

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8915 OF 2013

Shri. Shantilal Madhavdas Shah and ors. .. Petitioners.
vs.
The Deputy Collector (Pvt.) Forest and ors. .. Respondents.

Mr. C.M. Korde, Senior Advocate a/w. Mr. V.P. Sawant and Mr. R.A. Rodrigues i/b Ms Yogita Singh for the Petitioners.
Ms P.S. Cardozo, AGP for Respondent Nos.1 to 3.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 17 February 2015.

Date of Pronouncing the Judgment: 23 February 2015.

JUDGMENT :-

- 1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.
- 2] This petition, challenges the following orders:
 - (a) The order dated 4 October 1980 made by the Deputy Collector (Private Forest) Alibag;
 - (b) The order dated 7 December 2010 made by the Additional Commissioner, Konkan Division, Mumbai in Appeal No.76 of 2010 against the aforesaid order dated 4 October 1980.

3] The brief facts in which the aforesaid challenge arises is that the petitioners were owners of the property ad-measuring 97.86 hectares at Village Darsheth Taluka Pen (said property). There is no serious dispute that the said property answered the definition of '*private forest*', within meaning assigned to that term under Section 2(f) of the Maharashtra Private Forests (Acquisition) Act, 1975 (said Act). Accordingly, in terms of Section 3(1) of the said Act, the said property stood acquired and vested, free from all encumbrances, in the State Government. Some time in the year 1980, the petitioners were called upon to show cause in the matter of exercise of powers under Section 22A of the said Act, to which detailed reference shall be made hereinafter. In the inquiry which ensued, the petitioners made a solemn statement that none of the petitioners desire to retain or obtain any portion of the said property and that they would be satisfied with the payment of compensation. Based thereupon, the Deputy Collector (Private Forest) made the order dated 4 October 1980 determining the compensation of Rs.1941.20 alongwith interest at the rate of 4% per annum from 30 August 1975 till the date of payment.

4] It is the case of the petitioners that notwithstanding the order dated 4 October 1980, no compensation was in fact paid to the petitioners. Therefore, by representation dated 6 April 1983, the petitioners requested for payment as early as possible. In June 1983, the petitioners were informed that they should contact the Divisional Forest Officer, Alibag, in regard to their request.

5] It is the case of the petitioners that upto the year 1989, since no compensation was paid to them, the petitioners addressed yet another representation dated 7 April 1989, this time requesting for restoration of 35 acres of to each of the petitioners. It is the case of the petitioners that there was no response to the said representation.

6] On or about 10 February 2010, the petitioners instituted a revision application before respondent No.2 against the order dated 4 October 1980 and prayed therein that an area of 12 hectares be restored to each of the petitioners. The application seeking condonation of delay was made later seeking to explain delay of almost 30 years.

7] Respondent No.2, by order dated 7 December 2010, incorrectly styling the revision application, as an '*appeal*', has rejected the same by observing that no case has been made out to condone the delay of '*30 years*'.

8] Mr. Korde, learned senior counsel appearing for the petitioners, made the following submissions in support of this petition:

(a) That sufficient cause had been made out by the petitioners for condonation of delay in instituting the revision application under Section 22A of the said Act. Therefore, the order dated 7 December 2010 declining to condone the delay and thereby dismissing the revision application warrants interference ;

(b) The order dated 4 October 1980 made by the Deputy Collector (Private Forest) being *ultra vires*, the provisions of Section 22A of the said Act, is a 'nullity'. As such, this Court should entertain the petition against the same, as there is no period of limitation prescribed to challenge such a nullity and besides, the petitioners are not guilty of in-explicable delay and laches;

(c) Till date, the petitioners have not received any compensation for acquisition of the said property under Section 22A of the said Act. Consequently, the acquisition cannot be regarded as complete. In any case, this vital circumstance ought to be taken into consideration in determining whether sufficient cause was shown by the petitioners for condonation of delay in instituting revision application or for inviting this Court to exercise its extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

9] Ms Cardozo, learned AGP appearing for Respondent Nos.1 to 3, at the outset submitted that both the revision application before respondent No.2, as also this petition, in so far as it seeks to challenge the order dated 4 October 1980 are barred by unexplained and gross delay and laches. The learned AGP further submitted that the order dated 4 October 1980 is not at all relatable to the exercise of powers under Section 22A of the said Act and even if it were, since the petitioners themselves stated that they did not desire to retain or obtain any portion of the said property, the Deputy

Collector (Private Forest) was entirely justified in making the order dated 4 October 1980. Accordingly, learned AGP submitted that there was no question of the order dated 4 October 1980 being a nullity. On the aspect of non-payment of compensation, learned AGP did not justify the same, but submitted that the records for the years between 1980 and 1990 or thereabouts are not readily available and therefore, the respondents, despite efforts are unable to verify whether the compensation was indeed paid to the petitioners in respect of the acquisition of the said property.

10] The rival contentions, now fall for determination.

11] There is no ground made out by the petitioners for faulting the impugned order dated 7 December 2010 made by respondent No.2. In the first place, from the perusal of the application seeking condonation of delay, it cannot be said that any sufficient cause has been made out by the petitioners for explaining delay of almost 30 years in questioning the order dated 4 October 1980. That apart, Section 22A(4) , in terms provides that no appeal shall lie against any decision or order of the Collector under Section 22A of the said Act, but the Commissioner or the State Government may within a period not exceeding one year from the date of such decision or order, exercise revisional jurisdiction. Insofar as the appeals under the said Act are concerned, Section 15 of the said provides that save as otherwise provided in Section 6, every appeal under the said Act to the Tribunal shall be filed within a period of sixty days from the date of the award, or as the case may be, order, of the Collector. Further, the provisions of Sections 4,5,12 and 14 of the Limitation

Act, 1963, shall apply to the filing of such appeal. However, insofar as revision application under Section 22A(4) of the said Act is concerned, the provisions of Sections, 4,5, 12 and 14 of the Limitation Act, 1963, do not appear to have been made applicable. As against, the period of sixty days provided for filing an appeal, Section 22A(4) of the said Act provides that the revisional jurisdiction may be exercised '*within a period not exceeding one year from the date of such decision or order*'. From this, it is clear that the revisional jurisdiction had to be invoked within a period not exceeding one year from the date of the order dated 4 October 1980. The revision application instituted on 10 February 2010, was therefore, not entertainable. No fault can therefore, be found with the impugned order dated 7 December 2010.

12] Mr. Korde, learned senior advocate for the petitioners, then submitted that a '*nullity*' , can be questioned directly in this proceedings, particularly since the petitioners are not guilty of laches. Learned senior counsel submitted that only paper possession of the said property has been taken over by the State Government and further, no compensation as also been paid to the petitioners till date. The petitioners have been pursuing the matter with the authorities and all these circumstances are sufficient to entertain the petition against the order dated 4 October 1980 directly. Learned senior counsel relied upon the decision of the Supreme Court in case of *Deepak Agro Foods Vs. State of Rajasthan & ors.*¹, and *Tukaram Kana Joshi & ors vs. Maharashtra Industrial Development Corporation & ors.*².

1 (2008)7 SCC 748

2 (2013) 1 SCC 353

13] In order to appreciate the argument that the order dated 4 October 1980 is a 'nullity' reference is required to be made to the provisions contained in Section 22A of the said Act, which reads thus:

“22A. (1) Notwithstanding anything contained in the foregoing provisions of this Act, if, on an application made by any owner of private forest, within a period of six months from the date of commencement of the Maharashtra Private Forests (Acquisition) (Amendment) Act, 1978, or suo motu at any time, the Collector, after holding such inquiry as he deems fit, is satisfied that the total holding of land of such owner became less than twelve hectares on the appointed day on account of acquisition of his forest land under this Act or that the total holding of land of such owner was already less than twelve hectares on the day immediately preceding the appointed day, the Collector shall determine whether the whole of the forest land acquired from such owner or what portion thereof shall be restored to him, so, however, that his total holding of land, on the appointed day, shall not exceed twelve hectares.

(2) After the Collector has determined the area and situation of the land to be restored to any owner of private forest, the Collector shall make an order, that with effect from the date of his order, the land specified therein, which was acquired and vested in the State Government, shall cease to be a reserved forest within the meaning of the Forest Act, be deemed to have been regranted to the owner and shall be revested in his, subject, however, to all encumbrances, if any, lawfully subsisting on the day immediately preceding the appointed day, which shall stand revived. Possession of the land so restored shall be given by the Collector to the owner, as far as may be practicable under the circumstances, within a period of one month from the date of the order.

(3) *If the amount payable to the owner of private forest under section 7 has been paid to him or the holder of the encumbrances, if any, the Collector shall determine what would have been the amount of the proportionate amount payable to him under section 7 in respect of the land restored to him under sub-section (2), without taking into consideration the deductions to be made for paying the holders of encumbrances, if any, and shall by order direct the owner to repay the amount to determined to the State Government, within a period of six months from the date of receipt of such order by the owner. If the amount is not repaid in time, it shall be recoverable as an arrear of land revenue. When any amount due is repaid by the owner to the State Government, he shall be entitled to make necessary adjustment with the holders of the encumbrances, if any, for any payment made to them by the State Government in respect of the land revested in the owner.*

(4) *Notwithstanding anything contained in the Code or this Act, no appeal shall lie against any decision or order of the Collector under this section, but the Commissioner or the State Government may, within a period not exceeding one year from the date of such decision or order, -*

- (a) *call for the record of any inquiry or proceedings of the Collector for the purpose of satisfying himself or itself as to the legality or propriety of such decision or order; and as to the regularity of such proceedings, as the case may be, and*
- (b) *pass such order thereon as he or it deems fit:*

Provided that, no such decision or order shall be modified, annulled or reversed, unless opportunity has been given to the interested parties to appear and to be heard.

(5) *Any decision taken or order made under this section by the Collector, subject to any revision by the Commissioner or the State Government, and any order made by the Commissioner or the State Government in revision, shall be final and conclusive and shall not be questioned in any suit or proceeding in any Court.*

(6) Nothing contained in this section shall apply to any land in a private forest which was used immediately before the appointed day for extracting of minor minerals such as stone quarries. Accordingly, such land shall not be taken into consideration and shall not be liable to be restored under this section.”

14] Based upon the aforesaid, Mr. Korde, learned senior counsel for the petitioners contended that under Section 22A of the said Act, the Deputy Collector (Private Forest) could have only determined whether, consequent upon the acquisition and vesting of the said property, the petitioners land holding was reduced to less than 12 hectares and if so restored to the petitioners portion of the said property, so however, that their respective holdings shall not exceed 12 hectares. In the exercise of powers under Section 22A of the said Act, the Deputy Collector had neither the power nor jurisdiction to record any 'surrender' of rights by the petitioners or to make an order for payment of compensation to the petitioners. Inasmuch as, the impugned order dated 4 October 1980 does that, Mr. Korde contended, that the same is a 'nullity' , being *ultra vires* powers under Section 22A of the said Act.

15] In my judgment, the aforesaid reasoning cannot be accepted. No doubt, Section 22A of the said Act empowers the Collector and Deputy Collector under certain circumstances to restore the acquired property to its erstwhile owners, so, however, that his title holding of land on the appointed date does not exceed 12 hectares. However, this is only an enabling provision. There is no mandate as such to restore the lands notwithstanding the non-fulfillment of the conditions prescribed or the wishes of erstwhile landowners. In the

present case, when opportunity was afforded to the petitioners, they categorically stated that they do not wish to retain or obtain any portion of the said property, but would rather be satisfied with the compensation amount. In view of such solemn statement, which is neither denied nor disputed, there was no question the Deputy Collector proceeding to determine whether the pre-conditions for restoration have been complied with or not. The order dated 4 October 1980 was therefore, made, recording the statement of the petitioners for determining and directing the payment of compensation. Such an order dated 4 October 1980, can hardly be styled or castigated as being a 'nullity'. In the event, the petitioners had any grievance with regard to the order dated 4 October 1980, then the petitioners could have always resorted to the remedy of revision under Section 22A(4) of the said Act within the period prescribed.

16] In case of *Deepak Agro Foods (supra)*, the Apex Court has held that all irregular or erroneous or even illegal orders cannot be held to be null and void as there is a fine distinction between the orders which are null and void and orders which are irregular, wrong or illegal. Where an authority making order lacks inherent jurisdiction, such order would be without jurisdiction, null *non est* and *ab initio* as defect of jurisdiction of an authority goes to the root of the matter and strikes at its very authority to pass any order and such a defect cannot be cured even by consent of the parties. However, exercise of jurisdiction in a wrongful manner cannot result in a nullity – it is an illegality, capable of being cured in a duly constituted legal proceedings. In the present matter, it is not even the case of the

petitioners that the Deputy Collector (Private Forest) lacked authority or inherent jurisdiction to exercise powers under Section 22A of the said Act. It is only the case of the petitioners that the Deputy Collector (Private Forest), in the exercise of powers under Section 22A of the said Act ought to have ordered the restoration of at least 12 hectares from out of the said property to each of the petitioners. Therefore, it is the case of the petitioners that the Deputy Collector (Private Forest) has exercised jurisdiction in a wrongful manner or in an illegal manner. If this be so, then it was for the petitioners to have resorted to legal proceedings as contemplated by Section 22A(4) of the said Act, and that too within the period of limitation prescribed therefor. This is not a case where lack of jurisdiction is patent on the face of the order. Even otherwise, orders such as these do not bear the brand of invalidity upon their forehead and affected parties have to take out appropriate proceedings before the appropriate forum and within the prescribed period for the purposes of obtaining a declaration or for striking down such orders.

17] At this point of time, it is not possible to ascertain as to whether or not the petitioners have received the compensation in respect of the acquired land. Compensation was directed to be paid by order dated 4 October 1980. In the years 1980 and 1989, the petitioners have complained about the non receipt of compensation. For the period between 1989 and 7 December 2010 however, the petitioners have not offered any explanation whatsoever. Therefore, this is not a case where any semblance of explanation can be said to have been offered for the inordinate delay spread over almost thirty

years. The contention of Mr. Korde, the learned Senior Advocate for the petitioners that this is not a case of laches, can also not be accepted. From the material on record, it does appear that the petitioners have admitted having handed over the possession of the said property to the authorities. Since this is a case of private forest, it will have to be presumed that the said property, by now is covered by forest trees or is otherwise a forest. At this stage, the plea of the petitioners for restoration of 12 Hectares each i.e. about 48 Hectares is to be considered or accepted, then a large area of the private forest shall have to be restored to the petitioners, which the petitioners may use for non forest purposes. All this cannot be acceded to, in a situation where the petitioners had themselves solemnly stated that they did not desire to retain or obtain any portion of the said property and where the petitioners have approached the revisional authority or for that matter, this Court after a lapse of over thirty years. There is also no substance in the submission that since compensation has not been received, the acquisition of the said property cannot be deemed as complete. The provisions of Section 3 of the said Act are quite clear in this regard and they provide for vesting of the property free from all encumbrances on the appointed date itself.

18] In the case of *Tukaram Joshi* (supra), the Hon'ble Apex Court was concerned with acquisition of property without following the due process of law and non payment of compensation for over half a century. In such context, the Hon'ble Apex Court observed that depriving a citizen of their immovable property constitutes a violation of Article 21 of the Constitution of India. In a welfare State,

statutory authorities are bound, not only to pay adequate compensation, but also to rehabilitate persons. The non fulfillment of such obligations would tantamount to forcing the 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. In such a case, there is no period of limitation for courts to exercise their powers under Article 226 of the Constitution of India. Where substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of non-deliberate delay.

19] The decision of the Hon'ble Apex Court in the case of *Tukaram Joshi* (supra) is not applicable to the facts and circumstances of the present case. In the present case, the acquisition of the petitioners property is in accordance with law. Besides, the petitioners had themselves stated that they do not desire to retain or obtain any portion of the said property as and by way of rehabilitation but would be satisfied with the compensation amount. At this point of time i.e. after over thirty years from the date of acquisition, it is really not possible to even ascertain whether the compensation amount has been paid to the petitioners or not. There is no explanation for the delay of over thirty years in approaching either the revisional authority or this Court.

20] For the aforesaid reasons and in the facts and circumstances of the present case, there is no case made out for grant of any relief in this petition. However, it is observed that in case compensation

amount has indeed not been paid to the petitioners, then the same shall be paid at the earliest. Save and except such observations, the Rule is liable to be discharged and is so discharged. There shall be no order as to costs.

(M. S. SONAK, J.)