

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

WRIT PETITION NO. 7863 OF 2016

Baburao S/o. Bhaurao Wagh & Ors. ... Petitioners

Versus

The State of Maharashtra & Ors. ... Respondents

.....
Shri. Sachin S. Deshmukh, Advocate for the petitioners
Shri. S. G. Karlekar, AGP for respondent/State
Shri. Pathan Zareef Khan, Advocate for respondent No. 5
.....

AND
WRIT PETITION NO. 7862 OF 2016

Vithal S/o. Bhaurao Wagh & Ors. ... Petitioners

Versus

The State of Maharashtra & Ors. ... Respondents

.....
Shri. Sachin S. Deshmukh, Advocate for the petitioners
Shri. S. G. Karlekar, AGP for respondent/State
Shri. Pathan Zareef Khan, Advocate for respondent No. 5
.....

**CORAM : S. V. GANGAPURWALA &
A. M. DHAVAL, JJ.**

DATE : 21ST FEBRUARY, 2019

ORAL ORDER:

1. Shri. Sachin S. Deshmukh, learned counsel for the petitioners submits that, the land of the petitioners was taken in

possession by the respondents, however, the amount of compensation has not been paid to the petitioners. The land of the petitioners is taken in possession by the respondents for Shekta – Dhavalapuri road in 1973-74. The respondents cannot deprive the petitioners of the right to property without due process of law. The learned counsel submits that the right to property is a constitutional right under Article 300A of the Constitution and the petitioners cannot be deprived of their right to get the compensation of the land. The learned counsel relies on the judgment of the Apex Court in case of **Tukaram Kana Joshi and others through Power-of-Attorney Holder Versus Maharashtra Industrial Development Corporation and others** reported in (2013) 1 SCC 353. The learned counsel submits that, as the compensation amount has not been paid, the respondents are required to initiate proceedings u/s 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as “Right to Fair Compensation Act”). The learned counsel relies on the judgment of the Apex Court in case of **Pune Municipal Corporation and another Versus Harakchand Misirimal Solanki and others** reported in (2014) 3 SCC 183. The learned counsel submits that, the judgment relied upon by the respondents in the case of **State of Maharashtra Versus Digambar** reported in (1995) 4 SCC 683 does

not lay down the correct law. In view of the judgment of the Apex Court in case of Tukaram (referred to supra), the learned counsel submits that, the ratio as determined by the Apex Court in case of Tukaram (referred to supra) will have to be applied. In case of Digambar (supra), the Apex Court has negated the claim only on the ground of delay and laches, no ratio discendi is laid down and in view of that the judgment in the case of Tukaram (supra) will have to be followed. To buttress his submission, the learned counsel relies on the judgment of the Apex Court in the case of **Natural Resources Allocation, In Re, Special Reference No. 1 of 2012** reported in 2012 (10) SCC 1.

2. Learned counsel also refers to the judgment of the Division Bench of this Court in case of **Ganesh S/o. Narsing Lolge & Ors. Versus State of Maharashtra & Ors.** (Writ Petition No. 10104 of 2013 decided on 19.03.2018), to contend that this Court even after inordinate delay has directed the respondents to take up acquisition proceedings.

3. Shri. S. G. Karlekar, learned Assistant Government Pleader for respondent/State submits that, the case of the petitioner is squarely governed under the judgment of the Apex Court in the case

of Digambar (referred to supra). Learned Assistant Government Pleader submits that, the agriculturists in the year 1971-72 had given the land willingly for construction of road under EGS scheme for providing employment to the landless agricultural labour and the landowners at the relevant time did not raise any objection.

4. We have also heard the learned counsel for the respondents.

5. The proposition that the right to property though is not a fundamental right, still is a constitutional right needs no debate. The right to property now is brought within the contour of human right.

6. In the present case, the lands which the petitioners claim to have been acquired from their ancestors is in the year 1971-72. The land was used for construction of road under EGS to provide employment to the landless labours and to meet the drought situation. At the relevant time, there is nothing to show that objection was raised by the ancestors of the petitioners. On the contrary, it has been submitted by the respondents that the lands were given by the landowners willingly.

7. Many of the similarly situated persons whose lands were acquired in 1971-72, 1972-73 for construction of road under EGS so as to provide employment to the landless labours had filed Writ Petition before this Court in the year 1991-92 claiming compensation for the acquired land. This court allowed the writ petition. The State had filed SLP before the Apex Court. The Apex Court allowed the appeal filed by the State Government. The Apex Court in the case of Digambar (referred to supra), observed as under :

24. *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 the 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 a 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 therefor, 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.*
26. *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 blame- worthy conduct of undue delay or latches. 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, appears 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.P's 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.P's 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.

8. The Apex Court not only allowed the SLP filed before it, but in the concluding para observed that, it is allowing the appeal thereby setting aside the judgment under appeal, dismissed the writ petition of the writ petitioner and also annul all those judgments rendered by the High Court following the judgment under appeal, even though the SLPs filed in respect of them before Apex Court are yet to be registered or even if no SLPs are filed in respect of them.

9. The acquisition therein was for the land used for construction of the road in the year 1971-72 for the scarcity relief.

10. In the present case also, the land of the petitioners' ancestors were used for the scarcity relief road work to provide employment to the landless labours in the year 1971-72.

11. In case of Tukaram (referred to supra), the petitioners therein were persuading consistently and even the acquisition proceedings were initiated in the year 1981. To some of them, the compensation was paid in the year 1986. The Court observed that, this kind of discrimination not only breeds corruption, but also disrespects governance, as it leads to frustration. In the present case, no compensation was ever awarded to any of the persons whose lands were acquired for the EGS scarcity work in 1971-72.

12. The reliance on the judgment in Writ Petition No. 10104 of 2013 would be of no avail. In that case, the Primary Health Centre of the Zilla Parishad was constructed, however, name of the petitioner therein continued to be in the revenue record and the petitioner therein was incessantly making representations.

13. In light of the above, the facts of the present case are squarely governed by the judgment of the Apex Court in case of

Digambar (supra), as the acquisition in the present case and the case before the Apex Court in Diamber (supra), is the same.

14. In light of the above, no relief can be granted to the petitioners. The Writ Petitions are dismissed. No costs.

[A. M. DHAVALA]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

Punde