

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 11112 OF 2017

Vishnu s/o Prabhakar Kadam  
& others

Petitioners

Versus

The State of Maharashtra  
& others

Respondents

Mr. V.M. Humbe, advocate for petitioners.  
Mr. A.R. Kale, A.G.P. for respondents.

**CORAM : R.M.BORDE &**

**SMT. VIBHA KANKANWADI, JJ.**

**DATE : 13<sup>th</sup> SEPTEMBER, 2017**

**PER COURT:**

1. Petitioners contend that some portions of land belonging to them out of gat nos. 267, 8, 34, 29, 293, 294, 271, 9, 292, 272, 297 and 34 of village Ranjni have been taken up for construction of Gadiphata Pachegaon road, which was constructed in the year 1972. According to them, the width of the road was approximately 30 ft. It is further contended that the width of the road has been widen in the year 2016. Petitioners, for the first time, approached the authorities claiming amount of compensation in respect of lands acquired in the year 1992, by presenting representation on 19.05.2017. Since the claim has not been considered, they have moved this Court.

2. Petitioners place reliance on the judgment in the mater of Tukaram Kana Joshi and others Vs. Maharashtra Industrial Development Corporation and others reported in **(2013) 1 Supreme**

**Court Cases 353** and contend that since the lands belonging to them have been taken in possession without complying with the acquisition proceeding and the right of petitioners has been infringed, the aspect of delay and laches may not be any impediment in claiming the amount of compensation. Our attention is invited to paragraphs 12 to 16 of the judgment which read thus :

12. The State, especially a welfare State which is governed by the rule of law, cannot arrogate itself to a status beyond one that is provided by the Constitution. Our Constitution is an organic and flexible one. Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if the whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third-party interest is involved. Thus analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience.

13. The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that there is any period of limitation for the courts to exercise their powers under Article 226, nor is it that there can never

be a case where the courts cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such discretion, must be exercised fairly and justly so as to promote justice and not to defeat it. The validity of the party's defence must be tried upon principles substantially equitable. (Vide P.S. Sadasivswamy v. State of T.N., State of M.P. v. Nandlal Jaiswal and Tridip Kumar Dingal v. State of W.B. )

14. No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When 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 a non-deliberate delay. The court should not harm innocent parties if their rights have in fact emerged by delay on the part of the petitioners. (Vide *Durga Prashad v. Chief Controller of Imports and Exports, Collector (LA) v. Katiji, Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur, Dayal Singh v. Union of India and Shakara Coop. Housing Society Ltd. v. M. Prabhakar.*)

15. In *H.D. Vora v. State of Maharashtra* this Court condoned a 30 year delay in approaching the court where it found violation of substantive

legal rights of the applicant. In that case, the requisition of premises made by the State was assailed.

16. The High Court committed an error in holding the appellants non-suited on the ground of delay and non-availability of records, as the Court failed to appreciate that the appellants had been pursuing their case persistently. Accepting their claim, the statutory authorities had even initiated the acquisition proceedings in 1981, which subsequently lapsed for want of further action on the part of those authorities. The claimants are illiterate and inarticulate persons, who have been deprived of their fundamental rights by the State, without it resorting to any procedure prescribed by law, without the Court realising that the enrichment of a welfare State, or of its instrumentalities, at the cost of poor farmers is not permissible, particularly when done at the behest of the State itself. The appellants belonged to a class which did not have any other vocation or any business/calling to fall back upon, for the purpose of earning their livelihood.

In the reported matter, a very large chunk of land was taken over in the year 1964 for the industrial development. Although initially, proceedings under the provisions of Land Acquisition Act were initiated and, notification under section 4 of the Act was published in the year 1981, further proceedings were not taken up. Petitioners before the Supreme Court approached the authorities on various occasions. Writ petition was presented in the year 2009 which came to be rejected on the ground of delay.

3. In respect of acquisition during the relevant period in the year 1972, in identical circumstances, the claim of the petitioners

who approached this Court was allowed. As in the instant matter, in the reported matter i.e. State of Maharashtra vs. Digambar reported in **AIR 1995 Supreme Court 1991**, during the year 1971-1972 a large chunk of land was taken up. The facts giving rise to the aboveresferred matter are similar to the instant matter which are recorded in paragraphs 2 and 2A of the judgment, which are reproduced as below :

2. During the year 1971-72 when acute scarcity conditions prevailed in nearly 23,000 villages of the State of Maharashtra, large scale scarcity relief works had to be undertaken by the State Government to provide employment to small agriculturists and agricultural labour of those villages for earning their livelihood. Such relief works included 38,000 Km. of road works. As the State Government was not in a position to divert relief funds at its disposal for payment of compensation for lands to be utilised in road works, Collectors, put in charge of such works, were instructed not to accord sanction to them without ensuring that they did not involve any payment of compensation by the Government. Collectors, were, indeed specially instructed to impress upon the non-official and other social workers to use their good offices in ensuring that the land required for such scarcity relief works were donated to the Government without any claim for compensation.

2A. In the year 1991, respondent, an agriculturist of Vepani village in District Nandat of Maharashtra, filed a writ petition. W.P. no. 3124/91 under Article 226 of the Constitution of India in the Bombay High Court, Aurangabad Bench against the appellant, the State of Maharashtra. The relief sought in that writ petition was for issue of a direction to the Government of Maharashtra to grant compensation to him for his land alleged to

have been utilised by the Government without his consent for Vepana-Gogri Road - a road work carried out by the agencies of the State Government, in the course of execution of scarcity relief works undertaken by the State Government in the year 1971-72. When the said writ petition, as well as other 191 similar writ petitions, had been set down for admission before the Aurangabad Bench of the Bombay High Court, the Hon'ble Judges constituting that Bench, called upon the concerned Government Pleader to appear for the State by waiving service of notice on it. The learned Government Pleader, who, accordingly, appeared on behalf of the State in those writ petitions, urged for dismissal of the writ petitions on the ground of laches on the part of writ petitioners i.e. undue delay of 20 years, which had occurred in the filing of the writ petitions. But, the Bench of the High Court refused to entertain the ground of undue delay urged by the learned Government Pleader against the grant of the relief sought for in the writ petitions and allowed the writ petitions by its judgment dated October 10, 1990. The portion of the judgment which could be regarded as material, reads thus :

"Mr. Kakade, learned Government Pleader faintly urged that assuming that the petitioner/petitioners were right, but since possession was taken sometime in the year 1972, the present Writ Petition filed in the year 1991 are hopelessly time barred and this delay itself is sufficient to reject the petition. We are afraid, in a welfare State, the State Government cannot take such attitude when citizens come before the Courts and complain that they have been deprived of their property without following due process of law and without paying the compensation. It certainly affects the valuable right of the citizens to receive compensation. There is no dispute that the possession of lands was taken sometime in

1972. There is no Investigation on factual aspects by any agency so far. The question as to whether any land of the petitioner has been taken possession of in the year 1971-72 as alleged in the petition will have to be enquired into by a competent Officer. We accordingly direct the Collector or any other Officer nominated by him but not below the rank of Deputy Collector to initiate the proceedings under the Land Acquisition Act, 1894.

4. The main contention raised on behalf of the State in the aforesaid matter was in respect of sustainability of the judgment of the High Court in appeal and exercise of discretionary power conferred on the High Court under Article 226 of the Constitution of India for grant of relief of payment of compensation for the land allegedly utilised by the officers of the State in the year 1971-1972. While dealing with the issue, the Honourable Supreme Court has observed in paragraphs 12, and 21 to 25 of the judgment thus :

12. How a person who alleges against the State of deprivation of his legal right, can get relief of compensation from the State by invoking writ jurisdiction of the High Court under article 226 of the Constitution even though, he is guilty of laches or undue delay is difficult to comprehend, when it is well settled by decision of this Court that no person, be he a citizen or otherwise, is entitled to obtain the equitable relief under Article 226 of the Constitution if his conduct is blame-worthy because of laches, undue delay, acquiescence, waiver and the like. Moreover, how a citizen claiming discretionary relief under Article 226 of the Constitution against a State, could be relieved of his obligation to establish his unblameworthy conduct for getting such relief, where the State against which relief is sought is a welfare State, is also difficult to comprehend.

Where the relief sought under Article 226 of the Constitution by a person against the welfare State is founded on its alleged illegal or wrongful executive action, the need to explain laches or undue delay on his part to obtain such relief, should, if anything, be more stringent than in other cases, for the reason that the State due to laches or undue delay on the part of the person seeking relief, may not be able to show that the executive action complained of was legal or correct for want of records pertaining to the action or for the officers who were responsible for such action not being available later on. Further, where granting of relief is claimed against the State on alleged unwarranted executive action, is bound to result in loss to the public exchequer of the State or in damage to other public interest, the High Court before granting such relief is required to satisfy itself that the delay or laches on the part of a citizen or any other person in approaching for relief under Article 226 of the constitution on the alleged violation of his legal right, was wholly justified in the facts and circumstances, instead of ignoring the same or leniently considering it. Thus, in our view, persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot get discretionary relief obtainable thereunder unless they fully satisfy the High Court that the facts and circumstances of the case clearly justified the laches or undue delay on their part in approaching the court for grant of such discretionary relief. Therefore, where a High Court grants relief to a citizen or any other person under Article 226 of the Constitution against any person including the State without considering his blame-worthy conduct, such as laches or undue delay, acquiescence or waiver, the relief so granted becomes unsustainable even if the relief was granted in respect of alleged deprivation of his legal right by the State.

21. Therefore, where a High court in exercise of its power vested under Article 226 of the Constitution issues a direction, order or writ for granting relief to a person including a citizen without considering his disentitlement for such relief due to his blameworthy conduct of undue delay or laches in claiming the same, such a direction, order or writ becomes unsustainable as that not made judiciously and reasonably in exercise of its sound judicial discretion, but as that made arbitrarily.

22. Since we have held earlier that the person seeking grant of relief under Article 226 of the Constitution, even if it be against the State, is required to satisfy the High Court that he was not guilty of laches or undue delay in approaching it for relief, need arises for us to consider whether respondent in the present appeal (writ petitioner in the High Court) who had sought for relief of compensation on the alleged infringement of his legal right, had satisfied the High Court that he was not guilty of undue delay or laches in approaching it for relief. The allegation of the petitioner in the writ petition, as becomes clear from the judgment under appeal, was that although certain extent of his land was taken away in the year 1971-72 by the agency of the State for the scarcity relief road works undertaken by the State Government in the year 1971-72, to find work for small agriculturists and agricultural labourers in the then prevailing severe drought conditions, without his consent, he was not compensated therefore, despite requests made to the State Government and various agencies in that regard ever since till the date of filing of the writ petition by him.

23. In our view, the above allegation is in no way sufficient to hold that the writ petitioner (respondent here) has explained properly and satisfactorily the undue delay of 20 years which had occurred between the alleged taking of

possession of his land and the date of filing of writ petition in the High Court. We cannot overlook the fact that it is easy to make such kind of allegations against anybody that too against the State. When such general allegation is made against a State in relation to an event said to have occurred 20 years earlier, and the State's non-compliance with petitioners demands, State may not at all be in a position to dispute such allegation, having regard to the manner in which it is required to carry on its governmental functions. Undue delay of 20 years on the part of the writ petitioner, in invoking the High Court's extraordinary jurisdiction under Article 226 of the Constitution for grant of compensation to his land alleged to have been taken by the Governmental agencies, would suggest that his land was not taken at all, or if it had been taken it could not have been taken without his consent or if it was taken against his consent he had acquiesced in such taking and waived his right to take compensation for it.

24. Thus, when the writ petitioner (respondent here) was guilty of laches or undue delay in approaching the High Court, the principle of laches or undue delay adverted to above, disentitled the writ petitioner (respondent here) for discretionary relief under Article 226 of the Constitution from the High Court, particularly, when virtually no attempt had been made by the writ petitioner to explain his blameworthy conduct of undue delay or laches. The High Court, therefore, was wholly wrong in granting relief in relation to inquiring into the allegation and granting compensation for his land alleged to have been used for scarcity relief road works in the year 1971-72. As seen from the judgment of the High Court, the allegation adverted to above, appear to be the common allegation in other 191 writ petitions where judgments are rendered by the High Court following the judgment under appeal and which

are subject of S.L.Ps. in this court that are yet to be registered. We have, therefore, no hesitation in holding that the High Court had gone wholly wrong in granting the relief which it has given in the judgment under appeal and judgments rendered following the said judgment in other 191 writ petitions, said to be the subject of S.L.Ps or otherwise. All the said judgments of the High Court, having regard to the fact that they were made in writ petitions with common allegation and seeking common relief, are liable to be interfered with and set aside in the interests of Justice even though only learned counsel appearing for a few writ petitioners were heard by us.

25. In the result, we allow this appeal, set aside the judgment under appeal, dismiss the writ petition of the writ petitioner (respondent here) and also annul all those judgments rendered by the High Court following the judgment under appeal, even though the S.L.Ps filed in respect of them before this Court are yet to be registered or even if no S.L.Ps are filed in respect of them. However, in the facts and circumstances of the present case, we make no order as to costs.

Appeal allowed.

5. Considering the judgment of the Honourable Supreme Court in identical matter, we are not inclined to entertain the petition. Petition stands rejected.

**SMT. VIBHA KANKANWADI**  
**JUDGE**

**R.M.BORDE**  
**JUDGE**