

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

WRIT PETITION NO. 6332 OF 2016

SHRI SURESH KHANDSARI SUGAR MILLS, KANNAD  
THROUGH ITS PARTNER AJAY BALKRISHNA BHATWAL.

-VERSUS-

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Shri Shah Subodh P.

AGP for Respondents / State : Shri P.S. Patil.

Advocate for Respondents 5 and 6 : Shri Vijay V. Deshmukh.

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**CORAM: S.C. DHARMADHIKARI  
AND  
MANGESH S. PATIL, JJ.**

**DATE :- 07<sup>th</sup> July, 2017**

PC.:

1 By this petition under Article 226 of Constitution of India, the Petitioners are seeking a writ of mandamus or any other appropriate writ, order or direction in the nature thereof to the Respondents to give effect to and implement the General Body Resolution No.6 dated 27.11.2007 passed by the Municipal Council, Kannad.

2 The second relief is to issue a writ of mandamus or any other appropriate writ, order or direction in the nature thereof to the Respondents to initiate effective steps and proceedings to determine and to make the payment of compensation in accordance with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and

Resettlement Act, 2013 (for short "the Act of 2013").

3           Petitioner No.1 is a Partnership Firm of which the second Petitioner claims to be the partner. The business of this Firm is manufacturing white and crystallized Khandsari sugar at Kannad, Taluka Kannad, District Aurangabad.

4           The Respondents are the State of Maharashtra through the Department of Urban Development, the Commissioner- Aurangabad Division, the Collector of Aurangabad District and the Assistant Director of Town Planning, Aurangabad. These are respondent Nos.1 to 4. The real contesting respondents are Respondent Nos. 5 and 6, namely, Kannad Municipal Council and its Chief Officer.

5           The facts necessary to appreciate the arguments of Mr.Shah, learned Advocate appearing for the Petitioners, are that the immovable property bearing Survey No.7/1B situated at Kannad, Taluka Kannad, District Aurangabad belongs to and is owned by the Petitioners. The subject matter of the present proceedings is the area admeasuring 2844 sq.mtrs. out of this survey number. This area is claimed to be an area under acquisition. It is a portion of 12 metres wide Development Plan (DP) road. It is claimed that this road extends from the garage of one Shaikh Rahim ending with the quarters of the Police Sub Inspector. This road runs through the Petitioner' land.

6           It is claimed that the Development Plan for Kannad town was sanctioned on 24.03.1969. It came into effect from 15.06.1969. It is stated that the property which has been described herein above was earmarked and designated as a D.P. Road. The Petitioners state that the Fifth Respondent passed the Resolution No.3 dated 04.11.1989 and resolved that the physical possession be taken of the entire portion of D.P. Road from all the concerned owners. The Petitioners do not dispute that on 18.12.1990 the physical possession was handed over to the Municipal Council by the Petitioners under the panchnama. It was agreed, according to the Petitioners, that the Municipal Council will make payment of the amount of compensation in lieu of acquisition of the land. Accordingly, the communication dated 18.12.1990, copy of which is at Annexure-A, has been addressed by the Petitioners.

7           The Petitioners further state and submit that the Municipal Council completed development and construction of the D.P. Road on the entire site so reserved under the Development Plan. The entire expenditure for the same was incurred by the Municipal Council. The road was thrown open to the public for its use and benefit. The road is since being used by the public. On 19.09.1992 the Petitioners reminded the Municipal Council of its obligation to make payment of compensation in lieu of the land acquired. Copy of this communication is at Annexure-B

to the petition.

8           In paragraph 9 of the Writ Petition, the Petitioners state that they submitted the layout plan in relation to Survey No. 7/1B for use of it as a residence. This layout was approved by the Municipal Council on 02.11.1992. The layout plan also shows that an area admeasuring 2844 sq.mtrs. is covered up under the D.P. Road, whereas an area admeasuring 8802 sq.mtrs. was separately shown as an area under the layout roads. Annexure-C is the copy of order dated 02.11.1992 together with the layout plan.

9           It is at this stage that the Petitioners moved the Chief Officer, the Assistant Director of Town Planning, Aurangabad and claimed that the entire area under the road from the portion of Survey No. 7/1B was taken. This is the Petitioners' property. The Municipal Council has developed the road. However, it has not paid any compensation. Annexure-D is the copy of this letter dated 04.04.2007. The Deputy Director of Town Planning on 14.05.2007 instructed the Chief Officer that in the light of this communication, appropriate decision of payment of compensation be taken by the Municipal Council. That is how the Petitioners made representation once again, copy of which is at Annexure-F. It is claimed that pursuant to this representation dated 30.05.2007, a resolution bearing Resolution No. 6 dated 27.11.2007 was passed by the General

Body resolving to make payment of compensation to the Petitioners at the market value. It is the enforcement and execution of this Resolution which is sought in this petition.

10           The Petitioners claim that they have been corresponding or representing from 2007 to 2015 and seeking compensation. The Petitioners, relying upon these representations, submit that the payment of compensation under the Act of 2013 and rental compensation was also sought.

11           It is claimed that the Chief Officer of the Municipal Council departed from the Municipal Council's Resolution and sought an opinion from the Assistant Director of Town Planning. Annexure-H is the copy of of the Chief Officer's communication. The Chief Officer also questioned the right of the Petitioners to seek compensation by contending that the plot holders under the layout plan, namely, the one submitted by the Petitioners, are beneficiaries of the D.P. Road. Hence, the Petitioners are not entitled to make any claim of compensation in lieu of the land over which the D.P. Road is running. It is in this light that the Chief Officer orally informed the Petitioners in the month of January/February 2016 that they are not entitled to compensation.

12           It is on this basis and contending that the cause of action for this petition arose not when the Petitioners' land was taken over, not when

the resolution was passed, but when there was an express refusal of the Municipal Council to pay the compensation.

13           An affidavit-in-reply is filed to this petition by the Kannad Municipal Council, respondent Nos. 4 and 5. It is stated that the entire claim is barred by delay and laches. Secondly, there is no legal base for such a claim. The Petitioners have no right, title and interest in the land. They cannot seek compensation for the simple reason that the Development Plan of Kannad town was sanctioned in the year 1969. In the Development Plan, the road of 12 metres width passing through the property of the Petitioners and other similarly situated persons, was earmarked and designated as reserved. That is the reservation for D.P. Road. Though the Development Plan came into effect on 15.06.1969, still the physical possession of the road was not taken for a long period. Subsequently, in the year 1990 the physical possession of 12 metres wide road passing through the property of the present petitioners and similarly situated persons was taken. The D.P. Road passes not only through the survey number of the Petitioners, but also through Survey Nos. 7, 8 and 9. Approximate length of this D.P. Road is 500 metres, out of which 234 metres long road passes through the land of the Petitioners. Apart from the Petitioners, none of the adjoining land owners have raised any claim with regard to compensation knowing fully well that they are not entitled

for any compensation. After taking over possession of this affected land, the Petitioners applied for non-agricultural layout of the entire land and to the extent of 11 Acres. In the non-agricultural layout, the Petitioners themselves have shown 12 metres wide road and considering the fact that 12 metres wide road is kept for the use of plot holders, the layout appears to have been approved in the year 1992 by the Town Planning Authorities.

14           The Petitioners were already informed that the land is under Development Plan, but it is covered by the approved layout. The length of 234 metres road is, therefore, shown and even if there was no proposal in the development plan, still the Petitioners ought to have incorporated 12 metres wide road in their layout for its approval. It was further opined that the Petitioners, by demarcating the plots on 12 metres wide road, appear to have taken benefits. The D.P. road is in addition to the approved road in the layout plan. It is in these circumstances that it was decided to transfer the said road to the Municipal Council at the nominal rate of compensation of Rs. 1/-.

15           Though the Petitioners are relying upon the Resolution dated 21.11.2007 for claiming compensation, there is no decision taken to that effect. The decision taken is to pay compensation, if at all payable, in accordance with law. It is in these circumstances that Respondent Nos.4 and 5 have stated that by virtue of that letter dated 01.02.2001 and in

view of the Resolution dated 27.11.2007, the Petitioners are not entitled to any compensation.

16 Pertinently in paragraphs 11, 12 and 13 of this affidavit, Respondent Nos. 4 and 5 state as under :-

- "11. *I say and submit that, the petitioners are also guilty of not disclosing the true and better facts before this Hon'ble Court for the reason that, intentionally the petitioners have not disclosed the fact of issuance of purchase notice to the State Government as well as to respondent No.4 and the present deponent as per the provisions of Maharashtra Regional and Town Planning Act, 1966. The petitioners on 15.11.2000, on 20.12.2000 and on 27.12.2000 have issued purchase notice to the present deponent, State Government and to respondent No. 4 Town Planning Department. Copy of notice dated 15.11.2000 and 27.12.2000 is annexed herewith and marked as Exhibit- "R-2" colly.*
12. *I say and submit that, after the issuance of said purchase notices and after receipt of reply from the respondent No. 4 the petitioners did not initiate any further proceedings in pursuance to purchase notices till this date. The said conduct of the petitioners is itself sufficient to show that they have relinquished their claim.*
13. *I say and submit that the letter dated 22.01.2016 and 30.01.2016 seeking guidance by the present deponent from the office of the respondent No. 4 is appears to have taken as refusal of claim and cause of action for filing the present petition. I further say and submit that the letters dated 22.01.2016 and 30.01.2016 cannot be treated as cause of action for filing the present writ petition because the same are forwarded in consonance with the letter dated 01.02.2001 forwarded by the office of respondent No. 4 to the present deponent for seeking further detailed clarification and guidance and on this count it is*

*evident that the petitioners are trying to revive their time barred claim by taking undue advantage of letters dated 22.01.2016 and 30.01.2016 which are annexed at Exhibit "L and M" respectively to the present writ petition itself."*

17           It is on this material that we have heard the learned counsel appearing for the parties.

18           Pertinently, there is no rejoinder affidavit placed by the petitioners denying any of the factual assertions.

19           Mr.Shah would submit that this Writ Petition cannot be thrown out as contended by Respondent Nos.4 and 5 on the ground of delay and laches. The cause of action arose only when the Municipal Counsel refused to pay the compensation. The claim for compensation was already laid and followed up from time to time. It is submitted that the Municipal Council is not the owner of the property. The Petitioners are yet not deprived of their right, title and interest in the property. However, that is taken over contrary to the mandate of law. Mr.Shah would submit that Article 300-A of the Constitution of India mandates that the Petitioners' property should be taken over only by a process known to law and not otherwise. In the present case, depriving the Petitioners of the physical possession of the property and retaining it, but without paying them the compensation, is contravention of the constitutional mandate of

equality and that enshrined in Article 300-A of the Constitution of India. Hence, this is a claim which cannot be thrown out either on delay and laches, so also, on merits.

20           In support of his contentions, Mr.Shah places reliance upon two judgments of the Honourable Supreme Court, namely, (1) Major (Retd.) Inder Singh Rekhi vs. Delhi Development Authority, (1988) (2) SCC 338 and (2) Tukaram Kana Joshi and others vs. Maharashtra Industrial Development Corporation and others, (2013) 1 SCC 353.

21           On the other hand, Mr.Deshmukh, learned counsel appearing for the Municipal Council would submit that the Petitioners' claim is not only belated, but untenable in law. It is urged that in the affidavit-in-reply it is explained as to how the claim for compensation was turned down. The Petitioners proceeded on the footing that they have been deprived of their property without the process known to law. That is factually incorrect. The Petitioners have themselves and voluntarily together with adjacent land owners handed over physical possession of a huge chunk of the land so as to develop and construct the D.P. Road. It is a development road and meant for the public. It is also meant for the beneficial and profitable use of the lands of all land holders including the Petitioners. It is an amenity provided of which clear advantage is taken by all of them. None except the Petitioners raised this plea because all of them knew that

this road which is 12 metres wide and 500 metres approximately in length, assists and benefits them while developing and enjoying their property. The Petitioners have taken advantage by seeking an approval to the layout. In the layout which was approved, there was another road shown. Further, there are certain plots adjoining the DP Road. In these circumstances, this is the claim which was given up at the time when the property was voluntarily handed over. In such circumstances, he would submit that the Writ Petition is entirely misconceived and deserves to be dismissed.

22 For properly appreciating these contentions, we must make a reference to the annexures to the petition. At Annexure-A page 14, the Petitioners addressed a communication to the Chief Officer, Kannad Municipal Council. They refer to the Development Plan of Kannad. They refer to and very clearly in the subject of this letter that there is a proposal to make the road from the garage of one Shaikh Rahim up to the Police Inspector's residential quarters and this is an internal road. They claim at more places than one that by this proposal, the Petitioners' land is affected. However, there was request made by the Kannad Municipal Council on 18.12.1990 and pursuant thereto as evidenced by a panchnama, the land was handed over. It is stated that there will be no objection raised to the construction of the road and as per the Government

Rules and Regulations, the compensation, which is payable, would be accepted.

23           Then, there is a communication of 19.09.1992, copy of which is annexed as Annexure-B. It says that there is handing over of the portion of property on 18.12.1990 for the internal road as per the Development Plan. However, no amount has been paid after measurement of the land. The amount is claimed at market rate. There is no proposal forwarded. Though more than two years have lapsed, this claim of the Petitioners has not been accepted. Pertinently, this is a letter addressed not to any Executive Functionary, but to the President of Kannad Municipal Council with copies to the Assistant Director and Deputy Director of Town Planning.

24           In the meanwhile, the Petitioners sought approval to their layout and which proposal was placed before the Chief Officer. The layout has been approved and when the remarks of such approval are perused, it is evident that the Petitioners have never disputed that the land was taken over. The Petitioners were allowed the use of the land which is taken over and used as a road. That Development Plan road/internal road has been utilized by all concerned including the Petitioners. All the conditions and based on which the layout has been approved, would indicate that the Petitioners were aware that eventually taking over of a portion of 2844

sq.mtrs. from their land is to their benefit and advantage. That would enhance the value of their property. In such circumstances, we see no merit in this claim of the Petitioners. The Petitioners were aware that on 04.04.2007 as well and in reply to their letters dated 05.02.2007 and 15.02.2007, the Assistant Director of Town Planning was informed by the Chief Officer that for development of the road from the garage of Shaikh Rahim up to the Police Inspector's quarters (12 metres wide Development Plan Road), the Municipal Council had sought financial assistance. However, at that time, inquiries were made about handing over the property. The Petitioners on 25.09.1989 stated that Survey No.7/1B belongs to them and out of it, a portion can be taken over as per the prevailing registration rate. Thus, the Assistant Director of Town Planning was informed by the Chief Officer that a writing was obtained from all the concerned on the stamp paper of Rs. 10/- and based on that, Resolution No.3 dated 04.11.1989 was passed so as take possession of the land and for construction of the road. The road has been developed. For strengthening of the road, another map has been forwarded to the Assistant Director of Town Planning. It is in these circumstances that the Chief Officer informed the Assistant Director of Town Planning that the claim for compensation has been raised from time to time by the land owners.

25           However, we find that no reliance can be placed only on this letter or communication of the Chief Officer. An attempt has been made to read that in isolation. Equally, the resolution that is passed by the Municipal Council in November, 2007 is preceded by another communication from the Assistant Director of Town Planning to the Chief Officer. However, this letter, copy of which is at page 20, does not direct payment of compensation, but only says that necessary action at the end of Municipal Council be taken. It says an appropriate decision be taken. The Petitioners, relying upon this letter, on 30.05.2007 once again moved the Chief Officer. It is pursuant to these communications and remarks that the Resolution of which enforcement is sought, has been passed. Reading of this Resolution in its entirety would reveal that the layout has been approved. It is in these circumstances that one of the members of the Municipal Council expressed the view that the Chief Officer must examine the proposal or request for payment of compensation of the petitioners, from all legal angles and take an appropriate decision. It is in these circumstances that we would hold that one cannot read just one line or one sentence from this Resolution. It cannot be read in isolation and torn from the context. The context was that no decision contrary to law be taken. The Petitioners are aware of this position and, therefore, did nothing till 2015.

26           If indeed this was deprivation of the right, title and interest in the immovable property and contrary to the mandate of law or acquisition of the property without adherence to the law, then, right from the time they handed over the land and voluntarily in 1990, raising the claim in 1992, but waiting till 2007 and from 2007 in which year they allege favourable resolution was passed, they did nothing till 2015. The Petitioners are aware that it is their voluntary act which has resulted in giving up the claim for compensation.

27           No panchanama, writing executed along with others was ever challenged. Instead, a definite benefit was taken by seeking an approval to the layout in relation to the remaining land. In the layout as well and to seek sanction to it, the Petitioners demarcated the DP Road and other roads as internal roads and obtained approval to it. Else, a much larger portion would have to be earmarked for the internal roads. The property is developed pursuant to the approved layout plan. These are benefits in lieu of the token compensation paid for a voluntary handover.

28           Further, the Petitioners were aware that if the proposals or reservations of the Development Plan road as per the Development Plan have to be taken to their logical end, but not taken, then, they have a right in terms of the Maharashtra Regional and Town Planning Act, 1966 (for short "the MRTP Act"). The Development Plan is traceable to Section

22 of that Act. The Development Plan contains several designations, proposals, reservations, etc.. If they have to be taken to their logical end, the Town Planning Authorities and the State have to take further measures and steps. Thus, for passing on benefits of the reservations or designations and the provision of amenities, the State has to take further legal steps. If they are not taken, there are rights which accrue in favour of the parties like the Petitioners. They can claim that the Town Planning Authority must purchase the land and for that purpose the mode under Section 49 of that Act is available. If any further reference is required, then, one can usefully quote Sections 126 and 127 of the MRTTP Act, 1966. They read as under :-

*"126. Acquisition of land required for public purposes specified in plans.*

- 1) When after the publication of a draft Regional plan, a Development or any other plan or town planning scheme, any land is required or reserved for any of the public purposes specified in any plan or scheme under this Act at any time, the Planning Authority, Development Authority, or as the case may be, [any Appropriate Authority may, except as otherwise provided in section 113A] [acquire the land,—*
  - (a) by agreement by paying an amount agreed to, or*
  - (b) in lieu of any such amount, by granting the land-owner or the lessee, subject, however, to the lessee paying the lessor or depositing with the Planning Authority, Development Authority or Appropriate Authority, as the case may be, for payment to the lessor, an amount equivalent to the value of the lessor's interest to be determined by any of the said Authorities concerned on the basis of the*

*principles laid down in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Floor Space Index (FSI) or Transferable Development Rights (TDR) against the area of land surrendered free of cost and free from all encumbrances, and also further additional Floor Space Index or Transferable Development Rights against the development or construction of the amenity on the surrendered land at his cost, as the Final Development Control Regulations prepared in this behalf provide, or*

*(c) by making an application to the State Government for acquiring such land under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013,*

*and the land (together with the amenity, if any so developed or constructed) so acquired by agreement or by grant of Floor Space Index or additional Floor Space Index or Transferable Development Rights under this sections or under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, as the case may be, shall vest absolutely free from all encumbrances in the Planning Authority, Development Authority, or as the case may be, any Appropriate Authority.]*

- (2) *On receipt of such application, if the State Government is satisfied that the land specified in the application is needed for the public purpose therein specified, or [if the State Government (except in cases falling under section 49 [and except as provided in section 113A)] itself is of opinion] that any land included in any such plan is needed for any public purpose, it may make a declaration to that effect in the Official Gazette, in the manner provided in section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, in respect of the said land. The declaration so published shall, notwithstanding*

*anything contained in the said Act, be deemed to be a declaration duly made under the said section :*

*Provided that, subject to the provisions of sub-section (4), no such declaration shall be made after the expiry of one year from the date of publication of the draft Regional Plan, Development Plan or any other Plan, or Scheme, as the case may be.]*

[(3) *On publication of a declaration under the said section 19, the Collector shall proceed to take order for the acquisition of the land under the said Act; and the provisions of that Act shall apply to the acquisition of the said land, with the modification that the market value of the land shall be,—*

*(i) where the land is to be acquired for the purposes of a new town, the market value prevailing on the date of publication of the notification constituting or declaring the Development Authority for such town;*

*(ii) where the land is acquired for the purposes of a Special Planning Authority, the market value prevailing on the date of publication of the notification of the area as undeveloped area; and*

*(iii) in any other case, the market value on the date of publication of the interim development plan, the draft development plan or the plan for the area or areas for comprehensive development, whichever is earlier, or as the case may be, the date of publication of the draft Town Planning Scheme :*

*Provided that, nothing in this sub-section shall affect the date for the purpose of determining the market value of land in respect of which proceedings for acquisition commenced before the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972 :*

*Provided further that, for the purpose of clause (ii) of this sub-section, the market value in respect of land included in any undeveloped area notified under sub-section (1) of section 40 prior to the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972, shall be the market value prevailing on the date of such*

commencement.]

- (4) *Notwithstanding anything contained in the proviso to sub-section (2) and sub-section (3), if a declaration, is not made, within the period referred to in sub-section (2) or having been made, the aforesaid period expired on the commencement of the Maharashtra Regional and Town Planning [(Amendment) Act, 1993)], the State Government may make a fresh declaration for acquiring the land under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, in the manner provided by sub-sections (2) and (3) of this section, subject to the modification that the market value of the land shall be the market value at the date of declaration in the Official Gazette, made for acquiring the land afresh.*

127. *Lapsing of reservations.*

- (1) *If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional Plan, or final Development Plan comes into force [or if a declaration under sub-section (2) or (4) of section 126 is not published in the Official Gazette within such period, the owner or any person interested in the land may serve notice, alongwith the documents showing his title or interest in the said land, on the Planning Authority, the Development Authority or, as the case may be, the Appropriate Authority to that effect; and if within twelve months from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon, the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan.*

- (2) *On lapsing of reservation, allocation or designation of any land under sub-section (1), the Government shall notify the same, by an order published in the Official Gazette. "*

29           A bare perusal of all the above provisions and the MRTP Act in particular, would reveal that the parties like the Petitioners are aware that if the lands are blocked by earmarking, designating or reserving them for public purpose or for public amenity, the State is obliged to take that land from the Petitioners or parties like them by taking recourse to the above provisions. Once they are aware of this, then, we have no doubt in our mind that despite the claim for compensation not being acceptable to the Chief Officer and to the Municipal Council, they took recourse and to the above sections. The Petitioners on 15.11.2000, 20.12.2000 and on 27.12.2000 issued purchase notices to the Chief Officer, the State Government and to Respondent No.4/ Town Planning Department. Annexures R-2 collectively to the affidavit in reply are the copies of these letters. If the Municipal Council's resolution alone was the foundation for the claim, then, we do not see why the Petitioners resorted to this mode of compelling the State to acquire their lands. In any event, by this time the reservation had worked itself out. The D.P. Road reservation was taken to its logical end. The road was developed and dedicated to the public. The portion of the Petitioners land thus, stood vested in the Planning Authority

for making a public road which was made. The Petitioners took full advantage of this development as explained above.

30           Thus, the Petitioners were aware of their legal rights and that they could have compelled and prevailed upon the State to take recourse to law. If the Municipal Council does not take recourse to law, then, the Petitioners could have claimed that their lands be released from reservation or de-reserved. However, they are aware that it is not the entire property or the whole survey number which is acquired allegedly or taken over, but only portion of the same. It is only through that portion that the road runs. The Petitioners knew that the moment such road is proposed, constructed and developed, all the plot owners would derive the benefits and make capital of the same. That they took by presenting the layout. The layout contemplated use of this road and another internal road. This enhanced the value of the property and it was put to beneficial use. Hence, aware of the potential and future gains, the Petitioners not only volunteered to handover the land, but they willingly gave up the claim for compensation. It is only when a politically convenient atmosphere was there, that the Petitioners thought of reviving the claim which was already given up. It is that attempt and which is made from 1992, but given up, which resulted in the resolution of the Municipal Council. Even that resolution did not serve their commercial interests. We

do not think that writ jurisdiction is meant for such parties aware as they are from their first step that they have lost the right, title and interest in the land. Therefore, they devised a better scheme and obtained full returns after giving up the claim for compensation at market rate way back in 1990.

31           We are not in agreement with Mr.Shah that this claim is not dead, old or stale. This is not a claim which is alive. No reliance can be placed on the judgment of the Honourable Supreme Court in the case of Major (Retd.) Inder Singh Rekhi (supra). That was a case where the claim for money and by recourse to arbitration was held to be barred by limitation. The interpretation of Article 137 of the Limitation Act, 1963 was the issue before the Honourable Supreme Court. The Honourable Supreme Court held that Article 137 of Limitation Act, 1963 would apply to any petition or application filed in the Civil Court. Article 137 would apply to an application filed under Section 20 of the Arbitration Act. The period of 3 years prescribed under this Article will start from the date when the right to apply accrued. Section 20 of the Arbitration Act would enable seeking a reference of the claim to arbitration through the statutory mechanism by making an application to the Court. It was that application which was resisted by the Delhi Development Authority. The court held on facts that in works contract, on completion of the work, a right to get

payment would normally arise, but that is not enough for a reference under Section 20. Where the final bills had not been prepared earlier and the assertion of the claim was made on 28.02.1983 and there was non-payment, the cause of action arose from the date of non payment, namely, 28.02.1983 and an application filed under Section 20 in January, 1986 was within 3 years and not barred by limitation. It is in that context that the Court held that a mere failure or inaction to pay does not lead to the inference of the existence of dispute, but it entails a positive element.

32           We must look at these observations in the context and backdrop in which they were made, namely, the factual position. We cannot read these observations and relied upon by Mr.Shah from paragraph 4 of this judgment, torn from the factual context. Therefore, this is not a judgment which would assist the Petitioners in the facts and circumstances of the present case.

33           Equally, the case of Tukaram Kana Joshi (supra) was very peculiar in nature. All these land owners parted with their lands voluntarily. After they parted with the lands voluntarily, the land acquisition proceedings were initiated, but abandoned midway. Thereafter, the lands were handed over for use of the M.I.D.C. The M.I.D.C. utilized the land from 1964, but pertinently, Tukaram Joshi and others were denied compensation and at the same time, others were paid either compensation in money or were given several benefits and

advantages. The specific orders were passed to that effect. The respondents before the Honourable Supreme Court also realized that grave injustice had been done to the appellants. Hence, they issued fresh notification under the Land Acquisition Act dated 14.05.1981. That is how the claim, which was alleged to have been given up and opposed by the M.I.D.C., was held not to be so. Though the lands were taken over in 1964 and to be precise on 06.06.1964, it is these events of intermittently issuing notice and thereafter, abandoning the legal process and yet making over the lands for industrial development, persuading the Government agencies to give some source of livelihood to those landholders whose properties are taken over and some uprooted persons obtaining advantages and benefits, but denying the same to Tukaram Joshi and others, that the Honourable Supreme Court intervened.

34           It is that aspect which was emphasized throughout. We can safely rely upon the observations in paragraphs 9 to 11 and heavily relied upon, but we must not lose sight of the factual conspectus. All duties of the welfare State and as emphasized come into play when the people are vigilant and for no fault of theirs, still they are deprived of their legal rights. It is to emphasize that, but at the same time cautioning that no hard and fast rule can be laid down when the High Court can refuse to exercise its discretion under Article 226, that the judgment concludes.

35           We do not think that the judgment in the case of Tukaram.

Joshi (supra) can be of any assistance in the peculiar facts and circumstances of this case. The Petitioners' case is not on par with Tukaram Joshi and others. The Petitioners are themselves to blame for handing over their lands voluntarily and decades back. They are themselves to blame for giving up the claim for compensation. They are themselves to blame for relying upon some intermittent communications or few lines and sentences of these communications exchanged between the statutory authorities or public officials. Nobody prevented the Petitioners from staking the claim for compensation and asserting it in a court of law earlier by urging that they were induced into parting with their lands and forced or coerced to give up their legal rights. They did not do so advisedly. They were aware that from 1992 the lands are taken over. They were aware that they have been refused everything beyond a token compensation of Rs.1/- in 1992. That is how they took legal recourse in 2000 and addressed the purchase notice, but gave up the rights in that as well. The purchase notice has to be followed and taken to its logical end. The Petitioners could have taken it to its logical end by claiming a declaration as is claimed day in and day out before this Court of the reservation having lapsed, the lands be released from the same. Nothing of this kind has been done. Beyond persuading the President or elected representatives of the Municipal Council in passing the resolution, which also does not carry the case any further, the Petitioners did nothing. It is in

these circumstances that the Petitioners cannot rely upon the communication of 2015 / 2016 to urge that the cause of action is still alive. We are of the opinion that apart from asserting a dead, old or stale claim, even on merits, the Petitioners are not entitled to any relief.

36           As a result of the above discussion, this Writ Petition is dismissed, but without any order as to costs.

kps

**(MANGESH S. PATIL, J.)**

**(S.C. DHARMADHIKARI, J.)**