264-A/35 and 263-A/1. Part are already taken over by the Corporation on 3-3-1987 and only because of the proceedings taken out by the petitioner the work of construction of S.T. Bus stand is held up. It is asserted that completion of S.T. Bus stand is a dire need for the public purpose. It is also contended that the other co-owners having 2/3rd share are not impleaded nor Shri Haribhau Vartak of whom the petitioner claims to be tenant in respect of Survey No. 264/A/33. It is reiterated that there is no road to enter Survey No. 266 (Part) and there are semi permanent structures and a Hanuman temple on the land of Survey No. 290. These plots are not at all suitable for the purpose of construction and from traffic point of view. It is categorically stated that there is no possibility of demolition of the school as apprehended by the petitioners.

4. A further affidavit filed by the Special Land Acquisition Officer, Thane points out that the lands are required for the public purpose of M.S.R.T.C. that the possession of other lands notified have already taken after passing the necessary Award and only due to interim stay by the High Court, possession of the petitioner's land was not taken. Thereafter it is stated that in respect of Survey Nos. 263/A/1/2(Pt.), 264-A/22 (Part), 264-A/34 and 264-A/35 Award has been passed and declared on 27-1-1986 and the possession has been given to the acquiring body i.e. M.S.R.T.C. on 3rd March, 1987. It is further asserted that Survey No. 264-A/36 is owned by Vartak family and Survey No. 263-A/1(1/3) Part having large area of 26 acres and Survey No. 288-A (2 part) admeasuring 5.5 acres is also declared u/s 4 for the purpose of acquisition which lands also belongs to Vartak family. In respect of these two latter survey Numbers, the proceedings have been stayed by virtue of stay order granted in Writ Petition No. 2161 filed by one Ushabai and her husband. It is reiterated that possession of all other lands have been taken and the portion under the School and the well is not at all disturbed. It is relevant to notice that in the affidavit in rejoinder filed by the petitioner he has asserted that Survey No. 266 is adjacent to the Railway Station and, therefore, it is not known as to how and why any approach road is at all necessary for going to this land from the Railway Station.

5. We have heard Shri Angal, the learned Counsel for the petitioner at length. We have also heard Shri Sonawane, Asstt. Government Pleader for the State and Shri Hedge, the learned Counsel appearing for the acquiring body viz. Maharashtra State Road Transport Corporation.

6. Shri Angal raised two points. Firstly he contended that the entire acquisition proceedings are vitiated as no enquiry or hearing was held under the provisions of section 5-A of the Land Acquisition Act. So far as this aspect is concerned, it is relevant to notice that admittedly the petitioner was served with a notice dated 9-11-1983 informing him that Survey Nos. 264/A/33 and 264/A/1 are intended to be acquired for a public purpose viz. for construction of S.T. bus stand. The petitioner was also called upon to submit his objections. In fact, petitioner submitted his objections. The petitioner has thereafter contended that petitioner believed that he would be given further notice of hearing the objections. However, no such hearing was given to him. In this regard it is relevant to advert to the contents of the notice given to the petitioner. The notice clearly says that notification u/s 4(i) has been published in the Government Gazette in respect of the lands mentioned therein which are intended to be acquired for the public purpose of S.T. Bus stand. The notice further mentions that as the petitioner is a person interested he was informed that if he has any objection for the acquisition he should submit the same in writing either personally or through an advocate at 1.00 p.m. on 29th November, 1983 or earlier. The objections were to be filed in the office of the Talathi, Virar. What is extremely relevant to notice is that thereafter the notice clearly and expressly states that at the time of filing of the said objections the signatory of the notice viz. the Special Land Acquisition Officer will also hear the petitioner or his lawyer. The original record has been

produced before us which shows, and which is an admitted position before us, that by letter dated 29th November, 1983 signed by the petitioner and other interested persons the written objections were lodged. Those objections clearly show that the petitioner and others have received the notice and accordingly they have remained personally present at 1.0" clock on 29th November, 1983. This clearly shows that the petitioner and other persons had understood the notice and had remained personally present with objections. Shri Angal submitted that though petitioner and others remained personally present, no hearing was given. We are not impressed by this submission. If petitioner and others wanted to adduce any evidence or wanted to say anything further they ought to have told the Special Land Acquisition Officer when they personally met him. In the very file there is also an application made by one Mr. Y.N. Mhatre on the very day i.e. 29th November, 1983 requesting the Special Land Acquisition Officer to grant time to make his submissions and accordingly the Special Land Acquisition Officer has given time till 15th December, 1983 for taking objection to said Mhatre. This clearly showed that had the petitioner sought any time for adducing evidence or for any other reason or further hearing, certainly the same could have been granted. In our opinion, on the basis of facts and circumstances of the case we are satisfied that the requirements of provisions regarding hearing of as contemplated u/s 5-A of the Land Acquisition Act was complied with.

7. Shri Angal in that behalf relied upon several decisions. He relied upon the decision of the learned Single Judge of the Punjab and Haryana High Court reported in *Gurcharan Singh and Others Vs. State of Punjab and Others*, . In paragraph 8, on which reliance was placed by Shri Angal, the learned Judge of the Punjab and Haryana High Court has observed that a close perusal of the decisions of the Apex Court reported in *Shri Mandir Sita Ramji Vs. Lt. Governor of Delhi and Others*, and *Shri Farid Ahmed Abdul Samad and Another Vs. The Municipal Corporation of the City of Ahmedabad and Another*, leaves no manner of doubt that it is mandatory for the Collector to serve notice on the landowner who files written objections u/s 5-A and to provide him opportunity of hearing and non-compliance with this essential requirement vitiates the subsequent proceedings. In the case before the learned Judge, the State Counsel was not able to show from the record if petitioner therein who had filed objections was served with a notice u/s 5-A of the Act or if any opportunity of hearing was provided to him. Shri Angal then relied upon the decision of the Apex Court reported in *Shri Farid Ahmed Abdul Samad and Another Vs. The Municipal Corporation of the City of Ahmedabad and Another*, , which lays down that the heart of section 5-A of the Land Acquisition Act is the hearing of objections and under sub-section (2) of that section a personal hearing is mandatorily provided for. Section 5-A does not rest on a person's demand for personal hearing. The matter may be different if a person whose property is acquired abandons the right to a personal hearing. Provision of appeal is also not a substitute for personal hearing provided for u/s 5-A of the Land Acquisition Act. Having gone through these authorities and in the facts and circumstances of the case, to

which we have made a detailed reference, we are not at all impressed by the submission of Mr. Angal that the petitioner was not afforded hearing as contemplated u/s 5-A of the Land Acquisition Act. Shri Angal next brought to our notice the rules framed by the State for guidance of officers in dealing with objections u/s 5-A. Rule 1 of the said Rules provides that whenever any notification u/s 4 of the Act has been published but the provisions of section 17 have not been applied and the Collector has under the provisions of section 4(1) issued notices to the parties interested; and on or before the last day fixed by the Collector in those notices in this behalf any objection is lodged u/s 5-A(2), firstly the Collector shall record the objection in his proceedings, secondly the Collector shall consider whether the objection is admissible according to the Rules. Rule 2 provides for about six grounds on which the acquisition could be objected to. Rule 3 provides that after admitting an objection and after having given the objector an opportunity of being heard either in person or by pleader, the Collector shall decide whether it is desirable to hear oral or documentary evidence which u/s 14 or section 40 of the Act, he has power to call for, if evidence tendered by the objector is admitted, the Collector shall also afford the other party an opportunity of rebutting it by other evidence or of cross-examining the witnesses. If he admits evidence, he will fix a time and place of hearing it and will hear and record it in his proceedings. After completing the record of evidence, the Collector shall submit his report and recommendation as to each objection, whether inadmissible or admissible for the orders of Government u/s 5-A(2) of the Act. Shri Angal in this behalf relied upon the decision of the Division Bench of this Court reported in 1972 M. L.J. 103 Sardar Ajitsingh v. State of Maharashtra, which lays down that Rules framed u/s 55(1) have the force of law. Provision for giving an individual notice to the owner or other party interested in the land contained in Rule 1 is by the rule made an additional mode of publishing the notification u/s 4. The requirement of Rule 1 regarding service of individual notice is mandatory and not directory. The non-service of an individual notice as contemplated by Rule 1 would render the notification issued u/s 6 invalid because it would not give proper opportunity to the person interested to urge his objections as contemplated by section 5-A. In the facts of the case before the Court admittedly no notice whatsoever was given to the petitioner therein. Shri Angal urged that after giving notice of filing of objections the Land Acquisition Officer must give a further date for hearing of those objections and that the Rules do not permit simultaneous recording of the objections and the hearing. After having gone through the Rules and provisions of section 5-A of Land Acquisition Act we do not find any warrant for such a conclusion. The objectors are specifically invited to remain present personally or through their lawyer with a clear notice that at the time of the submission of objections the hearing will be afforded to him. In the facts of the case before us in fact the petitioner personally remained present at 1.0 o'clock on the specified date in pursuance to the notice of hearing. Under these circumstances unless there is material to show that the petitioner still wanted to adduce some evidence or produce some documents it cannot be stated that no hearing was

given to the petitioner. As already observed in fact such a course was followed by the Land Acquisition Officer in case of one Mr. Mhatre who sought further time. Once the notice of hearing is given it is for the person interested to adduce whatever evidence he wants to adduce or to submit personally whatever he wants to submit. We find it difficult to accept the submission of Shri Angal that submission of the objections & the hearing cannot be simultaneous in any case. After reading the Rules and provisions of section 5-A we do not find any justification to hold that after filing of the objections necessarily in every case the Land Acquisition Officer must give a further date. In this respect it is also relevant to notice that the report submitted by the Land Acquisition Officer u/s 5-A dated 26th July, 1985, which original report was produced before us by the learned Asstt. Government Pleader, clearly shows that all the objections taken by the petitioner were specifically considered & taken into account which demonstrates that it is not as if the objections of the petitioner were not considered at all by the Land Acquisition Officer before making a report u/s 5-A of the Act.

8. The next submission of Shri Angal was that the lands which are sought to be acquired are not suitable. In that behalf it is necessary to refer to the specific objections raised by the petitioner in his objections. The first objection is that if the S.T. Bus stand is constructed the well (pani khadda) will be destroyed and all people having their bagayati land including the petitioner may be deprived of the said bagayati lands. (ii) If the stand is constructed there the schools namely Gujarati School, Hindi School and Balwadi will be destroyed and students will be deprived of good education. (iii) Earlier the Development Plan showed Survey No. 266 as reserved for the S.T. stand. The said survey number belongs to Bhausaheb Vartak. The same survey number should be acquired. The fourth objection is that the petitioner and others interested are small landholders and they should not be deprived of their small land holdings. The fifth objection is that at Virar-Agashi Road the land of Khanderao Joshi is already taken over by S.T. Corporation. Therefore, there is no further need of the land by the S.T. Corporation. Similar such objections are reiterated in the petition. We have already made detailed reference to the assertions made in the affidavits in reply filed on behalf of the State and by the M.S.R.T.C. In those affidavits it is categorically asserted that the land over which the well is situate or over which the Gujarati School etc. are situate are not at all being acquired. It is not shown to us that in the land acquired either the well or the school is situate. In any case even if it is so situate at best the interested persons will be entitled to claim compensation for the same. So far as the allegation that Survey No. 290 belonging to Khanderao Joshi is already acquired is concerned it is categorically refuted and now it is an admitted position before us that Survey No. 290 is not at all acquired but what is contended is that Survey No. 290 and Survey No. 266 were shown as reserved for S.T. Bus stand in the Town Planning Scheme. Shri Angal submitted that when two plots of land are already reserved for a specific purpose of S.T. Bus stand it will not be permissible for the State to acquire some

other land for the very purpose without acquiring the lands so earmarked. Though the submission is impressive the same does not bear scrutiny. The right of the state to acquire lands under the Land Acquisition Act as per the provisions of the Act cannot be curtailed by the Development Plan and it is not as if no other land excepting that which may be earmarked for a particular public purpose in the development plan can be acquired if all requirements of the law and the Land Acquisition Act are complied with. So far as the suitability of the land vis-a-vis Survey No. 266 and Survey No. 290 are concerned, though the petitioner has claimed that survey Nos. 290 and 266 are more suitable and the land proposed to be acquired are not at all suitable the State and the S.T. Corporation has categorically denied this. Firstly it may not be open to this Court in this proceeding to enter upon the controversy of suitability of a particular plot of land. Once it is established that the lands are being acquired for a public purpose then the suitability and the extent of lands required for the purpose normally has to be left to the State. In the facts and circumstances of the case, in addition we find that the respondents have offered very cogent reasons even on the aspect of suitability. We have already made reference to the detailed assertions of the respondents in that behalf which shows that so far as Survey No. 290 is concerned there were large number of semi permanent structures including a Hanuman temple and so far as Survey No. 266 there is no approach road. It is further asserted that the reservation for the purpose of construction of S.T. stand in respect of Survey Nos. 266 and 290 has been deleted from the Development Plan of the year 1980. It is asserted that even the Passengers Association has pressed for the present site as more suitable. It is further asserted that the present land being nearer to Virar Railway Station and having an access of Village Panchayat Road adjoining the main road are more suitable lands for the purpose of acquisition. It is also asserted that even from traffic point of view the present site proposed to be acquired is more convenient than Survey No. 266 and Survey No. 290. There is a rough map annexed to the petition which, in our opinion, is absolutely misleading. It shows as if Survey No. 266 abuts the road. It is an agreed position before us that the said map annexed is not to the scale but is a rough map. With a view to understand the physical position we called upon the State to produce an authentic map and accordingly we were shown the authentic map of the Town Planning Scheme which reflects altogether a different situation than which is reflected in the map annexed to the petition. In our opinion the assertions made by the respondents authorities are borne out by the factual situation. Shri Angal further contended that if there were any changes in the Development Plan the petitioner ought to have been noticed. In our opinion, there is some confusion in the submission. We are concerned only with the acquisition. If the deletion of survey Nos. 266 and 290 and any changes in the Development Plan are made contrary to the provisions of the Maharashtra Regional Town Planning Act, the petitioner ought to have challenged the same by filing a petition at an appropriate time. We do not have any data at all so far as the publication of the draft development plan, the various notifications issued thereunder and the changes brought thereunder. It is

impossible to presume that the required provisions of the law were not followed without any material being put on record so far as the publication of the development plan is concerned. As such we do not find any merit in the submission of Shri Angal so far as this aspect of the matter is concerned. In support of his second submission Shri Angal relied upon the decision of the Division Bench of the Madras High Court reported in A. Subbiah Vs. Deputy Secretary to the Government of Tamilnadu, Social Welfare Dept., Madras, , where the petitioners therein had dug up a well at enormous cost and developed the land and they had turned into a coconut "tope" with 200 coconut yielding trees and in the small portion sugarcane crop was also raised. The small farmers had only that land for their livelihood. The lands were low lying lands and there were better alternative sites. Some of the Harijans in the locality for whom the land was sought to be acquired themselves had stated that the land is not suitable for their living as it is a low lying area and that an alternative site in a higher level situate near the existing Harijan Colony may be acquired. It is on the background of such facts and circumstances of the case that the particular acquisition therein was quashed. Shri Angal also relied upon the decision of the learned Single Judge of the Calcutta High Court reported in Daga Auto Service Pvt. Ltd. and Another Vs. The Land Acquisition Collector (Special Railway Cell), , which lays down that whether or not there is any alternative land which could be acquired or the purpose of acquisition would be better served by acquisition of any other property are not relevant as such but only relevant to the extent that if there is any alternative accommodation available which could be acquired without causing inconvenience or less inconvenience or the purpose intended would be better served by acquisition of that property and if the Land Acquisition Collector does not take that land into consideration for acquisition then the order & the report may become vulnerable as arbitrary. The very decision states that it is not in all cases that the Land Acquisition Collector is required to go into the technical aspect of the preference in a particular acquisition proceeding. What he has to be satisfied, however, is that there are cogent reasons for not accepting the alternative property. To that limited extent, the Land Acquisition Collector is obliged to consider the question of any alternative site proposed to him. The very decision further lays down that merely suggesting an alternative site is not enough because the requiring authority or the acquiring authority is entitled to make a choice from several alternatives even assuming that they are alternatives. But it has to be indicated that the alternative sites proposed are better sites in the sense that either these would better subserve the purpose of the requiring authority or that these would cause less hardship to the persons whose properties are being acquired or that these would be less expensive for the purpose. In the absence of such suggestions the challenge to the report of the Collector cannot be upheld. In the facts and circumstances before us, to which we have made detailed reference, none of these authorities help or support the submissions of Shri Angal. Shri Hegde for the acquiring body also brought to our notice the decision of the Apex Court reported in 1996 (2) C.C.C. 377 S.C. Subhashgir Khushalgir Gosavi and others v. Special LAO and others,

which lays down that it is for the Government to take a decision and it is not for the Court to give any finding in that behalf. This was with relation to selection of a particular plot of land for the purpose of S.T. bus stand and depot in a renowned temple town Pandharpur.

9. Shri Hegde for the Corporation and Shri Sonawane for the State also contended that section 4 notification in the case was issued on 27th October, 1983. Notices u/s 4(1) were issued on 9th November, 1983. Section 5-A enquiry was held on 29th November, 1983. Remarks of the acquiring body viz. M.S.R.T.C. were obtained on 6th January, 1984. Section 6 Notification was issued on 5th September, 1985. Section 9(3)(4) notices were issued on 4th November, 1985 and the writ petition was filed on 14th January, 1986. Stay was granted on 21st February, 1986. The petition was dismissed and stay vacated on 28th June, 1988. Thereafter in fact Award was declared on 3rd October, 1988 even in respect of the lands which are subject matter of this petition. It is asserted that possession was taken on 27th October, 1988 and thereafter the present writ petition was restored on 21st November, 1988. On the basis of these facts it is urged that the petition is grossly delayed and on that count should be dismissed. In that behalf reliance is placed on the decision of the Apex Court reported in The Ramjas Foundation and Others Vs. Union of India and Others, . Shri Hegde also submitted that in view of the aforesaid facts the Award having been passed and the possession having been taken, in law the property is vested in State without any encumbrance under the provisions of the Land Acquisition Act & no relief whatever can be granted to the petitioner in this petition, & in that behalf he heavily relied on the judgment of the Apex Court in the matter Allahabad Development Authority v. Nasiruzzaman and others, reported in 1996(4) C.C.C. 31 S.C. In view of the fact that we have held against the petitioner on the merits of the matter, we consider it unnecessary to express any opinion on these submissions specifically raised by the respondents.

10. Shri Hegde and Shri Sonawane also submitted that, as a matter of fact, the map annexed to the petition is misleading and some of the averments in the petition are also not factually correct. They urged that special costs should be awarded to the respondents. After having considered all the aspects of the matter we do not consider it necessary to award such special costs.

11. In the result the petition fails and the Rule is discharged with costs.

12. At this juncture Shri Angal prays for continuation of the stay for some more period. Upon consideration of the facts and circumstances of the case & the fact that construction of S.T. Bus stand is delayed for last several years, we are not inclined to accede to the request of Shri Angal. Accordingly the prayer of Shri Angal for continuation of stay is rejected.