

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

WRIT PETITION NO. 11602 OF 2016

Sandipan Baburao Pawar and others .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Shri Mahesh P. Kale, Advocate h/f Shri R. T. Deshmukh,
Advocate for Petitioners.

Shri K. S. Patil, A.G.P. for Respondent Nos. 1 to 7..

**CORAM : S. V. GANGAPURWALA AND
R. G. AVACHAT, JJ.**

DATE : 27TH NOVEMBER, 2018.

FINAL ORDER :

. The learned Assistant Government Pleader waives notice for respondents.

2. Mr. Kale, the learned counsel for petitioners submits that, in the year 1980 road was constructed from the lands of petitioners. The possession was taken from the ancestors of the present petitioners of their lands. Assurance was given that the notification under the Land Acquisition Act would be issued in due course of time. Keeping in mind the public need, the respondents were allowed to construct the road. However, respondents have neither paid compensation to petitioners, nor

have taken up any acquisition proceedings. The petitioners cannot be deprived of their property without due process of law. The right to property is a constitutional right under Article 300-A of the Constitution of India.

3. The learned Assistant Government Pleader for respondents submits that, after such a long period, the claim of petitioners cannot be entertained.

4. There is absolutely nothing on record to show as to why the petition is filed after 36 years. The petitioners are not even in a position to state the exact date as to when the work of road had commenced. The Apex Court in a case **State of Maharashtra Vs. Digambar** reported in (1995) 4 SCC 683 has observed thus :

14. 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 decisions 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 blameworthy 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. When 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 the 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 blameworthy 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.

5. In view of the above, the writ petition is disposed of. No costs.

[R. G. AVACHAT, J.]

[S. V. GANGAPURWALA, J.]