IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8195 OF 2023

Parvati Sahakari Gruhnirman Sanstha,
Through GPA holder –
Azharoddin s/o. Ahmed Syed,
Age : 40 Years, Occ. Business,
r/o. Galli No.20, Opposite MGM Hospital,
Gate No.6, Baijipura, Aurangabad ..Petitioner

Vs.

The State of Maharashtra,
Through its Secretary, Urban Development
Department, Mantralaya, Mumbai ..Respondents

Mr.Rameez M. Shaikh, Advocate for petitioner
Ms.Chaitali Choudhari – Kutti, AGP for respondent no.1
Mr.Anand P. Bhandari, Advocate for respondent nos.2 to 4

AND

WRIT PETITION NO.4638 OF 2022

Dilip Madanlal Patel,
Age : 66 years, Occ. Retired,
r/o.4-5-5, Madan Kore Gulmandi,
Opp.Mewad Tea House,
Aurangabad and others ..Petitioners

Vs.

The State of Maharashtra,
Through its Secretary, Urban Development
Department, Mantralaya, Mumbai ..Respondents

AND

WRIT PETITION NO.4637 OF 2022

Virendra Sundardas Patel,
Age : 67 years, Occ. Business,
r/o. 4-9-65, Aurangpura,
Aurangabad and others ..Petitioners

Vs.

The State of Maharashtra,
Through its Secretary, Urban Development
Department, Mantralaya, Mumbai ..Respondents

Mr.Devdatta Palodkar, Advocate for petitioner
Ms.Chaitali Choudhari – Kutti, AGP for respondent no.1
Mr.Anand P. Bhandari, Advocate for respondent nos.2 and 3 in WP No.4638/2022 and
Mr.A.R.Vaidya, Advocate for respondent nos.2 and 3 in WP No.437/2022

AND

WRIT PETITION NO.11163 OF 2016

M/s. Kalpak Developers,
Through its Partner,
Shodhan Yashwant Joshi,
Age : Major, Occ. Business,
Address:Kranti Chowk,
102, Veershanti Building,
Opp. Shivaji Maharaj Statue,
Adalat Road, Aurangabad ..Petitioner

Vs.

Municipal Corporation,
Aurangabad,
through its Municipal Commissioner
and anr. ..Respondent

AND

WRIT PETITION NO.1724 OF 2022

Abdul Hafeez Shaikh Abdul Hak,
Age : 52 years. Occ. Business
Shodhan Yashwant Joshi,
R/o. Old Bayjipura, Tq. Aurangabad,
Dist. Aurangabad. ..Petitioner

Vs.

The State of Maharashtra,
Through its Urban Development
Department, Mantralaya, Mumbai

2. Aurangabad Municipal Corporation,
Aurangabad Through Its Administrator.

3. Superintendent of Land Records Aurangabad
Taluka and District Aurangabad. ...Respondents

In Writ Petition No:8195 of 2023:-

Mr.Rameez M. Shaikh, Advocate for petitioner
Ms.Chaitali Chaudhari-Kutti, AGP for respondent no.1
Mr.Anand P. Bhandari, Advocate for respondent nos.2 to 4

In Writ Petition Nos.4637 of 2022 and 4638 of 2022 :-

Mr.Devdatta Palodkar, Advocate for petitioners

Mr.Anand P. Bhandari, Advocate for respondent nos.2 and 3 (W.P.No.4638/2022)

Mr.A.R.Vaidya, Advocate for respondent nos.2 and 3 (W.P. Nos. 4637 of 2022 and 4638 of 2022)

In Writ Petition No.11163 of 2016:-

Mr.P.N.Sonpethkar, Advocate for petitioner

Mr.A.P.Bhandari, Advocate for respondent no.1
Ms.Chaitali Chaudhari-Kutti, AGP for respondent no.2

In Writ Petition No:1724 of 2022:-

Mr.D.P. Palodkar, Advocate for petitioner
Ms.Chaitali Chaudhari-Kutti, AGP for respondent no.1 and 3
Mr.S.S. Tope, Advocate for respondent no.2

CORAM : R.G.AVACHAT AND ABASAHEB D. SHINDE, JJ.
RESERVED ON : OCTOBER 14, 2025
PRONOUNCED ON : DECEMBER 04, 2025

FINAL ORDER :-

These Writ Petitions are taken up together for hearing and decision since common questions of fact and law arise therein.

2. The petitioners claim compensation in terms of Transfer of Development Rights (TDR) in consideration of release/ relinquishment of their lands for construction of development planned roads. Although the petitioners had claimed similar reliefs for relinquishment of lands for open spaces and internal roads, the claims have been given up. The common thread of argument on behalf of all the petitioners is that the respondent – Aurangabad Municipal Corporation (AMC) made the petitioners relinquish certain lands for DP roads as a condition for sanctioning of Development of

their other lands.

3. Learned counsel for the petitioners relied on certain authorities to submit that the right to property is a constitutional right, in view of Article 300A of the Constitution of India. They would further submit that the said right has now been recognised as human right as well. No land owner can be dispossessed of his property without following due process of law and giving him just and adequate compensation. According to learned counsel, the delay in filing the Writ Petitions is, therefore, of little significance. According to them, the State ought to have recourse to the statutory provisions for acquisition of the lands for DP roads. The AMC ought to have offered the petitioners compensation before they were made to surrender their respective lands. According to learned counsel, the acts of surrender of lands could not, therefore, be termed to be voluntary. They, therefore, urged for allowing the Writ Petitions.

4. Learned counsels for the respondent – AMC would, on the other hand, submit that in one of the Writ Petitions (8195 of 2023), the petitioner is a co-operative housing society. Its erstwhile office-bearers had relinquished the lands for DP road. The officials of the said society, who have filed present Writ Petitions, did not place on

record any authorisation of its members or erstwhile office-bearers to file the present petition. According to learned counsels, over 20 years have passed post the petitioners executed the registered deeds relinquishing their respective lands for DP roads. The delay and latches would come in their way. Learned counsel relied on the judgment of the Apex Court in the case of **State of Maharashtra Vs. Digambar, MANU/SC/0740/1995**. According to him, when the lands were released, the concept of grant of TDR was not there. The communications rejecting the petitioners request for grant of TDR have not been challenged. They would further submit that the illegality or otherwise of the relinquishment deeds (contractual right) could not be gone into in the writ jurisdiction. According to them, judgment in the case of **Sk. Ibrahim s/o. Shaikh Maula Sahab (Writ Petition No.5080 of 2015, decided on 27.07.2016)** is of little assistance to the petitioners since under the relinquishment deeds, the petitioners therein had not surrendered the lands for DP road. According to them, the petitioners are also not entitled to any benefits in respect of the portion utilised for access to the main road. The petitioner in Writ Petition No.11163 OF 2016 has already been given TDR in respect of the land admeasuring 5983 sq. metres affected by the DP road. According to learned counsel, for all these reasons the Writ Petitions deserve to be dismissed.

5. We have considered the submissions advanced. Perused the documents relied on. Before adverting to the factual matrix, reference to the judgment of the Apex Court in the case of **Bernard Francis Joseph Vaz and another Vs. Government of Karnataka and others, (2025)7 SCC 580** is necessary:-

> "40. This Court, in the case of Vidya Devi v. State of Himachal Pradesh and Ors. (2020) 2 SCC 569 : 2020 INSC 23, while surveying the earlier judgments on the issue, has observed thus:
>
> 12.1. The Appellant was forcibly expropriated of her property in 1967, when the right to property was a fundamental right guaranteed by Article 31 in Part III of the Constitution. Article 31 guaranteed the right to private property [State of W.B. v. Subodh Gopal Bose, 1953:INSC:89 : (1953) 2 SCC 688 : AIR 1954 SC 92], which could not be deprived without due process of law and upon just and fair compensation.
>
> 12.2. 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 [Tukaram Kana Joshi v. MIDC, 2012:INSC:503 : (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] 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 in that Article. [K.T. Plantation (P) Ltd. v. State of Karnataka, (2011) 9 SCC 1]
>
> 12.3. To forcibly dispossess a person of his private property,

without following due process of law, would be violative of a human right, as also the constitutional right Under Article 300-A of the Constitution. Reliance is placed on the judgment in Hindustan Petroleum Corporation. Ltd. v. Darius Shapur Chenai [Hindustan Petroleum Corporation. Ltd. v. Darius Shapur Chenai, (2005) 7 SCC 627], wherein this Court held that: (SCC p. 634, para 6)

6. ... Having regard to the provisions contained in Article 300-A of the Constitution, the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid.

(emphasis supplied)

12.4. In N. Padmamma v. S. Ramakrishna Reddy [N. Padmamma v. S. Ramakrishna Reddy, 2008:INSC:720 : (2008) 15 SCC 517], this Court held that: (SCC p. 526, para 21)

21. If the right of property is a human right as also a constitutional right, the same cannot be taken away except in accordance with law. Article 300-A of the Constitution protects such right. The provisions of the Act seeking to divest such right, keeping in view of the provisions of Article 300-A of the Constitution of India, must be strictly construed.

(emphasis supplied)

12.5. In Delhi Airtech Services (P) Ltd. v. State of U.P. [Delhi Airtech Services (P) Ltd. v. State of U.P., 2011:INSC:590 : (2011) 9 SCC 354 : (2011) 4 SCC (Civ) 673], this Court recognised the right to property as a basic human right in the following words: (SCC p. 379, para 30)

30. It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the

Government. Jefferson was of the view that liberty cannot long subsist without the support of property. "Property must be secured, else liberty cannot subsist" was the opinion of John Adams. Indeed the view that property itself is the seed-bed which must be conserved if other constitutional values are to flourish, is the consensus among political thinkers and jurists.

(emphasis supplied)

12.6. In Jilubhai Nanbhai Khachar v. State of Gujarat [Jilubhai Nanbhai Khachar v. State of Gujarat, 1994:INSC:272 : 1995 Supp (1) SCC 596], this Court held as follows: (SCC p. 627, para 48)

48. ... In other words, Article 300-A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession Under Article 300-A. In other words, if there is no law, there is no deprivation.

(emphasis supplied)

12.7. In this case, the Appellant could not have been forcibly dispossessed of her property without any legal sanction, and without following due process of law, and depriving her payment of just compensation, being a fundamental right on the date of forcible dispossession in 1967.

12.8. The contention of the State that the Appellant or her predecessors had "orally" consented to the acquisition is completely baseless. We find complete lack of authority and legal sanction in compulsorily divesting the Appellant of her property by the State.

12.9. In a democratic polity governed by the Rule of law, the State could not have deprived a citizen of their property without the sanction of law. Reliance is placed on the judgment of this Court in

Tukaram Kana Joshi v. MIDC [Tukaram Kana Joshi v. MIDC, 2012:INSC:503 : (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] wherein it was held that the State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. 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.

12.10. This Court in State of Haryana v. Mukesh Kumar [State of Haryana v. Mukesh Kumar, 2011:INSC:731 : (2011) 10 SCC 404 : (2012) 3 SCC (Civ) 769] held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multi-faceted dimension.

.....

12.13. In a case where the demand for justice is so compelling, a constitutional court would exercise its jurisdiction with a view to promote justice, and not defeat it. [P.S. Sadasivaswamy v. State of T.N., 1974:INSC:198 : (1975) 1 SCC 152 : 1975 SCC (L&S) 22]

41. In the case of Ultra-Tech Cement Ltd. v. Mast Ram and Ors. 2024:INSC:709, this Court observed thus:

D. Role of the State Under Article 300-A of the Constitution

43. The Right to Property in our country is a net of intersecting rights which has been explained by this Court in Kolkata Municipal Corporation v. Bimal Kumar Shah, 2024:INSC:435. A division bench of this Court identified seven non-exhaustive sub-rights that accrue to a landowner when the State intends to acquire his/her property. The relevant observations of this Court under the said judgment are reproduced below:

...27.

... Seven such sub-rights can be identified, albeit non-exhaustive. These are : i) duty of the State to inform the person that it intends to acquire his property - the right to notice, ii) the duty of the State to hear objections to the acquisition - the right to be heard, iii) the duty of the State to inform the person of its decision to acquire - the right to a reasoned decision, iv) the duty of the State to demonstrate that the acquisition is for public purpose - the duty to acquire only for public purpose, v) the duty of the State to restitute and rehabilitate - the right of restitution or fair compensation, vi) the duty of the State to conduct the process of acquisition efficiently and within prescribed timelines of the proceedings - the right to an efficient and expeditious process, and vii) final conclusion of the proceedings leading to vesting - the right of conclusion...

[Emphasis Supplied]

This Court held that a fair and reasonable compensation is the sine qua non for any acquisition process.

44. In Roy Estate v. State of Jharkhand, 2009:INSC:659 : (2009) 12 SCC 194; Union of India v. Mahendra Girji, (2010) 15 SCC 682 and Mansaram v. S.P. Pathak, 1983:INSC:135 : (1984) 1 SCC 125, this Court underscored the importance of following timelines prescribed by the statutes as well as determining and disbursing compensation amount expeditiously within reasonable time.

45. The subject land came to be acquired by invoking special powers in cases of urgency Under Section 17(4) of the 1894 Act. The invocation of Section 17(4) extinguishes the statutory avenue for the landowners Under Section 5A to raise objections to the acquisition proceedings. These circumstances impose onerous duty on the State to facilitate justice to the landowners by providing them with fair and reasonable compensation expeditiously. The seven sub-rights of the landowners identified by this Court in Kolkata Municipal Corporation (supra) are corresponding duties of the State. We regret to note that the amount of Rs. 3,05,31,095/- determined as compensation under

the Supplementary Award has not been paid to the landowners for a period of more than two years and the State of Himachal Pradesh as a welfare State has made no effort to get the same paid at the earliest.

46. This Court has held in Dharnidhar Mishra (D) v. State of Bihar, and State of Haryana v. Mukesh Kumar, 2011:INSC:731 : (2011) 10 SCC 404 that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. This Court held in Tukaram Kana Joshi thr. Power of Attorney Holder v. M.I.D.C., 2012:INSC:503 : (2013) 1 SCC 353 that in a welfare State, the statutory authorities are legally bound to pay adequate compensation and rehabilitate the persons whose lands are being acquired. The non- fulfillment of such obligations under the garb of industrial development, is not permissible for any welfare State as that would tantamount to uprooting a person and depriving them of their constitutional/human right.

47. That time is of the essence in determination and payment of compensation is also evident from this Court's judgment in Kukreja Construction Co. v. State of Maharashtra, wherein it has been held that once the compensation has been determined, the same is payable immediately without any requirement of a representation or request by the landowners and a duty is cast on the State to pay such compensation to the land losers, otherwise there would be a breach of Article 300-A of the Constitution.

48. In the present case, the Government of Himachal Pradesh as a welfare State ought to have proactively intervened in the matter with a view to ensure that the requisite amount towards compensation is paid at the earliest. The State cannot abdicate its constitutional and statutory responsibility of payment of compensation by arguing that its role was limited to initiating acquisition proceedings under the MOU signed between the Appellant, JAL and itself. We find that the delay in the payment of compensation to the landowners after taking away ownership of the subject land from them is in contravention to

the spirit of the constitutional scheme of Article 300A and the idea of a welfare State.

49. Acquisition of land for public purpose is undertaken under the power of eminent domain of the government much against the wishes of the owners of the land which gets acquired. When such a power is exercised, it is coupled with a bounden duty and obligation on the part of the government body to ensure that the owners whose lands get acquired are paid compensation/awarded amount as declared by the statutory award at the earliest.

50. The State Government, in peculiar circumstances, was expected to make the requisite payment towards compensation to the landowners from its own treasury and should have thereafter proceeded to recover the same from JAL. Instead of making the poor landowners to run after the powerful corporate houses, it should have compelled JAL to make the necessary payment."

6. It is true that the petitioners herein executed relinquishment deeds of certain lands for construction of DP roads. It is also true that the relinquishment deed, the subject-matter of Writ Petition No.8195 of 2023 was executed by erstwhile/then officials of the petitioner – Co-operative housing society. This petition has been filed by their successors in office. It is necessary to assume that it is for and on behalf of all the members of the housing society. Exception to the authority of the present office-bearers to file the Writ Petition is of trivial nature and not going to the root of the matter in the light of the facts and circumstances of the case. While in the relinquishment deed dated 04.07.2002, the subject-matter of

Writ Petition No.4637 of 2022, no land for DP road has been released. On the contrary, there is specific recital, to the effect the compensation therefor (D.P. road) would be determined lateron.

7. It could not be said to be coincidence that all the petitioners did execute the registered relinquishment deeds in favour of the respondent - AMC releasing their lands for construction of DP roads. There is substance in the oral submissions made on behalf of all these petitioners that those relinquishment deeds could not be termed to have executed voluntarily. It is true that those documents have been registered way back in 1997 to 2004. Little over 20 years have passed. In the interregnum, there was no whisper on the part of the petitioners against execution of those documents. It may also be true that in the writ jurisdiction, contractual matters could not be gone into. The facts and circumstances of these cases are however peculiar. It was informed across the bar that most of the Municipal Corporations for granting development permission, resort to such methodology of putting condition on the landowners to execute relinquishment deed releasing certain lands for construction of DP roads. One can read between the lines. It takes no time to infer that the AMC herein must have made the petitioners execute the registered relinquishment deeds as implied condition for grant of

permission for development of their other lands. Admittedly, all the relinquishment deeds have been executed along side grant of development permission in favour of respective executants. The acts of AMC indulging in such methodology needs to be strongly deprecated. Needless to mention that no owner of the land could voluntarily surrender the land, that too, in favour of the municipal corporation. Nothing has *prima facie* been shown to infer the petitioners to have executed the relinquishment deeds for non-consideration. Consideration for execution of those deeds appear to be grant of permission for development of their other lands.

8. It is true that the petitioners have approached this court after a long spell of little over 20 years. The Apex Court in the case of **State of Maharashtra vs. Digambar** reported in **AIR 1995 SC 1991** observed thus:-

> "**18.** Laches or undue delay, the blame-worthy conduct of a person in approaching a Court of Equity ' in England for obtaining discretionary relief which disentitled him for grant of such relief was explained succinctly by Sir Barnes Peacock, tong ago, in Lindsay Petroleum Co. v. Prosper Armstrong (1874) 3 PC 221 thus:
>
> Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a

remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation, in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute or limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of Justice or injustice in taking the one course or the other, so far as it relates to the remedy.

19. Whether the above doctrine of laches which disentitled grant of relief to a party by Equity Court of England, could disentitle the grant of relief to a person by the High Court in exercise of its power under Article 226 of our Constitution, when came up for consideration before a Constitution Bench of this Court in Moon Mills Ltd. v. M. R. Melier, President, Industrial Court, Bombay AIR 1967 SC 1450 it was regarded as a principle that disentitled a party for grant of relief from a High Court in exercise of its discretionary power under Article 226 of the Constitution."

9. This Court in the case of **Sk. Ibrahim** (supra) granted

similar relief to the petitioners therein. The relinquishment deed was executed by the petitioners therein in the year 1999. It was specifically observed in paragraph 7 of the judgment thus:-

> 7. …….
> …….
> …….
> …….
> This court vide its order dated 6th May, 2014 in Writ Petition No. 5179 of 2003 and 5183 of 2003 has held that, even if, the land is under the development plan road in the lay out the owner of the said lay out is entitled for the compensation."

10. It appears that the decision of this court in afore referred Writ Petition attained finality, i.e. the Corporation either did not challenge the same or their challenge there-against failed. The petitioners, therefore, need to be granted similar reliefs. Further more in one of the petitions, namely Writ Petition No.11163 of 2016, the petitioner has been given TDR in consideration of surrender of the land for DP road. The relinquishment deed was executed on 28.06.2004 The TDR was granted in the recent past. Was it for extraneous consideration? Then how can the AMC be allowed to contend the petitioner to suffer for delay and latches.

11. For the sake of convenience the lands affected by the DP/Service roads are given in tabular form below:-

Sr. No.	Writ Petition No.	Area (Square Metres)	Location
(i)	8195 of 2023	2325	Survey Nos.186/2 and 186/4, situated at Harsul, Tq. and Dist. Chh. Sambhajinagar
(ii)	4638 of 2022	1250	Survey No.70, Situated at village Satara, Tq. and Dist. Chh. Sambhajinagar
(iii)	4637 of 2022	1440	Gut No.70, situated at village Satara, Tq. and Dist. Chh. Sambhajinagar
(iv)	11163 of 2016	1376.25 (Service road)	57, Situated at village Satara, Tq. and Dist. Chh. Sambhajinagar
(v)	1724 of 2022	3419	Survey No.157/1 at Harsul, Tq. and Dist. Aurangabad.

12. We, therefore, allow these Writ Petitions directing the respondent – AMC to give the petitioners TDR in terms of the relevant rules as on the date of filing of these Writ Petitions in consideration of the lands (details whereof is given in the tabular form above) surrendered for DP/Service roads, as stated in the tabular form above.

[ABASAHEB D. SHINDE, J.] **[R.G. AVACHAT, J.]**

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KBP