
(2021) 07 BOM CK 0022

Bombay High Court

Case No: Writ Petition No. 4694, 4937, 5250, 5826, 5997, 6155, 7270 Of 2020, Civil Appeal
No. 5114, 5136, 5553 Of 2020, 3480 Of 2021

Bhagauji S/o Nathaji
Maind And Others

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision: July 3, 2021

Acts Referred:

- Constitution Of India, 1950 - Article 21, 226, 300A
- Bombay Highways Act, 1955 - Section 3

Hon'ble Judges: S.V. Gangapurwala, J; Shrikant D. Kulkarni, J

Bench: Division Bench

Advocate: S.S. Tope, A.R. Kale, D.G. Nagode, N.T. Tribhuwan, S.K. Kadam, Deepak K.
Rajput

Final Decision: Disposed Of

Judgement

,,,

Shrikant D. Kulkarni, J",,,

1. Rule. Rule made returnable forthwith. With the consent of the learned counsel for both the sides, heard finally at admission stage.",,,

2. This bunch of writ petitions can be disposed of by common judgment and order by looking to the similar facts and question of law involved therein.,,,

3. Factual matrix -,,,

(a) The petitioners are resident of different villages situated in Taluka Jalna and Ambad, District Jalna. They own agricultural lands adjacent to",,,

National Highway No. 753H (previously known as State Highway No. 176). According to the petitioners, in their agricultural lands, they have their",,,

residential houses, wells, fruit trees, bore-well etc. which are also adjacent to the National Highway No. 753H." ,,,

(b) The road in question was a small road earlier and it came to be converted into State Highway without payment of any compensation to the,,

petitioners while expansion of State Highway.,,,

(c) It is the stand of the petitioners that the existing width of the road is about 12 meters. The respondents have recently issued a letter of award and,,

started expansion of the road/up-gradation of the road to 30 meters without acquisition of land. The respondents are trying to take forcible possession,,,

of the lands of the petitioners. The respondent- authorities have cautioned to the petitioners even to use police force while taking possession. The,,,

petitioners have made it clear that they are not opposing for the road widening/up-gradation of road in question but the authority should acquire their,,,

respective lands for up-gradation of the roads as per due procedure of law. The authorities while converting the small road into said Highway No. 176," ,,,

not initiated acquisition proceeding and thereby deprived of compensation of their lands which were acquired. The respondents have started up-,,,

gradation of the road in question from Sillod to Wadigodri in a phase-wise manner. The petitioners are 29 WP-5250-2020 & Ors J . concerned with,,,

the phase of Dhangar Pimpri to Wadigodri for which the authorities are attempting to take the forceful possession of their lands under the pretext of,,,

resolution regarding adjacent lands of road which need not require acquisition. The stand taken by the authorities is not genuine.,,,

(d) According to the petitioners, the Government or the State authorities cannot take possession of land of any land owner without following due",,,

procedure of law. Article 300-A of the Constitution provides that no person shall be deprived of his property save by the authority of law. The action,,,

initiated by the respondent-authorities thereby taking forcible possession of the lands belonging to the petitioners for road widening by showing the,,,

Government Resolution is contrary to the provision of Article 300-A. All the petitioners are similarly situated. It is their common grievance and,,,

apprehension that the respondent- authorities may take forcible possession of their respective lands without following due process of law. In the above,,,

premise, they have rushed this Court by invoking extraordinary jurisdiction of Article 226 of the Constitution of India.",,,

The stand of the Chief Engineer (National Highway, P.W.D., Executive Engineer, National Highway Division/ Union of India (Respondent Nos. 2,4",,,

and 7),,,,

(e) According to respondent Nos. 2, 4 and 7, the road in question is a part of National Highway No. 753H in view of Central Government",,,

Notification/Gazette dated 06.02.2018. Previously, the said road was 30 & Ors J . known as State Highway and it was under the control of",,,,

Government of Maharashtra and under the jurisdiction of Executive Engineer, P.W.D. Jalna. The road in question is in a possession of the",,,,

Government since last more than 40 years. The disputed road was a State Highway No. 50A and in the year 1981-2001, it was declared as State",,,,

Highway No. 176 and in the year 2001-2021, same is declared as major State Highway No.13. The said major State Highway is declared 30 meter",,,,

road in the Maharashtra Gazette in the year 1996. The State Government has issued Government Resolution to that effect dated 26.10.2010. It is the,,,

stand of the Union Government that the petitioners cannot claim any compensation after lapse of 20 years in respect of acquisition of their lands while,,,

expanding the road as State Highway in view of decision of the Apex Court in case of State of Maharashtra Vs. Digambar reported in 1995 (4) SCC,,,

683.,,,,

(f) It is the stand of the Union of India/Central Authorities that they are not constructing new road but improving the road in existence with same,,,

alignment while converting the same into National Highway standard. The road construction is within the Right Of Way (ROW) i.e. 30 meters (100,,,

feet only) as per the Road Development Plan which consist two lane road only. Expansion of the road into National Highway standard is for the,,,

benefit of the adjacent farmers to transport agricultural produce from remote area and nearby rural areas to urban areas. It may boost the economy of,,,

that area. This will improve connectivity to villages with cities, medical facilities, education etc." ,,,

(g) It is further stand of the Central authority that it is an attempt made by the petitioners to seek compensation in respect of lands which were already,,,

used for expansion of the road more than 56 years back. As per the scales of village maps of Shahpur, Dadhegaon, etc, the width of the road is 30" ,,,

meters everywhere and as per topographical sheet of Survey of India department, survey made in 1968 to 1969 and revised in the year 1971, the" ,,,

existing road has been shown in the road development plan published by the Government of Maharashtra for the year 1961-1981 (SH-50A), 1981-" ,,,

2001(SH-176), 2001-2021 (MSH-13) of then Aurangabad District. The above said road is part and parcel of the Sillod - Bhokardan, Hasnabad - Rajur, " ,,,

Bhavanpangari - Jalna - Ambad-Wadigodri and numbered as State Highway No. 176 in the road development plan for the year 1981-2001. Now road,,,

is upgraded as a National Highway 753H on 06.02.2018. The said road was in possession of the P.W.D. Division Aurangabad and later on came to be,,,

transferred to Jalna and further to National Highway Division, Aurangabad." ,,,

(h) It is further contention of the authority that the construction of the road is on existing road only. The petitioners are not entitled to get any relief,,,

under Article 226 of the Constitution of India in view of the earlier orders passed by this Court in Writ Petition No. 11112/2017 vide order dated,,,

13.09.2017. The construction of road is within the parameters of the existing road and if the work is stopped, the authorities may put to huge loss. The" ,,,

work of construction of road is being carried out within ROW only, as such, the question of acquisition of adjacent lands for construction of road does" ,,,

not arise. The petitions devoid of merits.,,,

Stand of the State Government/State Authority,,,

(i) It is the stand of the State Authority/State Government that road in question was known as State Highway No. 50A in view of Notification dated,,,

19.04.1967 issued by the State Government. The road was known as Jalna - Wadigodri. In the revised development plan for the year 1981-2001, the",,,

State Highway No. 50A came to be re-numbered as State Highway No. 176. The revised road development plan for the year 1981-2001 indicates,,,

that State Highway No. 176 already exists. As per the standard width of the road ranges from 30-46 meters if the road is passing through open and,,,

agricultural area. In the revised development plan for the year 2000-2021 of Jalna District, the State Highway No. 176 is upgraded to State Highway",,,

No. 13. The width of the existing road is upto 30 meters and that fact was not disputed for 50 years. The work of up-gradation of the road is being,,,

carried out within 30 meters by the authorities. The village map of the Wadigodri also shows existence of road which is prepared by D.S.L.R, Ambad.",,,

As per the scales, the width of the road as on today is of 30 meters width. The village maps of Dakalgaon, Dadegaon and Shahpur also shows",,,

existence of road. The road in question passes adjacent to the lands of the petitioners, but the State Authorities/National Highway authorities are",,,

carrying out their work within their limits. The existence of 30 meters width of road in village Vadi Godri and other villages particularly adjacent to the,,,

lands of the petitioners cannot be disputed. The petitioners are not in possession of road area i.e. 30 meters width. The water supply pipeline from,,,

Sinhagad 33 WP-5250-2020 & Ors J . to Wadigodri, Dadegaon, Dakalgaon, Shahpur, Math Tanda, Ambad and Jalna was laid down by Maharashtra",,,

Jeevan Pradhikaran by considering existing width of the road of 30 meters. The communication to that effect within the authorities is placed on record,,,

and that may be taken into consideration which supported case of the authorities.,,,

(j) It is further stand of the authorities that various persons had sought permission from the authorities before starting their units like petrol pump or any,,,

other work/O.F.C. cable which shows existing width of the road is 30 meters. That is why permission was sought. The District Collector, Jalna has",,,

granted No Objection to the concerned by taking into consideration existing width of the road as 30 meters, and therefore, the petitioners cannot",,,

dispute the width of the road as 30 meters.,,,

(k) It is stand of the State Authorities that as on today, National Highway Authorities are carrying out the work within 30 meters which is the width of",,,

the State Highway No.176. The authorities are upgrading the road within the limits of 30 meters width and not beyond that. It is denied by the,,,

authorities that the width of the road is 12 meters.,,,

(l) According to the State Authorities, petitions are barred by principles of delay and laches. It is also hit by law of limitation. The work of the road is",,,

also commenced and near completion. For the public at large, it is necessary to complete the remaining work.",,,

4. Heard Mr S.S. Tope, Mr Deepak A. Rajput and Mr A.R. Lukhe, the learned counsel for the petitioners, Mr D.R. Nagode, learned. Counsel for",,,

Union of India/National Highway Authority, Mr A.R. Kale, learned Assistant Government Pleader for the State/State Authorities, Mr N.T.",,,

Tribhuwan, learned counsel appearing for the Executive Engineer, National Highway Division and Mr S.K. Kadam, learned counsel appearing for",,,

respondent No. 8/State Construction integrated works (joint venture) at length.,,,

5. Perused the documents, papers and affidavits relied upon by the respective parties. Submissions of learned counsel for the petitioners",,,

6. According to the learned counsel for the petitioners, the lands owned by the petitioners are adjacent to State Highway No. 176 now converted in",,,

the National Highway No. 573H. The width of the State Highway is 12 meters including side margins. The authorities are trying to enhance width of,,,

the road from 12 meters to 30 meters without acquisition of lands of adjacent land owners. The respondent-authorities are depriving the petitioners,,,

from their legal possession of respective lands without any compensation. The petitioners are not opposing for expansion of the road/up-gradation of,,,

the road but insist to follow due process of law while expansion of the road. The petitioners are having their houses, wells, bore-well, food trees, etc.",,,

adjacent to road in question if road is upgraded and width is expanded, the petitioners may suffer huge loss. According to the learned counsel for the",,,

petitioners, it would not be proper for the State Government/Central Government Authority to take possession of any land owner without following due",,,

process of law.,,,

The action of the respondent authorities thereby taking forceful possession of the lands of the petitioners for widening of the road is a clear breach of,,,

Article 300-A of the Constitution of India. They submitted that the petitioners have right to get fair compensation in view of Article 300-A of the,,,

Constitution of India. Mere change of the status of the road does not give any permission to the authorities to take possession of the land of the,,,

adjacent land owners without following due process of law.,,,

7. The learned counsel for the petitioners have placed their reliance on following citations :-,,,

(I) Tukaram Kana Joshi and others Vs. M.I.D.C. and others reported in 2013 (3) Bom. Cases Reporter 103 (II) Pradyumna Mukund Kokil Vs. State,,,

of Maharashtra and others reported in 2015,,,

(4) All Mah. Reporter 983 (III) Vidyadevi Vs. State of Himachal Pradesh and others reported in Civil Appeal No. 60-61-2020 (Arising out of SLP,,,

(Civil) 467/468 of 2020 at D. No. 36919 of 2018 decided on 8th January, 2020 (IV) Writ Petition No. 4717/2019 decided by the Division Bench of this",,,

Court on 30th April, 2020 (V) Vinayakrao Ramrao Gaike and others Vs. State of Maharashtra and others reported in 1988 Mah. Law Reporter 797",,,

(Aurangabad Bench) (VI) Writ Petition No. 6619/2020 (Sitabai Vitthal Mandlik and Others Vs. State of Maharashtra with connected matters decided,,,

by this Court vide order dated 14 th December, 2020.".,,,

The learned counsel for the petitioners also invited our attention to the copies of the documents and papers relied upon by the petitioners in respective,,,

writ petitions in support of their claim.,,,

Submissions learned Standing Counsel for the Union of India, National Highway and learned Government Pleader for the State of Maharashtra/State",,,

Authority,,,

8. It is submitted that the authorities are not constructing new. road but improving the same alignment. It is up-gradation of the State Highway into,,,

National Highway standard. The road in question was previously known as Road No. 176. Subsequently, known as Major Highway State Road No.",,,

13 and now, it is known as National Highway No. 753H. The width of the road in question has been shown as 30 meters everywhere and even in the",,,

Survey of India Department and various maps prepared by the State authority. The road construction is within the 30 meters as per the road,,,

development plan. Since the up- gradation of the road is being done within 30 meters, no question of acquisition of land arises as contended by the",,,

petitioners. They submitted that it is an attempt made by the petitioners to seek compensation in respect of the lands which were acquired long back,,,

for conversion of road as State Highway. They have relied upon the Government Notification dated 26th October, 2010.",,,

9. Mr A. R. Kale, the learned Assistant Government Pleader for the State Authorities invited our attention to the Notification dated 19.04.1967 with",,,

relevant pages, copy of road development plan, copy of revised road development plan for the year 1981-2001, copy of relevant extract of hand book",,,

of basic PWD static of State of Maharashtra, the copy of village maps, the copy of letter dated 7. 10.2020 along with the map given by Executive",,,

Engineer, Maharashtra Jeevan Pradhikaran, Jalna, No Objection Certificate/permission letters granted by the Collector, Jalna, copies of measurement",,,

report, copies of all old Urdu documents regarding Highway No. 176. copies of map after measurement pertains to the road, etc. The learned",,,

Assistant Government Pleader has 37 WP-5250-2020 & Ors J . placed his reliance in case of State of Maharashtra Vs. Digambar reported in 1995,,,

SCC (4) 683 to support his argument regarding belated claim of compensation.,,,

10. Mr N.T. Tribhuwan and Mr S.K. Kadam, learned counsel appearing for the respective respondents echoed the arguments advanced by the",,,

learned Standing Counsel for the Union of India and learned Assistant Government Pleader for the State.,,,

Sr. No.,Particulars of documents,Exh.,Page Nos.

1., "The copy of notification dt. 19/04/1967 along

with relevant pages.",R-1,116 to 143

2.,Copy of Road Development Plan map.,R-2,144 to 154

3., "Copy of revised road development plan for the

year 1981-2001",R-3,155 to 155

4., "Copy of relevant extract of hand book of

basic P.W.D. Static of State of Maharashtra",R-4,156 to 164

5.,Copies of village maps,R-5,165 to 168

6., "Copy of letter dated 7.10.2020 along with the

map given by the Executive Engineer, colly

Maharashtra Jeevan Pradhikarn, Jalna",R-6,169 to 170

7.,Copy of the No Objection certificate granted,R-7,171 to 177

Sr.

No.",Particulars of documents,Exh.,Page Nos.

1,Copy of Right Of Way (ROW),R-2,161

2,"Copy of revised Road Development Plan of R-3

Aurangabad District for the year - 1961",R-3,162

3,"Copy of revised road development plan of R-3

Jalna District for the year 1981-2001",81,163

4,"Copy of road development plan of Jalna R-3

district for the year 2001-2021",R-3,164

5,Copy of Dhakalgaon village map,R-3,165

6,Copy of village map of Shahapur,R-3,166

7,Copy of Dadhegaon village map,R-3,167

8,Copy of village Math Tanda map,R-3,168

9,Toposheet,R-3,169

10,Toposheet,R-3,170

11,Copy of consolidation map of village Shahapur,-,-

12,Joint measurement map of village Wadigodri,R-4,273

13,"Joint measurement map pertaining to Gut Nos.

36/1 and 36/2 in Writ Petition No.",-,274

maps, at particular places, the width of the road comes to 30 meters. If we peruse the map of the road which passes through Ambad city, it is a two",,,

lane road and having regard to the estimates and other documents produced by the P.W.D., it seems to be a 30 meter road. But it is in respect of",,,

Ambad town. The question is about width of the road at villages, Shahapur, Dadegaon, Dhakalgaon and Math Tanda, National Highway No. 753-H",,,

(previously known as State Highway No. 176) passing through these villages. Is width of the National Highway No. 753- H is 30 meter is a question",,,

to be answered on the basis of cogent evidence. Merely, producing maps of certain villages and copies of road development plans, may not be helpful",,,

to arrive at a conclusion and record finding to that effect. That may be erroneous exercise. On careful examination of above referred maps, plans and",,,

other documents, it is noticed by us that at some places, the width of the road is about 30 meters and at some places, it is less than 30 meters.",,,

22. The learned counsel for the petitioners also invited our attention to the reply filed by respondent Nos. 2, 4 and 6 as well as reply filed by",,,

respondent Nos. 4, 5 and 7 and by referring relevant pages of the same forcefully argued that the width of the road in question is 12 meters.",,,

23. The right to property ceased to be a fundamental right by the Constitution (Forty Fourth Amendment) Act, 1978, however, it continued to be a",,,,

human right in a welfare State, and a constitutional right under Article 300 A of the Constitution. Article 300 A provides that no person shall be",,,,

deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure,,,

established by law. The obligation to pay compensation, though not expressly included in Article 300 A, can be inferred from that Article. To forcibly",,,,

dispossess a person of his private property without following due process of law is certainly violative of human right and so also, constitutional right",,,,

provided under Article 300 A of the Constitution.,,,,

24. In case of Vidyadevi Vs. Himachal Pradesh and Ors (SLP No. 6066/1995), it is held by the Apex Court that in a democratic polity governed by",,,,

the rule of law, the State should not deprive a citizen of their property without sanction of law. The State being a welfare State governed by the rule of",,,,

law, cannot arrogate to itself a status beyond what is provided by the Constitution.",,,

25. In case of Pradyumna Mukund Kokil Vs. State of Maharashtra and others reported in 2015 (4) All M.R. 983, it is held by the Apex Court that it",,,,

would not be proper on the part of the government body or any State authority to take possession of somebodies land without following due process of",,,,

law and even if a citizen has permitted his land being used by government authority, the authority should not take undue advantage thereof at a time of",,,,

giving compensation when said land 45 WP-5250-2020 & Ors J . is acquired.,,,,

26. In case of Tukaram Kana Joshi and others Vs. MIDC and others reported in 2013 AIR (SC) 565, wherein it is held by the Apex Court that the",,,,

question of condonation of delay is one of the discretion and has to be decided on the basis of the facts of the case at hand, as the same is vary from",,,,

case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that,,,

there is any period of limitation for the Courts to exercise their powers under Article 226, nor is it that there can never be a case where the Courts",,,

cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the demand for justice is so compelling that the",,,

High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such discretion, must",,,

be exercised fairly and justly so as to promote justice and not to defeat it.,,,

27. Depriving the persons of their immovable properties, was a clear violation of Article 21 of the Constitution. In a welfare State, statutory authorities",,,

are bound, not only to pay adequate compensation, but there is also a legal obligation upon them to rehabilitate such persons. The non-fulfillment of",,,

their obligations would tantamount to forcing the said uprooted persons to become vagabonds or to indulge in anti-national activities as such sentiments,,,

would be born in them on account of such ill- treatment. Therefore, it is not permissible for any welfare State to uproot a person and deprive him of his",,,

fundamental/constitutional/human rights,. under the garb of industrial development.",,,

28. The learned counsel for the petitioners also relied upon decision of Division Bench of this Court in writ petition No. 4717/2019 to which both of us,,,

were party decided on 30.04.2020 and pressed for the same relief.,,,

29. It is now well settled position of law that right to property is a human right and according to Article 300-A of the Constitution, a person cannot be",,,

deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure,,,

established by law. The obligation to pay compensation though not expressly included in Article 300-A, can be inferred from the said Article.",,,

30. If a person is forcefully dispossessed from his private property without following due process of law would amount to breach of human right as,,,

well as violative of constitutional right under Article 300-A of the Constitution as held in case of Vidydevi (supra),,,

31. The facts involved in a writ petition No. 4717/2019 decided by us on 30.04.2020 are quite distinguishable from the case at hand. In writ petition,,,

No. 4717/2019, decided by us, the respondents in the affidavit-in-reply had in no uncertain words, admitted the ownership of the petitioners over their",,,

lands. It was observed by us that 10 meters wide road was in existence since the year 1971-72. It was further observed by us that only on paper, the",,,

State Authorities upgraded the road constructed under the 47 WP-5250-2020 & Ors J . Employment Guarantee Scheme (E.G.S.) in the year 1971-72,,,

as a District Road in the year 1981 and a District Road into a State Highway in 2001. Here the case at hand, the respondents/authorities have not",,,

admitted that the width of the road in question is 12 meters. The respondents/authorities have come out with a specific case that the width of the road,,,

in question is about 30 meters. Having regard to the distinguishable facts, decision in writ petition No. 4717/2019 does not render any help to the",,,

petitioners.,,,

32. We understand that up-gradation of road as a National Highway is a development work. It would be certainly beneficial to the people at large in,,,

the vicinity including the petitioners. They are agriculturists and their agricultural produce may reach to the big cities by speedy transportation and they,,,

may get good price of their agricultural produce. At the same time, we cannot overlook the duty cast upon the State authorities. The respondents are",,,

the State authorities and Central authorities constructing National Highway. They are expected to be model litigants. It is expected from the State and,,,

Central authorities to respect rights of petitioners and follow due procedure of law when property is likely to be acquired. The respondents/authorities,,,

are certainly required to adhere to the rule of law. In a society governed by rule of law, there should not be arbitrariness in any decision. The courts in",,,

appropriate cases need to step in a exercise of their extraordinary writ jurisdiction under the Constitution of India to prevent any arbitrary action by the,,,

State Authorities.,,,

33. Now, coming back to the factual scenario of the case on hand. As discussed herein before, there is no conclusive proof on record to establish that",,,

the width of the road which passes through villages, Shahapur, Dadegaon, Dhakalgaon and Math Tanda is 30 meters, and there is no question of",,,

acquiring lands of adjacent land owners/petitioners. In order to strike a balance, and to resolve the issue of width of the road, it is necessary to have",,,

joint measurement of the road which passes through above said villages. Certainly, that exercise of measurement of road shall be in presence of",,,

petitioners and the respondents/authorities. If that exercise of measurement of roads in respect of the above said villages is exercised through",,,

appropriate agency under the supervision of the District Collector, Jalna, that would resolve the dispute completely. There may not be any injustice to",,,

either side if that exercise is made. On the other hand, it would facilitate both the sides to resolve the dispute regarding the width of the road in a",,,

smooth way.,,,

34. Having regard to the above reasons and discussion, we arrive at a conclusion to issue certain directions to the respondents/ authorities regarding",,,

measurement of the road in question at respective villages in presence of both the sides. With these reasons, we proceed to pass the following order :-",,,

ORDER (I) The respondents-authorities shall conduct measurement of National Highway No. 753-H (previously known as State Highway No. 176),,,

at villages, Shahapur, Dadegaon, Dhakalgaon and Math Tanda through appropriate authority in presence of both the sides, as expeditiously as possible",,,

and preferably within four months.,,,

(II) At the time of measurement, if the width of the road at respective villages is found to be 30 meters, there shall not any question of acquisition of",,,

adjacent lands of the petitioners. (III) If at the time of measurement, the width of the road is found to be less than 30 meters, certainly, the State and",,,

Central authorities, shall follow due process of law in acquiring the land to the extent required by them.",,,

(IV) The exercise of measurement of road at above said villages shall be undertaken under the supervision of District Collector, Jalna in order to avoid",,,

any controversy.,,,

(V) With the above directions, these writ petitions stand disposed of.",,,

(VI) Civil Application No. 5553/2020 in Writ Petition No. 5250/2020 and Civil Application No. 3480 in Writ Petition No. 7270/2020 stand allowed in,,,

terms of prayer clause (B) therein.,,,

(VII) In view of disposal of writ petitions, civil application No. 5136/2020 in writ petition No.5250/2020 and civil application No. 5114/2020 in writ",,,

petition No. 4937/2020 also stand disposed of.,,,

(VIII) No order as to costs.,,,