

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1321 OF 2019

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|---------------------------------------|-------------------|
| 1. Shri Shaffi Usman Shaikh |)... Petitioners. |
| Aged 67 years, Occu.: Nil. |) |
| 2. Shri Ibrahim Usman Shaikh |) |
| Aged 62 years, Occu.: Nil. - Both |) |
| Indian Inhabitant, R/at. Nandakhal, |) |
| Khivani, Near Talav Post Agashi, Tal. |) |
| Vasai, Dist. Palghar – 401 301. |) |

V/s.

- | | |
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| 1. State of Maharashtra, |)...Respondents. |
| through Revenue & Public Works Dept., |) |
| Mantralaya, Mumbai. |) |
| 2. The Collector of Palghar District, |) |
| at Palghar. |) |
| 3. The Executive Engineer, Public Work |) |
| Department, Palghar. |) |
| 4. The Sub-Divisional Officer and Competent |) |
| Authority, Vasai |) |

Mr. A. J. Almeida, Advocate, for the Petitioners.

Mrs. P. N. Diwan, AGP for the State/Respondent Nos. 1 to 4.

CORAM : R.M. BORDE & V.L. ACHLIYA, JJ.

DATE : FEBRUARY 04, 2019.

ORAL JUDGEMNT : (Per : R. M. BORDE, J.)

1 Rule. By consent, the Rule is made returnable forthwith and heard finally.

2 By this Petition, the Petitioners seek directions to the Respondents to notify their lands as per government resolution dated 12.05.2015 and to pay the compensation for acquisition of their land, admeasuring about 510 square metres in Survey No. 29A/1, Hiss No.12 at village Virar, Tal. Vasai, Dist. Palghar.

3 It is informed to us by the learned AGP that the subject land was recorded in the name of the father of the petitioners, who died in November, 1979 and that the compensation determined under the award for the said land has been paid. It has not been clearly stated whether the fact that the grand-father of the petitioners had received the amount of compensation is within the personal knowledge of the petitioners. The affidavit of the petitioner also does not disclose that the said fact is within the personal knowledge of the petitioners.

4 The Petitioners had also moved this court earlier by filing writ petition bearing no. 1518 of 2016, seeking a direction to the Respondents/State to pay compensation to the petitioners for taking over and/or utilizing the land by the State Government. It is observed in the order passed in the said writ petition by the Division Bench of this court (Coram :

Dr. Manjula Chellur, C.J., & G.S. Kulkarni, J.) in paragraph nos. 3 and 4, as quoted below :

3. We have perused the averments in the petition. The averments lack details of the acquisition and more particularly of the various proceedings which were undertaken to acquire the land in question. The case of the petitioners is that though the acquisition was of 1979, at the relevant time, it was their father who was concerned with the land and that they have learnt about acquisition in the year 2005. On the above background, the petitioners have made the prayers for payment of compensation.

4. Considering the prayer as made in the petition, the first issue which we would be required to address is the delay on the part of the petitioners to assert the rights under the land acquisition and make the prayer demanding compensation. The prayers are simplicitor for a money claim, that is, payment of compensation and that too after a substantial period of about 38 years from the acquisition. Surely, the claim of the petitioners being a delayed claim, would not justify any interference in the jurisdiction of this Court under Article 226 of the Constitution of India. The petitioners, however, have averred that the petitioners are the legal heirs of the original owner and suffer from physical disability, as also are illiterate. Even if that would be the case, it would be difficult for us to entertain this petition which suffers from such gross delay. However, in the interest of justice, we dispose of this petition with a direction to the respondents to treat this petition as a representation and decide the same on the basis of records and documents which are available with the respondents. A decision be taken in accordance with law within a period of six months from today.”

5 The Division Bench of this court while disposing of the earlier petition i.e. writ petition no. 1518 of 2016 has

recorded the finding that the petitioner has not explained the delay caused in approaching the court for asserting his rights. He has approached the court after lapse of about 38 years. However, the Division Bench of this court, while disposing of the petition, directed the Respondent authorities to consider the writ petition as a representation and deal with it in accordance with law. On perusal of the report of the Sub-Divisional Officer, Vasai, it transpires that the road for which the land came to be acquired, was part of the road re-development scheme formulated during the year 1943-63 during the British Regime. The construction of the Road appears to have been completed in 1961. The period of 56 year has lapsed after construction of the road in the year 1961 and the relevant record concerning the acquisition of the land maintained by the office of the District Local Body is also not available. Apart from this, the petitioner has not explained the aspect of delay in approaching this court. The disputed questions raised in the petition need not be examined in exercise of the extraordinary jurisdiction conferred on this court under Article 226 of the Constitution of India. In an identical situation, while dealing with the matter between the **State of Maharashtra vs. Digambar**, reported in (1995) 4 Supreme Court Cases 683, the Hon'ble Apex Court has observed that unless the facts and circumstances of the case clearly justified the laches or undue delay, the writ petitioner,

be he a citizen or otherwise, is not entitled to relief against anybody including the State.

6 The Petitioners, relying upon the judgment of the Hon'ble Supreme Court in the matter of the **State of Uttar Pradesh & Ors. Vs. Raj Bahadur Singh & Anr.**, reported in (1998) 8 Supreme Court Cases 685, contend that the delay and laches would not come in their way in asserting claim for compensation. Firstly, the reliance placed by the petitioners on the order passed by the Apex Court is mis-placed. There is no ratio laid down in the said order cited before us by the petitioners.

7 For the reasons recorded above, in our opinion, in exercise of our extra ordinary jurisdiction under Article 226 of the Constitution of India, we do not find any justification to interfere in the instant petition.

8 Writ Petition is devoid of any substance and as such the same is rejected. Rule is discharged.

(V.L.ACHLIYA,J.)

(R.M. BORDE)

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