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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.251 OF 2015

Yashwant Patil

Age : 59 years. Occu: Agriculture and Business

R/at : 104, Ganraj Apartment,

Near Shivalay Bungalow,

Vitawa, Koliwada, Bandarpada,

Kalwa, Thane (West) – 400 605.

...Petitioner

v/s.

- 1) The District Collector, Thane,
(Revenue Department)
- 2) The Municipal Corporation of
Navi Mumbai
Having Office at :- C.B.D., Navi Mumbai.
- 3) The Ld.Tahasildar,
Tahasil Karyalaya, Thane.
- 4) The Maharashtra Industrial Development
Corporation,
Through its Chief Officer Land and
Redevelopment, Navi Mumbai.

- 5) The State of Maharashtra.

...Respondents.

Mr.Tejas Dande a/w Mr.Bharat Gadhvi, i/b Tejas Dande & Associates, for
the Petitioner.

Mr.V.S.Gokhale, AGP for the Respondent Nos.1, 3 and 5.

CORAM : **A. S. OKA &
REVATI MOHITE DERE, JJ.**

DATED : **28th JULY, 2015.**

ORDER (Per Revati Mohite Dere,J.):-

1. By this petition, under Article 226 of the Constitution of India, the petitioner seeks to challenge the action of the respondents of non-payment of compensation/award in respect of acquisition of a land bearing No.Old Survey No.158, Gat No.57 at Digha, Taluka and District – Thane, admeasuring 7 acres and 5 gunthas and further seeks revocation/cancellation of the land acquisition in respect of the aforesaid land.

2. According to the petitioner, the land bearing Old Survey No.158, Gat No.57 at Digha, Taluka and District – Thane (hereinafter referred to as 'the said land') has been in his possession for more than 36 years. It is contended that all revenue entries since 1978 reflect the name of the petitioner as the owner and occupier of the said land. The petitioner had constructed galas on the said land. It is contended that the said construction was erected when village Digha was not included in the limits

of the Navi Mumbai Municipal Corporation and was in the limits of the Gram Panchayat. He has stated that subsequently in 1993, the Gram Panchayat merged with the Navi Mumbai Municipal Corporation. According to him he had installed high power electricity connection in the said galas by applying to the Gram Panchayat, after obtaining its No Objection Certificate. It appears that the Corporation had issued a Notice dated 17th April, 1998 calling upon him to remove the said structure. Pursuant to the said notice, the petitioner challenged the said action of the Corporation by filing a suit being Regular Civil Suit No.51 of 1998 before the learned Civil Judge, Junior Division, Vashi. In the said suit a declaration and injunction was sought to restrain the Corporation from demolishing the said structure. The said suit was resisted by the Corporation on several grounds. Vide Judgment and Order dated 29th April, 2005, the suit was decreed in favour of the petitioner, thereby permanently restraining the Corporation from doing any activity, insofar as, the notice dated 17th April, 1998 was concerned. The Corporation being aggrieved by the Judgment and Order dated 29th April, 2005 preferred an appeal being Civil Appeal No.36 of 2009 before the learned District Judge, Thane. After hearing the parties the learned District Judge, Thane by Judgment and Order dated 30th April, 2010, was pleased to

allow the said Appeal preferred by the Corporation and accordingly the Judgment and Decree passed by the learned Civil Judge, Junior Division, Vashi in Regular Civil Suit No.51 of 1998 dated 29th April, 2005 was set aside. The petitioner challenged the Judgment and Order of the District Judge, Thane by filing a second appeal being Second Appeal No.301 of 2010. The said Second Appeal was rejected by this Court vide Judgment and Order dated 30th June, 2010. The petitioner being aggrieved by the same approached the Apex Court by filing Special Leave to Appeal No.20282 of 2010, which came to be dismissed vide order dated 27th August, 2010.

3. The present writ petition is filed on 7th November, 2014. The learned counsel for the petitioner contended that despite the petitioner being in absolute possession of the suit property as was reflected from the revenue entries, no compensation was awarded to the petitioner. He contended that the petitioner had sent a statutory legal notice to the respondents for non-payment of compensation/award in respect of the acquisition of the said land. According to him the respondents had not issued any Notification/notices under Sections 4, 6 and 9 in respect of the said land nor have followed any procedure for acquisition of the said land.

He submitted that the land in question was acquired by the respondents only on paper, whereas the actual possession of the land remained with the petitioner till the Special Leave Petition was dismissed by the Apex Court. According to the learned counsel for the petitioner, the unauthorized galas were demolished sometime in September, 2010 and that the possession of the galas on the land in question was with the petitioner till 2010. He submitted that the petitioner was cultivating the said land till 2004 and therefore the stand of the respondents that possession was taken in the year 1970 was false. According to him, the revenue entry was changed by the respondents only after 2004, without following due procedure of law. He further submitted that in view of Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 which came into force on 1st January, 2014 the said land acquisition proceedings under the Land Acquisition Act, 1894 had lapsed. He therefore submitted that the respondents be directed to cancel/revoke the land acquisition in respect of the said land and/or compensation be awarded for the said land.

4. Per contra, the learned AGP for the respondent nos.1, 3 and 5 opposed the petition. He submitted that the said property was acquired by

the MIDC and that after acquisition of the said property, the petitioner was divested of his title. According to him, the land of the petitioner was acquired by the Maharashtra Audyogik Vikas Mahamandal (MIDC) in the year 1970. He further submitted that the proceedings that were filed by the petitioner challenging the Notice dated 17th April, 1998 by the Corporation were decided in favour of the respondent – Corporation by the District Court and confirmed by the High Court and the Apex Court. He submitted that there is no merit in any of the grounds raised by the petitioner and that the belated petition filed in 2014 ought not to be entertained.

5. Perused the petition along with the annexures. As noted earlier, the suit filed by the petitioner was for declaration and injunction restraining the respondent – Corporation from demolishing the galas on the said property. It was contended in the said suit by the petitioner that he was the owner of the said property and was in exclusive possession of the same for a few decades. The said suit was filed challenging the notice seeking to pull down the unauthorized construction on the said land. The respondent – Corporation denied that the petitioner was in exclusive possession of the said property and contended that the said land was

allotted to the MIDC and that MIDC had handed over the said land to the second respondent – Corporation on 1st October, 1997 and since then the respondent – Corporation was in possession of the same.

6. Although the said suit was decreed in favour of the petitioner and it was declared that the notice issued by the respondent – Corporation dated 17th April, 1998 was not legal and valid, the second respondent – Corporation being aggrieved by the said Judgment and Decree dated 29th April, 2005 challenged the same before the learned District Judge. The learned District Judge as recorded earlier vide Judgment and Order dated 30th April, 2010 allowed the Appeal preferred by the Corporation and set aside the Judgment and Decree dated 29th April, 2005 passed by the learned Civil Judge, Junior Division, Vashi in Regular Civil Suit No.51 of 1998. The said Judgment and Order passed by the learned District Judge was challenged by way of a Second Appeal by the petitioner which came to be dismissed vide Judgment and Order dated 30th June, 2010. This Court in para 8 of the order dated 30th June, 2010 has observed as under :-

“8. After hearing the learned counsel appearing for the parties and after considering the material on record, it is evident that the plaintiff has not taken any permission for carrying out the structure. Infact the

learned District Judge in para 29 of the judgment, recorded that the plaintiff has not led any evidence with regard to any permission for construction of work. He further observed that the plaintiff did not reply to the notice at Exh. 25 as also he did not produce any material to substantiate the claim that the construction is authorized. It is evident that the land of the plaintiff was acquired by MIDC. It is also evident that the plaintiff has not substantiated his claim that the construction is authorized. If that be so, no fault can be found in the notices which were impugned by the plaintiff. In the result I do not find that the learned District Judge has committed any error and it cannot be said that the impugned judgment is perverse. The Second Appeal does not involve any substantial question of law and hence the same is dismissed”.

7. The SLP having been dismissed by the Apex Court, the order passed by the District Judge and this Court stands confirmed. It is pertinent to note that a letter dated 30th September, 1999 was addressed to the petitioner by an officer of the Maharashtra Audyogik Vikas Mahamandal (MIDC) – the fourth respondent. It pertained to an application dated 25th August, 1999 sent by the petitioner for return of the land which was acquired by the Maharashtra Audyogik Vikas Mahamandal (MIDC). It is specifically stated in the said letter that the petitioner's land as stated aforesaid was acquired pursuant to a Government Resolution dated 23rd October, 1967 and that the possession of the said land was given

to the said Mahamandal i.e MIDC on 29th April, 1970. The said letter dated 30th September, 1999 clearly records that possession of the said land was handed over to Mahamandal (MIDC) on 29th April, 1970. It is thus evident that the land was acquired pursuant to the Government Resolution dated 23rd October, 1967 and that possession of the said land was handed over to the MIDC in 1970. No steps were taken by the petitioner since then, except filing of the suit, and that too for challenging the notice issued by the Corporation for demolition of the galas which were unauthorized. There is also no challenge to the said letter which is dated 30th September, 1999. This petition is not only devoid of merit but also suffers from delay and latches.

8. Accordingly, the petition being devoid of merit, we reject the petition.

(REVATI MOHITE DERE,J.)

(A.S. OKA,J.)