

**COMMITTEE ON PETITIONS
(SIXTEENTH LOK SABHA)**

SIXTH REPORT



**LOK SABHA SECRETARIAT
NEW DELHI
13 July, 2015/Ashadha, 1937 (Saka)**

SIXTH REPORT OF THE COMMITTEE ON PETITIONS**(SIXTEENTH LOK SABHA)****INTRODUCTION**

I, the Chairperson, Committee on Petitions, having been authorized by the Committee to present the Report on their behalf, present this Sixth Action Taken by the Government on the recommendations of the Committee on Petitions made in their Thirtieth Report (15th Lok Sabha) on the representation received from Shri Dilip Gandhi, MP, Lok Sabha regarding: the issue of right of passage to villagers of Nagardeole- Bhingar through Defence Land occupied by Basic Training Regiment (BTR), Armoured Corps Centre, Ahmednagar.

2. The Committee considered and adopted the draft Sixth Report at their sitting held on 13 July, 2015.
3. The observations/recommendations of the Committee on the above matters have been included in the Report.

NEW DELHI;**BHAGAT SINGH KOSHYARI****Chairperson,
Committee on Petitions****13 July, 2015****22 Asadha, 1937 (Saka)**

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ANNEXURE

- i) Minutes of the 13th sitting of the Committee held on 13.07.2015

**COMPOSITION OF THE COMMITTEE ON PETITIONS
(2014-2015)**

Shri Bhagat Singh Koshyari - *Chairperson*

MEMBERS

2. Shri Suresh C. Angadi
3. Shri Om Birla
4. Shri Jitendra Chaudhury
5. Shri Ram Tahal Choudhary
6. Shri Rajen Gohain
7. Dr. K. Gopal
8. Shri Chhedi Paswan
9. Shri Kamlesh Paswan
10. Smt. Krishna Raj
11. Shri Arjun Charan Sethi
12. Shri Kodikunnil Suresh
13. Shri Dinesh Trivedi
14. Shri Rajan Vichare
15. Shri Dharmendra Yadav

SECRETARIAT

- | | | |
|---------------------------|---|-----------------------------|
| 1. Shri K. Vijayakrishnan | - | <i>Additional Secretary</i> |
| 2. Shri Shiv Kumar | - | <i>Joint Secretary</i> |
| 3. Shri Raju Srivastava | - | <i>Additional Director</i> |
| 4. Md. Aftab Alam | - | <i>Deputy Secretary</i> |
| 5. Shri Soumik Roy | - | <i>Executive Assistant</i> |

(iii)

ii)

DRAFT REPORT

ACTION TAKEN BY GOVERNMENT ON THE RECOMMENDATIONS OF THE COMMITTEE ON PETITIONS MADE IN THE THIRTEENTH REPORT (15 LOK SABHA) OF THE COMMITTEE ON THE REPRESENTATION RECEIVED FROM SHRI DILIP GANDHI, MP, LOK SABHA REGARDING THE ISSUE OF RIGHT OF PASSAGE TO VILLAGERS OF NAGARDEOLE-BHINGAR THROUGH DEFENCE LAND OCCUPIED BY BASIC TRAINING REGIMENT (BTR), ARMoured CORPS CENTER, AHMEDNAGAR

The Committee on Petitions in their Thirteenth Report (Fifteenth Lok Sabha) presented to the Lok Sabha on 5 February, 2014 had dealt with a representation received from Shri Dilip Gandhi, MP, Lok Sabha regarding the issue of right of passage to villagers of Nagardeole-Bhingar through defence land occupied by Basic Training Regiment (BTR), Armoured Corps Center, Ahmednagar

2. The Committee on Petitions had deliberated upon the issue and made certain observations/recommendations in their Report on the subject. The Ministry of Defence were requested to take action on the recommendations and furnish the Action Taken Replies thereon for the consideration of the Committee.

3. The Action Taken Replies received from the Ministry of Defence on the observations/recommendations made by the Committee have been dealt with in the succeeding paragraphs.

4. In paragraphs 20 to 27 of the Report, the Committee had noted/recommended as follows :-

- (i) "In his representation, Shri Dilip Gandhi, MP drew attention of the Committee on the long pending dispute of the right of passage through the Defence land between the villages of Nagardeole-Bhingar and the Local Military Authority, Ahmednagar. As stated in the representation, as per the available records the land measuring 346.88 acres in Bhingar Village, Ahmednagar was acquired by

the Government during 1905 to 1907 for use by the Army. It has since then been under the active occupation of Army and is presently held by the Basic Training Regiment (BTR) and various types of accommodation, ranges and the internal roads are existing on the land for use of troops and their families. The land is situated along the Ahmednagar-Aurangabad Road. On the Eastern Side of the land lie the Nagardeole and other villages. The residents of these villages as well as one Shri Sharad M. Mutha have claimed that one cart track on the said land had been existing there from the time the land was acquired and is not of recent origin. He therefore, requested that since the passage has always been used by the villagers as an approach road to the Aurangabad Road, they have a right to use the passage.”

(para 20)

- (ii) “From the chronology of events emanating from different communications issued by various State level authorities/ Local Military Authority (LMA)/Ministry of Defence, the Committee note that, in 1953, an effort was made by the villagers alongwith Shri Sharad M. Mutha to convert the said track into a pucca road which was objected to by the Local Military Authority (LMA). Thereafter, one of the villagers took up the matter to the Court of Hon'ble Judge (Senior Division), Ahmednagar by filing Regular Civil Suit in which order was passed on 24 April, 1998 in favour of the plaintiffs and was awarded an interim injunction refraining the defendants (Union of India) from causing obstruction in the use of the existing road by the villagers and converting it into a tar road. Being aggrieved with this order, the Union of India had filed a Miscellaneous Civil Appeal which was dismissed on 16 July, 2001. Challenging this order the Union of India filed Civil Revision Application before the High Court which quashed the order dated 16 July 2001 and the interim injunction granted was also rejected. Against this order Shri Sharad M. Mutha filed a Special Leave Petition, before the Hon'ble Supreme Court, which subsequently dismissed the case as infructuous.”

(para 21)

- (iii) “The Committee note that the Defence Estates Officer (DEO), Pune circle vide his letter dated 04 July, 2005 addressed to the HQs, Mumbai Sub Area (Copy enclosed with representation) had submitted that during the pendency of the Court cases Shri Mutha had submitted a proposal to amicably settle the issue. This proposal was considered by the LMA in consultation with Defence Estates Officer, Pune Circle and verification of the extent of land involved in the proposal was carried out under a joint survey. This proposal, in turn, was sent to the Army Headquarters New Delhi by HQs, Southern Command, Pune under their letter dated 20 November, 1999 along with the recommendation of the GOC-in-Chief, Southern Command, Pune dated 20 November, 1996 regarding exchange of the Defence land of 12579 sq mtrs with 19393 sq mtrs of Private

land belonging to Shri Mutha as a quid pro quo which would satisfy the aspirations of the villagers as well as the security need of the LMA.

The Committee further note that as mentioned in the letter of DEO, Pune Circle, as per HQs, Southern Command the offer of Shri Mutha to construct a boundary wall around BTR instead of the Defence land being bifurcated into two segments by the existing passage through the ER Range would be in the Organizational interest of the Army. The Committee however find that the said proposal did not find favour with the Ministry of Defence on the grounds of security concerns and the Defence Land Policy of not permitting the allotment of Defence land to private individuals. The Committee further note that Shri Sharad M. Mutha had again approached the LMA to consider the case and gave fresh undertaking and affidavit for withdrawal of Court cases - in addition to construction of boundary wall at his own expense and an unconditional transfer of 19407.16 sqmtr of land in lieu of 12579 sqmtr of Defence land.”

(para 22)

- (iii) “The Committee take note of the clarification tendered by the Commandant, Armoured Corps Centre and School (ACC & S), Ahmednagar while recommending again that the proposal is for exchange of the Defence Land for private land and not for allotment of Defence land to private individual as viewed by the Ministry of Defence. Furthermore, the exchange of Defence land for private land of equal value or more, particularly when it is needed for a public purpose has been allowed earlier by the Ministry of Defence in many cases. In this case the private land (19407.16 sq mtrs) being offered in lieu of the Defence land (12579 sq mtrs) is not only more in area but also in value as assessed by this office in the year 1999. Moreover as stated by the Commandant, ACC & S, Ahmednagar, the Defence land proposed to be offered in exchange of the private land for making of approach road for the villagers lie on the extreme boundary of the Defence land on the Southern Side and its alienation will not in any way whatsoever affect the status or use or security of the remaining Defence land.”

(para 23)

- (iv) “The Committee also note that besides above stated comments of DEO, Pune Circle, Army Headquarters had also sought in principle approval of Ministry of Defence in April 2006, for grant of the permission for alternate road proposed by Shri Sharad M. Mutha and in January 2009, the Vice President, Zila Parishad also wrote to MOD and AHQ requesting for right of passage for villagers. The Committee further note that the Deputy Collector in his letter dated 31 October 1995 addressed to the Station Commandant, Station Headquarters Ahmednagar had written that, the Tehsildar, Ahmednagar in his certificate had mentioned that the villagers of Nagardeole-Bhingar are using

this road for long and therefore has the legal right to use this road as per Section 5 (2) of the Court Act 1906”.

(para 24)

- (vi) “The Committee are, however surprised to note that despite all these recommendations from different local Authorities viz LMA Ahmednagar, Army HQ, DEO Pune Circle, GOC-in-Chief, Southern Command, Commandant ACC & S, Ahmednagar and Vice President Zila Parishad to the Ministry of Defence for grant of the permission for an alternate road proposed by Shri Sharad M. Mutha, the proposal has been rejected by the Ministry of Defence due to one reason or the other.”

(para 25)

- (vii) “The Committee are constrained to note that all the concerned local Authorities, who are in a better position to appreciate the situation as obtaining on the ground and assess the merits and demerits for either accepting or rejecting the proposal, have been repeatedly recommending the proposal mutually suitable to both LMA as well as the general public. The Committee obviously are unhappy over the apathy shown by the Ministry of Defence for not appreciating the whole issue in the larger public interest which is evident from the position taken by them in their written submissions and also in the depositions made before the Committee.”

(para 26)

- (viii) “The Committee observe that although no formal proposal has been moved by the State Government of Maharashtra but the local Authorities representing the State Government at the local level i.e the Tehsildar , Zilla Parishad and the Collector, have all recommended for the grant of right of passage duly backed by proof of existence of a road for the stated purpose. Therefore taking sense of the depositions made before the Committee wherein the Ministry of Defence have maintained that they would consider a proposal if moved from the State Government, the Committee are, of the view that the Ministry of Defence should consider the recommendation made by the State Authority(ies)- keeping in view the larger public interest and expedite the formalities for the exchange of Land instead of waiting endlessly for receiving a formal proposal from the State Government to this effect. The Ministry of Defence should also examine the proposal submitted by Shri Sharad M. Mutha or as feasible to the Local Authority or Ministry of Defence with due pragmatism because the same is not only beneficial for the LMA, but would also meet the long pending aspirations of

the people of the adjoining villages in the area. The Committee would, therefore, urge the Ministry of Defence, to address the whole issue in a proactive manner so that various technicalities involved are settled and the right of passage is provided to the people residing in that area.”

(para 27)

5. The Ministry of Defence have furnished their Action Taken Reply on the observations/recommendations of the Committee as detailed in the succeeding paragraphs:-
 - 5.1 The matter before the Parliamentary Committee on Petitions is regarding grant of access to nearby villages through A-1 Defence land under the active use of BTR Ahmednagar. The matter has also been raised earlier in the Lok Sabha under Unstarred Question No.3698 dated 17.12.2012. A written reply to the Parliament Question is enclosed as **Annexure-‘A’**.
 - 5.2 The residents of Nagardeole-Bhingar villages as well as one Mr. Sharad M. Mutha have been claiming that one of the cart tracks on the said land, has been in existence there from the time the land was acquired for defence purposes by the Army during 1905 to 1907. The contention of Shri Mutha and others is however not factually correct since the land was acquired as long back as during 1905 to 1907 whereas the demand to provide passage through the land was raised for the first time during 1992. There is also no record to suggest that the passage was being used as an approach road to Aurangabad State Highway by the villagers. This shows that such a demand is only a subsequent development meant to serve the interest of a few private persons and not any public purpose.
 - 5.3 An effort was made by the villagers with the help of Mr. Sharad M. Mutha to convert the said cart track into a pucca road which was objected to by the Local Military Authorities (LMA). One of the villager viz., Shri Maruti Kerulkar took the matter to the Court of Hon’ble Judge Sr. Division, Ahmednagar by filling Regular Civil Suit (RCS) No.320/97.
 - 5.4 The matter was taken upto the Apex Court by the petitioners which was dismissed as having become in-fructuous by the Hon’ble Supreme Court vide their order dated 04.05.2010(**Annexure-‘B’**).
 - 5.5 In the meantime, a proposal for provision of an alternate road, to amicably settle the dispute, was submitted by Mr. Sharad M. Mutha in 1999. It was considered by the LMA in consultation with DEO, Pune and verification of the extent of lands involved in the proposal as well as their title was carried out under a Joint Survey. The proposal was sent to the Army Headquarters, New Delhi by Headquarters, Southern Command, Pune duly recommended by them on 20th November 1999.
 - 5.6 The said proposal was, however not found acceptable by the Government as communicated under the Ministry of Defence, New Delhi letter No.13020/1/2002-

D(Lands) dated 01 July 2002 on the grounds of “security reasons” and there being no provision in the Defence Land policy for allotment of Defence Land to private individuals.

- 5.7 During the pendency of the Court case Shri Sharad M. Mutha once again approached Local Military Authorities for the alternative road and executed fresh undertakings for withdrawal of court cases, construction of boundary wall on both sides of the road at his own expense and unconditional transfer of 19407.13 square meters of his land in lieu of 12579 square meters of Defence Land. The DEO, Pune vide his letter dated 04.07.2005 forwarded the proposal received from the Local Military Authorities at Ahmednagar to the Headquarters Mumbai Sub Area, Mumbai, endorsing a copy thereof to the PDDE, SC, Pune requesting them to obtain Government sanction. Since the request for defence land by local bodies is to be routed through respective State Governments and the instant request from the panchayat was not forwarded through the Government of Maharashtra, the said proposal was not considered by the Government as lease/license of defence land cannot be granted to any individual or private party.
- 5.8 The matter was also discussed in the meeting chaired by JS (Works) on 10.05.2012 and the Ministry of Defence had taken a stand not to allow passage through Defence land on BTR. The minutes of the meeting is enclosed (**Annexure-‘C’**).
- 5.8 While giving evidence before the Committee on Petitions of the Lok Sabha in its meeting held on 21.03.2013, reply given in the Lok Sabha on 17.12.2012 for Unstarred Parliament Question No.3698 was also referred to. In the said meeting, the proposal considered earlier and rejected by MoD for exchange of defence land with that of certain private individuals for making a road along the boundary of defence land as approach to the nearby villages was also discussed. The Ministry of Defence has already rejected the case as stated in their reply to the said Parliament Question due to security reasons.
- 5.10 During the course of hearing held by the Parliamentary Committee, the Chairman of the Committee on Petitions pointed out that the Tehsildar, Nagar had issued a Certificate dated 30.06.1992 confirming the existence of this road. At that time then Additional DG, DGDE had submitted to the Parliamentary Committee that the issue would be examined. The matter has been examined by the DGDE and it is observed that the Certificate issued by the Tehsildar was cancelled by the Sub Divisional Magistrate Nagar Division, Ahmednagar vide his order dated 27.03.1998. The Sub Divisional Magistrate mentioned in his order:-
- “..... Prima facie, certificate is vague one, as it does not disclose out ward number and case No. Neither it has been issued after conducting procedural and mandatory enquires nor it has been issued in the form of judgment interested parties do

not provided opportunity of being heard. The village map demarcating the alleged road have not been seen and appreciated as master evidence in this regard.

I have carried out the site inspection of the alleged location as to road and found that that there exist no road, it appears and believed that certificate ought to have been issued under the un-due influence exerted by either builder or his agent, the said certificate is produced in the District Court as a evidence to safeguard and uphold the interest of the builder which is in fact bogus documents for reasons discussed above further it is evidence and inferred that there is no acute necessity of road for the agriculturist for their harvest etc. The talathi Bhingar has also issued certificate on 16.11.1993 in favour of so called builder. This act on the part of the talathi is prima facie out of jurisdiction and needs to be dealt with administratively

Upon proper inspection of the documents and site the Sub Divisional Magistrate had ordered that the Certificate dated 30.06.1992 issued by the then Tehsildar Nagar be cancelled being null and void and bogus one. He further held that henceforth the said Certificate could not be used as evidence in any Court of Law. (Copy of the order of SDO Nagar Division, Ahmednagar dated 27.03.1998 is attached as **Annexure-'D'**)

- 5.11 The examination of proposal by LMA from security point of view has to be seen in the given time frame. The LMA, during 2005 did not appear to have perceived any threat while giving their 'no objection' for construction of boundary wall on both sides of the proposed road. However, subsequently in the changed security scenario in the country and local surroundings, it is not considered feasible by the LMA and their higher echelons to create such a structure which is a potential security hazard. The point has already been amplified by the Military authorities during hearing of the petition by the Committee on Petitions on 21.03.2013.
- 5.12 The fact that Shri Sharad Mutha who is a real estate developer and grant of passage through BTR is of commercial help to him has all along been moving all the for a available while none of the villagers have put up any formal objection in this regard can also not be ignored. There are alternate routes available for the villagers and are using the same and this may be a plausible reason why the villagers are not raising any objections.
- 5.13 No proposal was received from Government of Maharashtra in this regard. Exchange of defence land with that of certain private individuals for making of road along the boundaries without the proposal being routed through the State Government of Maharashtra is not acceptable as it amounts to creation of private passage through Defence land belonging to Central Government. It may be pertinent to mention that in a recent judgement dated 26th November 2012 by High Court of Andhra Pradesh on PIL no. 361 of 2012, the Hon'ble High Court has interalia ruled that A-1 Defence land cannot be permitted to be used as a public thoroughfare and therefore, the petitioners or the general public have no right to use the same (copy enclosed as **Annexure-'E'**).

In any case of transfer of land involving Ministry of Defence, State Government is a necessary party as it maintains full details of all lands and will have to ensure that all facts related to the land in question are correctly communicated/ recorded. The State Government is also the rightful authority to assess the larger public interest involved in the matter, if so. If such a proposal is received through the State Government, it can be examined subject to the security concerns of the LMA. In the absence of any proposal from the State Government, it will not be appropriate for MoD/DGDE to consider the request as it prima facie lacks merit and is supported neither by the State Government nor by the local public opinion.

Observations/Recommendations

6. Shri Dilip Gandhi, MP had represented and sought intervention of the Committee on the long pending dispute about the provision of right of passage to the villagers of Nagardeole-Bhingar through the Defence land. The disputed land has been under the active occupation of Army and is presently held by the Basic Training Regiment (BTR). The residents of the villages of Nagardeole-Bhingar villages claimed that one cart track on the said land had been existing there from the time, the land in question was acquired. Since the passage had always been used by the villagers as an approach road to the Aurangabad Road, they have a right to use the passage.

7. The Committee in their 30th Report (Fifteenth Lok Sabha) had deliberated upon the issue raised in the representation and noted that an effort was made by the villagers alongwith Shri Sharad M. Mutha to convert the said track into a pucca road which was objected to by the Local Military Authority (LMA). The matter was referred to the Court of Hon'ble Judge (Senior Division), Ahmednagar in which an order was passed on 24 April, 1998 in favour of the plaintiffs by awarding an interim injunction refraining the defendants (Union of India) from causing obstruction in the use of the existing road by the villagers and converting it into a tar road. Being aggrieved with this order, the Union of India had filed a Miscellaneous Civil Appeal which was dismissed on 16 July, 2001. Challenging this order the Union of India filed Civil Revision Application before the High Court - which quashed the order dated 16 July 2001 and the interim injunction granted was also rejected. Against this order Shri Sharad M. Mutha filed a Special Leave Petition, before the Hon'ble Supreme Court, which subsequently dismissed the case as infructuous.

8. The Committee also observed that a proposal was made by Shri Sharad Mutha to amicably settle the issue out of Court. This proposal contained the exchange of the Defence land of 12579 sq mtrs with 19393 sq mtrs of Private land belonging to Shri

Mutha as a *quid pro quo* which would satisfy the aspirations of the villagers as well as the security need of the LMA. The proposal also included an offer of Shri Mutha to construct a boundary wall around BTR instead of the Defence land being bifurcated into two segments by the existing passage through the ER Range. The proposal was considered by the LMA in consultation with Defence Estates Officer, Pune Circle and was sent to the Army Headquarters New Delhi by HQs, Southern Command, Pune.

9. The Committee were given to understand earlier that the proposal for exchange of the Defence Land for private land of equal value or more, particularly when it was needed for a public purpose had been allowed earlier by the Ministry of Defence in many cases. Accordingly, in this case, the private land (19407.16 sq mtrs) being offered in lieu of the Defence land (12579 sq mtrs) was not only more in area but also in value as assessed by this office in the year 1999. Moreover, as stated by the Commandant, ACC & S, Ahmednagar, the Defence land proposed to be offered in exchange of the private land for making of approach road for the villagers lie on the extreme boundary of the Defence land on the Southern Side and its alienation will not in any way whatsoever affect the status or use or security of the remaining Defence land.

10. The Committee further observed that although no formal proposal has been moved by the State Government of Maharashtra but the local Authorities representing the State Government at the local level i.e the Tehsildar , Zilla Parishad and the Collector, have all recommended for the grant of right of passage duly backed by proof of existence of a road for the stated purpose. The Committee also took note that the Ministry of Defence had maintained that the Ministry would consider a proposal, if moved from the State Government.

11. From the Action taken replies furnished by the Ministry, the Committee now find it difficult to appreciate that due to the change in security scenario of the country and local surroundings subsequently, it is not being considered feasible by the Ministry of Defence from the security point of view to accord to the proposal of exchanging the

existing Defence Land or construction of boundary wall on both sides of the proposed road.

12. Further, the Committee constrained to note that the Ministry has been constantly maintaining that no proposal has been received from Government of Maharashtra on the issue of exchange of land. On the contrary, the Committee in their earlier report have emphasized that the concerned local authorities have been repeatedly recommending the proposal mutually suitable to both LMA as well as general public. Further, the Ministry have sought to rely on and compare the instant matter with that of a case citing a judgement dated 26th November, 2012 of High Court of Andhra Pradesh on PIL No. 361 of 2012 - where the Hon'ble High Court *inter alia* ruled that A-1 Defence land can not be permitted to be used as a public thoroughfare. However, the Committee feel that both the cases are placed on different footing. While in the instant case private land is being offered in lieu of the Defence land whereas in the case referred to by the Ministry apparently there was no such *quid pro quo*.

13. The Committee, however, are in total agreement with the contention of the Ministry that in any case of transfer of land involving Ministry of Defence, State Government is a necessary party as it maintains full details of all lands and will have to ensure that all facts related to the land in question are correctly communicated/ recorded. The State Government is also the rightful Authority to assess the larger public interest involved in the matter. The Committee also tend to agree with the argument of the Ministry that if such a proposal is received through the State Government, the same can be examined by the Ministry of Defence. The Committee would, however, like to emphasize that the absence of any proposal from the State Government should not become a pretext for the Ministry of Defence to reject out-rightly the long standing demand of the people of the said villages of the right of passage through the defence land. The Committee are constrained to note that the long pending issue of convenience concerning the locals in the matter has not been correctly appreciated by the Ministry.

14. The Committee have reasons to believe that while the matter is stuck in bureaucratic wrangling, the residents of the area continue to face hardship. The Committee, therefore, reiterate their earlier recommendation that the Ministry of Defence and the State Government of Maharashtra should work in tandem to expedite the transfer of land and prevent any further delay to ensure an early settlement of the issue.

The Committee would like to be apprised of the final conclusive action taken by the Authorities concerned in this regard within three months from the date of presentation of this Report to the House.

NEW DELHI;

13 June, 2015

22 Ashadha, 1937 (Saka)

BHAGAT SINGH KOSHYARI

**Chairperson,
Committee on Petitions**