

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 10104 OF 2013

1. Ganesh s/o. Narsing Lolge,
Age 38 years, Occu. Agri.,

2. Sachin s/o. Narsing Lolge,
Age 35 years, Occu. Agri.

R/o. Kailasnagar, Aurangabad,
Dist. Aurangabad.

....Petitioners.

Versus

1. State of Maharashtra,
Through its Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai - 400 021.

2. The Divisional Commissioner (Revenue)
Aurangabad Division,
Aurangabad.

3. The Collector,
Aurangabad, Dist. Aurangabad.

4. The Chief Executive Officer,
Zilla Parishad, Aurangabad,
Dist. Aurangabad.

5. The Tahsildar,
Aurangabad, Tq. Aurangabad,
Dist. Aurangabad.

6. Gram Panchayat Ladsawangi,
Tq. & Dist. Aurangabad
Through its Gram Sevak

....Respondents.

Mr. S.A. Ambilwade, Advocate for petitioners.

Mr. Y.G. Gujrathi, AGP for respondent Nos. 1 to 3.

Mr. S. Mundhe, Advocate for respondent No. 4.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.
DATED : MARCH 19, 2018.**

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The petition is filed under Articles 226 and 300-A of Constitution of India for giving direction to respondents, particularly, Zilla Parishad, Aurangabad to initiate proceeding under provisions of Land Acquisition Act and pass award in respect of 82 R. portion of land Gat No. 210 situated at Ladsawangi, Tahsil and District Aurangabad. Both the sides are heard.

2) It is not disputed that the father of petitioners namely Narsing was the owner and possessor of entire portion of land Gat No. 210 (area 93 R.). In the year 1964-65 Zilla Parishad constructed building of Primary Health Center and also residential quarters for it's staff on 82 R. portion from aforesaid land. It is contention of the petitioners that no acquisition proceeding was started and Narsing had not given the land on his own to Zilla Parishad. It is contention of the petitioners that right from 1973 he made many representations to the respondents, Government and Zilla Parishad, but they did not give any response. It is contended that on the record Narsing is still shown as owner and that circumstance also shows that the land was not given by Narsing to Zilla Parishad and it was also not acquired for Zilla Parishad. By making aforesaid

contentions, the relief of giving direction to respondents to start acquisition proceeding is claimed so that the petitioners get compensation.

3) Zilla Parishad filed reply affidavit. It is contended that in view of Government Resolution of State Government dated 26.10.2010, the petitioners are not entitled to get any compensation as the amount was taken for public purpose more than 20 years back. He has admitted that the land was taken in possession by Zilla Parishad without taking land acquisition proceeding under the Land Acquisition Act. It is contended that as there are constructions of Zilla Parishad, the name of Zilla Parishad is appearing in village record. Alternatively, it is contended that the land was donated by Narsing, father of petitioners and due to that Village Panchayat had submitted proposal to Zilla Parishad to make construction for Primary Health Center on this land.

4) The submissions made and the record show that no acquisition proceeding was started for acquiring the land for Primary Health Center of Zilla Parishad. No record is available to show that the land was gifted or given in any manner by Narsing, the owner for aforesaid purpose. Admittedly, not a single pie is paid by the Government or Zilla Parishad to Narsing or to the petitioners as

compensation in respect of 82 R. land portion. The information supplied by Information Officer, Zilla Parishad, Aurangabad in letter dated 12.12.2013 shows that it is informed that land admeasuring 82 R. has been acquired for Zilla Parishad and in the year 1968 building was constructed for Primary Health Center and residential quarters on that land.

5) There is the revenue record like 7/12 extracts available and the revenue record shows that till today the name of Narsing, predecessor of the petitioners is shown as owner of 82 R. portion. Copy of sale deed is produced to show that in the year 1982 land admeasuring 11 R. from same survey number was sold by Narsing in favour of one co-operative society. Thus, as per the record petitioners are still shown as owners of disputed land though there is construction of respondent Zilla Parishad on the disputed land.

6) The learned counsel for Zilla Parishad and the learned AGP placed reliance on the observations made by the Apex Court in the case reported as **(1995) 4 SCC 683 [State of Maharashtra Vs. Digambar]**. In that case, due to the delay of 20 years caused in filing writ petition, the Apex Court held that the petitioners were not entitled to get any relief like claimed in the present proceeding. On the other hand, the learned counsel for petitioners placed reliance on

some observations made by the Apex Court in the case reported as **AIR 2013 (SC) 565 [Tukaram Kana Joshi & Ors. Vs. M.I.D.C. & Ors.]**. In that case also, the functionaries of the State took over the possession of the land without any sanction of law. The owner had requested the State to comply with the procedure laid down for acquisition, but the State had avoided to do so. The Apex Court held that even when the petitioner is guilty of laches, there is no hard and fast rule that High Court should refuse to exercise its jurisdiction in favour of such party. It is observed that if the claim made by the party is legally sustainable, delay should be condoned. The Apex Court has also considered the necessity to consider such claims of parties and the rights of such parties.

7) In the present matter also, there is no record with the respondents to show that the land was gifted for aforesaid purpose. Admittedly, no acquisition proceeding was started. There is the record to show that from the year 1971 Narsing was prosecuting the matter. If the poor persons have no support or they have no influence on the machinery, they suffer like anything and they are found to be placed in a situation like present one. The Courts are not expected to shut eyes and ignore such matters by holding that the petitioner himself is guilty of laches. It can be said that only due to poverty or the circumstance that the petitioner could not resist or

influence, no steps are taken for acquisition and the land of the poor person was virtually grabbed. This Court holds that proper proceeding ought to have been started for acquisition and as it was not started, a direction sought needs to be given. In the result, following order :-

ORDER

- (I) The petition is allowed in terms of prayer clause 'B'.
- (II) The respondents are directed to start the process within six months.

Rule is made absolute in aforesaid terms.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

ssc/