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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5399 OF 2012
WITH
CIVIL APPLICATION NO. 680 OF 2013
WITH
CIVIL APPLICATION NO. 1492 OF 2015
WITH
CIVIL APPLICATION NO. 2333 OF 2015

Maruti Dhondiba Kanchan	...Petitioner
Vs.	
The State of Maharashtra & Ors.	...Respondents

Mr. L.H. Patil for the Petitioner and for the Applicant in
all Civil Applications
Mr. V.S. Gokhale AGP for the Respondent Nos. 1 to 8
Ms. N.R. Rane i/b. Mr. Nitin P. Deshpande for the Respondent No.9

**CORAM : A.S.OKA, &
C.V. BHADANG, JJ.
DATE : JANUARY 19, 2016**

PC.:

1. Heard the learned Counsel appearing for the petitioner. The substantive challenge in this writ petition under Article 226 of the Constitution of India is to the proceedings bearing No.522 of 2008 and to the award dated 31st December, 1990 made under Section 11 of the Land Acquisition Act, 1894. There is also a challenge to the order dated 29th January, 2010 passed by the respondent No.4. By the said order dated 29th January, 2010 the fourth respondent rejected the application made by the petitioner for challenging the acquisition.
2. We had directed the Registry to produce the papers of the

disposed of Writ Petition No.4258 of 2010 filed by the petitioner. We have perused the file of the said Writ Petition. The said Petition was filed for in respect of the same land bearing Gat No.514 village Urali Kanchan, Taluka Haveli, District Pune. The said petition was filed on 20th May, 2010. In the said Writ Petition, there are specific averments that the award dated 31st December, 1990 is illegal. There is a challenge in the said Writ Petition to the allotment of the acquired land to the third parties. The first prayer in the said petition is for calling for the proceeding No.522 of 2008. The proceeding No.522 of 2008 is the application made by the petitioner to the District Collector for challenging the acquisition which was rejected by the Collector (4th respondent in this Petition) by the order dated 29th January, 2010. Thus, in the earlier Writ Petition No.4258 of 2010 there was a specific pleading regarding illegality of the acquisition which is a subject matter of challenge in this petition. The subsequent allotment made of the acquired land was also challenged.

3. We have perused the Farad sheet of the said disposed of Writ Petition. The said Farad Sheet shows that on 10th January, 2016 the writ petition filed by the petitioner was dismissed as none appeared for him. Thereafter, Civil Application No.2622 of 2011 was filed by the petitioner for restoration. On 29th December, 2012, the said Civil Application for restoration was allowed to be withdrawn on the request made by the Advocate for the petitioner. Thus, the order of dismissal of the Writ Petition No.4258 of 2010 continues to operate even as of today.
4. We have perused the averments made in the present petition. In paragraph 19 it is disclosed that the Writ Petition

No.4258 of 2010 was dismissed in which application for restoration being Civil Application No.2622 of 2011 was filed. It is disclosed in paragraph 20 that the petitioner withdrew the Writ Petition and the said Civil Application.

5. While permitting withdrawal of the Civil Application for restoration, this Court has not granted any liberty to the present petitioner to file a fresh petition. The cause of action for filing the earlier petition as well as the present petition is the same. The said cause of action is the alleged illegal acquisition.
6. In view of the dismissal of the earlier Writ Petition No.4258 of 2010 filed by the petitioner, we cannot allow the petitioner to invoke extra ordinarily remedy under Article 226 of the Constitution of India by filing a fresh Writ Petition on the same cause of action. The remedy under Article 226 of the Constitution of India is always a discretionary and equitable remedy.
7. Hence, we reject the writ petition. The pending Civil Applications do not survive.

(C.VBHADANG,J.)

(A.S.OKA,J.)