

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition NO. 11624 OF 2013

1.Pratap Bhogilal)
adult, Indian Inhabitant residing at 26,)
B.G.Kher Marg, Malabar Hill, Mumbai-400006)

2.Nirmal Bhogilal)
adult Indian Inhabitant residing at 26,)
B.G.Kher Marg, Malabar Hill, Mumbai-400006)...Petitioners

Versus

1.City Industrial Development Corporation)
a statutory corporation having its registered)
office at CIDCO Bhavan, C.B.D.Belapur,)
Navi Mumbai.)

2.State of Maharashtra)
through its Urban Development Department)
service effected through the office of the)
Government Pleader Appellate Side-Writ Cell)
P.W.D. Building,High Court, Mumbai.)...Respondents

Mr.Shardul Singh i/b. Mr.Vaibhav Gaikwad, for the Petitioners.

Dr.Poornima Advani I/b. M/s. The Law Point, for Respondent No.1.

Mrs.S.S.Bhende, AGP for the State-Respondents.

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CORAM :- DR. MANJULA CHELLUR, C.J., &
G. S. KULKARNI, J.
RESERVED ON:- FEBRUARY 20, 2017

PRONOUNCED ON :- APRIL 4, 2017

JUDGMENT : (Per G.S.Kulkarni, J.)

1. The challenge in the present petition is to the communication dated 21 March 2013 of the 1st respondent whereby claim of the petitioners for allotment of a developed plot of land under 12.5% scheme has been rejected. The petitioners have also prayed that the respondents be directed to grant the petitioners benefit of the 12.5% scheme.

2. Respondent no.1 under the directions of the State Government was implementing a scheme popularly known as 12.5 % scheme whereby those persons whose agricultural lands were acquired for the "New Bombay Project" and who had become landless were granted 12.5% developed plots in addition to the land acquisition compensation paid to them.

3. The petitioners' claim to be the heirs and representatives of one Bhogilal Leharchand, who, the petitioners have averred was the owner of 61 acres of land situated at Village Vashi, District Thane. These lands were acquired by the Government of Maharashtra under the Land

Acquisition Act, 1894 (for short '1894 Act'), for the New Bombay project. As regards the said land acquisition a notification under Section 4 of 1894 Act came to be issued on 3 February 1970. A notification under Section 6 of 1894 Act was issued on 14 May 1971 and thereafter an award came to be declared under Section 11 of the 1894 Act on 20 November 1972. It is stated that the land was divided into two parcels and there were two separate awards. The petitioners' father being aggrieved by the award, had preferred references under Section 18 of 1894 Act. There was also a reference for apportionment of compensation under Section 30 of the Land Acquisition Act as there were several claimants who made a claim in the compensation. A reference as preferred by the petitioners' father for enhancement of compensation was allowed.

4. In the year 1990, the State Government promulgated the said policy for allotment of developed plot of land to a category of persons who had become landless in the land acquisition undertaken for "New Bombay Project". About 15 years after issuance of this policy, the petitioners being legal heirs of late Bhogilal addressed a letter dated 5 December 2011 to the Chief Land Officer, CIDCO requesting for allotment of land under 12.5% scheme at village Vashi. The letter set out that the petitioners were legal heirs of late Bhogilal whose land admeasuring about 61 acres was acquired under the land acquisition and the petitioners being legal heirs

had become entitled for allotment of 12.5% plot of land. The petitioners also stated that late Bhogilal cannot be considered as absentee landlord within the meaning of clause (J) of paragraph (1) of the Government Resolution dated 6 March 1990. (Policy decision). It appears that there was one more application made by the petitioners being application dated 21 December 2000, however a copy of the same is not annexed to the petition.

5. Respondent No.1 by a communication dated 21 March 2013 replied to the petitioners, interalia stating that the Government Resolution dated 6 March 1990 in clause "J" had provided that those persons who were not by themselves cultivating the land (Absentee landlords) and other persons like the owners of salt pans, public trust and other institutions were not entitled for the benefit of the said Government Resolution dated 6 March 1990. This letter of Respondent No.1 also refers to the letter of the State Government dated 15 December 1997 whereby the Government had informed that the lands in question were not in the possession and cultivation of the petitioners' father but the lands were cultivated by the tenants. It was further recorded that the absentee landlords were not entitled for the benefit of said 12.5% scheme of the State Government. The petitioners were accordingly informed that they were not entitled for allotment of 12.5% plot under the scheme. The

petitioners being aggrieved by the said communication and the decision of respondent No.1 rejecting their application for grant of 12.5% plot are before us in this petition.

6. Respondent No.1 has appeared as also has filed a reply affidavit interalia contending that respondent No.1 as “a new town development authority” has a power and authority under Section 118 of the Maharashtra Regional and Town Planning Act,1966 (for short “MRTP Act”) to dispose off and lease the lands acquired under Section 113A of the MRTP Act, vested in it by the State Government, alongwith the Government lands. Respondent refers to New Bombay Disposal of Land Regulations,1975 issued with the previous approval of the State Government as amended in the year 2008 which confers a power in Respondent No.1 to dispose of the lands. It is stated that the Government of Maharashtra had acquired the privately held lands within the notified area of Navi Mumbai (previously New Bombay) and vested the same alongwith other Government lands to Respondent No.1 to sub-serve the purpose of creation of a new city 'New Bombay'. It is stated that Respondent No.1 CIDCO was acting as a statutory agent on behalf of the State Government for the purpose of development of new town Navi Mumbai. It is further stated that the State Government had acquired privately held lands in the notified areas of New Bombay as per the

provisions of the Land Acquisition Act as also compensation was awarded. Respondent no.1 has stated that there was a demand from the project affected persons for providing developed plots within the notified area of Navi Mumbai in addition to the statutory compensation payable under the Land Acquisition Act and accordingly as per the mandate of Section 118(2) of the MRTP Act, the State Government has formulated a scheme for allotment of developed lands to the Project Affected Persons (PAP) which is popularly known as 12.5% scheme. In this regard, the State Government had issued directions vide Government Resolution dated 6 March 1990 and further Government Resolution dated 28 October 1994. Respondent no.1 has stated that in terms of the directions contained in clause "J" of the Government Resolution dated 6 March 1990, the Government has excluded certain categories of PAPs from the entitlement of benefit of 12.5% scheme which are as follows:-

- (i) Absentee landlord ;
- (ii) Salt pan owners;
- (iii) Public Charitable Trust and other institutions.

7. In the reply affidavit Respondent No.1 has also averred that respondent no.1 being an implementing agency on behalf of the State Government for allotment of the land under 12.5% scheme to the PAPs, while implementing the scheme, it had faced difficulties as to which

categories can be treated as “absentee landlords” and therefore respondent no.1 had sought a clarification from the State Government. The State Government vide its clarification dated 15 December 1997 defined the “absentee landlord” as under:-

“The Terms, “Agricultural land owners not cultivating themselves their own lands (Absentee landlord)” will be applicable to the land holders whose lands have been acquired, as follows:

1. The acquired land is fit for cultivation, but the same was not in the possession of land owner and the cultivators only were cultivating the said land.
2. The land owners not cultivating themselves their own lands as aforesaid will not get the benefit of this scheme.”

8. Respondent no.1 has stated that the decision to declare the petitioners' father as 'absentee landlord' was taken in accordance with the notification dated 6 March 1990 read with clarification dated 15 December 1997, which in explicit terms excluded absentee landlords namely owners who are not cultivating the land personally, to claim benefit under the scheme. It is the case of Respondent No.1 that this policy dated 6 March 1990 and the clarification dated 15 December 1997 are accepted by the petitioners as this policy is not challenged by them. It is stated that there is nothing arbitrary in the decision rejecting the claim of the petitioners, as the petitioners' father late Bhogilal was not cultivating the land himself. It is stated that the petitioners' also cannot

contend that late Bhogilal was the cultivator as it is expressly observed in the Award dated 20 November 1972 that there are more than 100 persons who are “cultivators in actual possession of the land”, and though name of Bhogilal was shown as owner as also specific names of cultivators were also shown in column no.7. It is stated that the petitioners reliance on the common judgment dated 30 November 1978 in Land Acquisition References Nos.34 of 1975 and 35 of 1975 would not assist the petitioners as the said issue was not the subject of the said land acquisition references. It is stated that the mere fact that several occupants of the said lands were cultivating the land clearly showed that late Bhogilal was not cultivating the lands himself. It is further stated that the reliance on the order of the learned District Judge dismissing the Land Acquisition Reference Nos. 20 to 190 of 1973 also would not assist the petitioners as the said dismissal was on technical defects in the references made by the counter-claimants and not due to lack of merits. It is stated that no adverse finding has been recorded to suggest that there were no occupants on the said lands and late Bhogilal was in possession of the same.

9. Apart from the above defence respondent No.1 has also averred that the petition is barred by delay and laches inasmuch as the acquisition of the land was notified in the year 1970 and the 12.5 % scheme was implemented in the year 1990 after about 20 years from the

said acquisition. The petitioners' representation for allotment of land under 12.5% scheme was for the first time made vide letter dated 5 December 2011 that is about 21 years after the implementation of the scheme. It is thus stated that there is an inordinate and unexplained delay on behalf of the petitioners to assert this claim, even assuming the petitioners had a legal right to assert the same. It is submitted that on this count itself the writ petition be dismissed.

10. On the rival pleas of the parties as noted above, we have heard the learned Counsel for the parties and with their assistance we have also perused the documents as placed on record.

11. There is no dispute that the lands belonging to the petitioners' father late Bhogilal, were subject matter of the acquisition under Notification dated 3 February 1970, issued under Section 4 of 1894 Act followed by a notification dated 14 May 1971 issued under Section 6 of 1894 Act and the subject matter of award dated 20 November 1972. A perusal of the award would show that the Special Land Acquisition Officer has observed that there are complications involved in the ownership and title over the lands. It is observed that though the lands were owned by late Bhogilal as the lands were lying fallow, they were issued to village folk by the Government in pursuance to its policy. The cultivators being

lessees of the Government, they did not acquire any tenancy rights under the tenancy law over the lands. However, their names appeared in the 7/12 extract under the village extract VII-A under the 'Crops' column in pencil. The cultivators who were in actual possession of the land had created interest in favour of one Mr.J.M.Patel who had purchased the land without ascertaining the issue of ownership. It is therefore averred that that in the circumstances it became a civil dispute and the land acquisition officer therefore was unable to decide the interest of the contesting parties in this land and apportion the compensation, the land acquisition officer therefore thought it appropriate to deposit the compensation as awarded in the Civil Court under Section 30 of the 1894 Act.

12. A perusal of the Award nowhere shows that late Bhogilal was in possession of the land and that he was actually cultivating the land. It also appears that this assertion was never made either before the Special Land Acquisition Officer or in the reference proceedings. There is nothing on record to indicate, as to whether during his life time late, Bhogilal asserted this position. Admittedly, the State Government notified the 12.5% scheme by a Government Resolution dated 6 March 1990. The scheme was formulated to give some reliefs to the persons who were deprived of their source of livelihood, by allotment of land on a reasonable price in addition to statutory compensation already paid under

the 1894 Act. The scheme in regard to the category of persons who would become entitled for allotment of 12.5% land was clarified by the Government vide its clarification dated 15 December 1997, as noted above, interalia providing that the persons who were not cultivating their lands personally and who fall within the term of absentee landlord, would not to be entitled for allotment of plot of land under 12.5% scheme. This clarification also reflects the object as contained in the main scheme namely that the scheme was to mitigate the loss of livelihood, of those persons who were cultivating the lands and had become landless. The petitioners do not dispute or challenge this Government Resolution which would provide the category of 'absentee landlord', being not entitled for the benefit under 12.5% scheme.

13. The petitioners, however, on the basis of the observations as made in the award and in the orders passed by the District Court in the adjudication of the References, are contending to the contrary, that late Bhogilal was actually cultivating the land. We are afraid that this assertion of the petitioners cannot be accepted as nowhere in the award or in the orders of the Civil Court, it is accepted that late Bhogilal was actually cultivating the lands. In fact the observations are contrary namely that the land was leased to villagers who were actually cultivating the lands and their names also came to be recorded in the revenue record

and in view of this position, the Special Land Acquisition Officer could not apportion the amount of compensation payable under the Award. In any event, it is not the case of the petitioners that their father late Bhogilal had not received compensation. The scheme of 12.5% is over and above the compensation. The private persons claiming such a benefit would become eligible for such allotment if they fall in the eligible category, under the said scheme.

14. On the above background, we cannot accept the contention of the petitioners that the impugned communication dated 21 March 2013 issued by Respondent No.1 rejecting the representation/ application of the petitioners for allotment of developed plot of land under 12.5 % scheme, is in any manner arbitrary or illegal. There cannot be two opinions that Respondent No.1 being a public body is required to act in accordance with law and in the present context, the policy / scheme dated 6 March 1990 notified by the State Government to help the cultivators who were actually cultivating the land, by granting plot under the said 12.5 % scheme. The scheme specifically prohibits allotment of plot of land to such persons who were not actually cultivating the land or who are termed as absentee landlords under the scheme. The State Government in its clarification dated 15 December 1997 has explained as to who are the absentee landlords as noted above. Thus, the petitioners cannot make a claim

contrary to the terms and conditions of 12.5% scheme / policy and claim allotment of a plot as a matter of a legal entitlement.

15. Before concluding, we cannot overlook another aspect of the case namely the belated attempt of the petitioners in making their claim. In our opinion, Respondent No.1 would be justified in its contention that there is inordinate and an unexplained delay, in the petitioners filing this petition after about 21 years of the 12.5% scheme / policy being notified by the State Government. As noted by us above, the petition is completely silent on as to whether the petitioners' father late Bhogilal asserted this position. However, the fact remains that the petitioners for the first time by their application dated 5 December 2011 sought allotment of plot under 12.5% scheme from respondent no.1 which shows that it was about 21 years after the 12.5% scheme was notified by the State Government. There is not a whisper of explanation as provided in the petition to explain this delay even assuming that the petitioners had any legal rights to assert, what they contend. This Court surely would not come to the help of those persons who are not diligent and who are sleeping over their rights. The law in this regard is well settled. In taking this view we would be consistent with our observations in our order dated 31 January 2017 as made in the case “Nirabail Parshuram Koli & Ors. Vs. The City & Industrial Development Corporation Maharashtra & Ors.” (Writ

Petition No.1602 of 2015). In dealing with the issue of delay this Bench has observed thus:-

“6. Thus, there is no dispute with regard to the acquisition proceedings. The contention is only on the subsequent Government Resolution/policy of 1990. At the time when the acquisition proceedings were complete, such scheme of 12.5% was not in vogue, which has come subsequently in the year 1990 i.e. about 20 years, after the acquisition proceedings had attained finality. We cannot permit persons like the petitioners to approach the Court as and when they desire to seek such reliefs. In this proceeding, we also cannot verify a locus/entitlement of the petitioners who make such a claim. We need not undertake the enquiry as to the eligibility and entitlement of the petitioners as being urged by the petitioners in the several paragraphs of the Writ Petition.”

We are therefore of the clear opinion that apart from the petitioners having failed to make out any case on the merits, it would also be required to be held that the petition is barred by delay and laches.

16. In view of the above discussion, we see no merit in the writ petition. It is accordingly rejected. No order as to costs.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)