

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CIVIL APPLICATION (CA0) NO.509 OF 2017

IN

MISCELLANEOUS CIVIL APPLICATION (ST.) NO.8068 OF 2016

IN

WRIT PETITION NO.2104 OF 1994

(Gopal Ganesh Padhye and others ..vs.. The State of Maharashtra, through its Secretary, Ministry of Urban Development, Bombay and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Arjun V. Bobde, Counsel for the applicants,
Smt. K.S. Joshi, Addl.G.P. for respondent No.1,
Shri G.A. Kunte, Counsel for respondent No.2,
Shri A.M. Quazi, Counsel for respondent No.3,
Shri D.M. Kakani, Counsel for respondent No.4,
Shri S.V. Manohar, Senior Counsel assisted by Shri Ravi Bhardwaj and
Shri K.P. Mahalle, Counsel for respondent No.5.

**CORAM : P.N. DESHMUKH AND
ROHIT B. DEO, JJ.**

DATED : 27-02-2019

The applicants, who were the petitioners in Writ Petition 2104/1994 which is decided by judgment and order dated 30-8-2010, are seeking condonation of delay of 2016 days in preferring the application seeking review of the said judgment and order.

2. Writ Petition 2104/1994 was preferred by the applicants seeking the following reliefs :

“(A) To declare that the petitioners are entitled to claim the restoration of the possession of the land in question.

(B) Direct the respondents to restore the lands to the petitioners, which were originally acquired from them, under such terms and conditions as may be fixed in terms of G.R. dated 10th October, 1978.

(C) By an ad-interim order, restrain the respondents from disturbing the peaceful possession of the petitioners during the pendency of the petition in the interest of justice and fair play.

(E) Allow this petition with costs.

(F) Grant any other relief which this Honourable Court deems fit and proper in the facts and circumstances of the case.”

This Court refused to interfere in exercise of writ jurisdiction and disposed of Writ Petition 2104/1994 by judgment and order dated 30-8-2010 which reads thus :

“It is not in dispute that the award in respect of Survey Nos.167, 168/1, 168/2 and 169/2 admeasuring 22.49 acres of Mouza-Bhandewadi was passed on 15th February 1962 and in terms of the averments made in para 2 of the writ petition, its possession was also taken from the land owners including the present petitioners after paying compensation to them. The Prayer made in the petition for restoration of land to the original owner as the land has not been yet put to the purpose for which it was taken, cannot be considered in view of the fact that the petitioners lost the ownership after award was passed, possession was taken and compensation was paid. The law is well settled in view of the judgment of the Supreme Court in Administrator, Municipal Committee Charkhi Dadri And Another vs. Ramjilal Bagla And Others (1995) 5 Supreme Court Cases 272 and followed by this Court in Ramakant Vithobaji Gaikwad Vs. Government of Maharashtra and Other 2000(4) Maharashtra Law Journal 597 and fairly conceded by Mr. Parchure that such lands vested in the Government after acquisition cannot be restored to the owner or who so ever. In that view of the matter, it is not possible for us to interfere in the matter. Insofar as Civil Application No.1793 of 2010 is concerned we do not propose to say anything except that the contents of the said civil application and the prayer do not and cannot form subject matter of present writ petition.

Civil Application disposed of. Writ petition disposed of.”

This Court noted the undisputed factual position that the land acquisition award qua land surveys 167, 168/1, 168/2 and 169/2 admeasuring 22.49 acres situated in Mouza-Bhandewadi was passed on 15-2-1962 and the possession of the said land was also taken from the land owners including the petitioners after payment of compensation. This Court *inter alia* referred to the decision of the Hon'ble Apex Court in *Administrator, Municipal Committee Charkhi Dadri And Another vs. Ramjilal Bagle And Others* and concluded that since the ownership vested with the State Government, the prayer for restoration of land to the petitioners is untenable. The learned Counsel who appeared for the petitioners conceded that once the land vests with the Government possession thereof cannot be restored to the owner owners.

3. In the context of the application seeking condonation of delay in preferring the review application and the contentions and grounds incorporated in the review application, it would be apposite to refer to certain averments in Writ Petition 2104/1994. In paragraph 2 of the petition, it is averred that the award was passed and physical possession of the land was taken from the predecessors-in-title of the petitioners with effect from 15-2-1962. In paragraph 5 of the petition, it is averred that the then land owners were awarded

compensation which was accepted by them. The relevant averments in paragraph 5 read thus :

“5. The award came to be passed in the respective cases of the petitioners i.e. in favour of the predecessors-in-title. The then land-owners were awarded compensation which was accepted by them and as such the acquisition was complete in that regard.”

It would be also relevant to note the averments in paragraph 25 of the petition which read thus :

“25. It is submitted that no steps were taken to return the land and relying on the oral assurances of the authorities, the petitioners have proceeded to occupy the land which originally belonged to them. The petitioners are occupying the entire land admeasuring 22.69 Acres and are under its cultivating possession since over a period of ten years.”

4. The pleadings in Writ Petition 2104/1994 reveal that even according to the petitioners, the possession of the land was taken pursuant to the land acquisition award on 15-2-1962 and compensation was duly received. The petitioners do contend that 10 years prior to the filing of the petition, which would be in 1984, the petitioners resumed physical possession of the land. Needless to say, if the petitioners did resume possession

in the year 1984 unilaterally and without taking recourse to law, from the rightful owner which is the State Government with which the land stood vested, the possession is of no significance or relevance in the context of the controversy involved in Writ Petition 2104/1994 and the prayer for restoration of land.

5. The justification pleaded in support of the prayer for condonation of delay of 2016 days in preferring the review petition may now be noted. The substratum of the justification is that after the judgment and order dated 30-8-2010 in Writ Petition 2104/1994, the applicants-petitioners submitted a representation dated 08-12-2011 to the State Government seeking change in the record of mutation as regards the land which was the subject matter of the writ petition. The applicants state that since the said representation dated 08-12-2010 did not evoke any response, another representation dated 17-5-2014 was preferred. The representation was not decided and the applicants approached this Court in Writ Petition 175/2015 seeking a direction that the representation be decided within a stipulated time frame. By order dated 22-1-2015 this Court allowed the petition and directed the competent authority to decide the representation within a period of three months. The applicants then aver that the representation was rejected on 13-8-2015, the rejection was assailed in appeal under Section 247 of the Maharashtra Land Revenue Code

which is pending before the Collector since 2015. The applicants preferred Writ Petition 590/2016 seeking a direction that the said appeal be decided by the Collector within a stipulated time frame and this Court by order dated 04-3-2016 directed the competent authority to decide the representation/appeal within three months. It is further contended by the applicants that the relevant information as regards the land was obtained under the Right to Information Act in the year 2015 and the delay in preferring the review application is, therefore, adequately explained.

6. We have heard Shri Arjun V. Bobde, learned Counsel for the applicants, Smt. K.S. Joshi, learned Additional Government Pleader for respondent No.1, Shri G.A. Kunte, learned Counsel for respondent No.2, Shri A.M. Quazi, learned Counsel for respondent No.3, Shri D.M. Kakani, learned Counsel for respondent No.4 and Shri S.V. Manohar, learned Senior Counsel for respondent No.5 at length. We were initially not inclined to delve into the merits or otherwise of the review application since, in our opinion, the delay of 2016 days was not satisfactorily explained. This Court having rejected the petitioners' claim that the land be restored, preferring representations before the State Government was an exercise in futility. In the teeth of the authoritative pronouncement of this Court holding that in view of the vesting of the land with the State

Government the prayer for restoration to the original owners was untenable, any contrarian view by the State Government would be overreaching the judicial process and bordering on the contemptuous. However, in view of the persistent and at times fervent submissions of Shri Arjun Bobde that the applicants are in a position to demonstrate an excellent case for review of the judgment and order dated 30-8-2010, we have ventured to consider the review application on merits.

7. We may now consider the grounds on which review of the judgment and order dated 30-8-2010 in Writ Petition 2104/1994 is sought :

(i) The first ground is that there was a typographical error in paragraph 2 of the petition and inadvertently the word “not” came to be omitted from the sentence after the word “was” and before the word “taken”. The averment in paragraph 2 reads thus :

“The award was passed in the matter and the physical possession of the land was taken from the predecessors-in-title of the petitioners with effect from 15-2-1962.”

The structure of the sentence would reveal that the contention that the word “not” was inadvertently omitted is untenable and borne out of desperation. The said contention which is urged after 5 years and 6½ months cannot be countenanced and falsehood is writ large on the face thereof.

(ii) The second ground is that holistic reading of

the petition and particularly the averments in paragraphs 25 and 26 of the petition would reveal that it was always the case of the applicants that they were in possession of the land. We have already considered the averments in paragraph 25 of the petition. Even if the averments in paragraphs 25 and 26 are taken at face value, the only inference is that the applicants have taken illegal possession from the rightful owner-State Government in the year 1983-84. The averments, therefore, do not take the case of the applicants any further. The judgment and order under review is predicated on the settled position of law that once the land acquired vests with the State Government, same cannot be restored to the original owners. Even if it is assumed *arguendo* that after the vesting of land which took place in the year 1962, the petitioners resumed possession illegally in the year 1984, the illegal physical possession cannot be the basis of claim for restoration of land.

(iii) The third ground is that the possession was not taken in accordance with law. The contention is noted only for rejection. The possession is taken in the year 1962. The ground that possession was not taken in accordance with law was not raised in Writ Petition 2104/1994. *Au contraire*, the applicants accepted that possession was taken from their predecessors-in-title and compensation paid in the year 1962.

(iv) The last ground is that the petitioners who are the legal heirs of the original land owner were

unaware of the payment or otherwise of the compensation. Reference is made to letter dated 18-5-2015 of the Information Officer, Nagpur Improvement Trust which states that the payment vouchers confirming the payment of compensation are not available. The fact that after 53 years of the payment of compensation the acquiring body is not in a position to trace the vouchers, is not suggestive of non-payment of compensation. We are not inclined to consider the submission that compensation was not paid particularly since such contention is raised 5 years and 6 ½ months after the dismissal of the Writ Petition 2104/1994 in which the petitioners admitted the receipt of the compensation by their predecessor-in-title.

8. We have no hesitation in observing that the proceedings initiated are frivolous and an abuse of the process of law. We have already observed that we were not inclined to condone the delay and were of the *prima facie* view that the applicants should be directed to deposit an amount of Rs.10,00,000/- (Rupees Ten Lakhs) with the registry to demonstrate their *bona fides*. However, since the learned Counsel for the applicants, on instructions, made a statement on 26-2-2019 that instead of depositing the amount, the applicants shall pay the costs which may be directed to be paid if the application seeking condonation of delay is rejected, we proceeded to continue with the hearing. We are of the considered

view that the tendency to initiate frivolous and vexatious proceedings must be curbed with an iron hand. This Court is already heavily burdened and when judicial time is spent on proceedings which are *ex facie* unmerited and tainted with falsehood, the ultimate casualty is the thousands of genuine causes which await adjudication. We, therefore, direct the applicants to deposit costs of Rs.1,00,000/- (Rupees One Lakh) with the registry of this Court within two weeks, failing which the said amount shall be recovered as arrears of land revenue. We, therefore, dismiss Civil Application (CAO) 509/2017 in Miscellaneous Civil Application (Stamp) 8068/2017 and Miscellaneous Civil Application (Stamp) No.8068/2016 which seeks review of the judgment and order dated 30-8-2010 in Writ Petition No.2104/1994 with costs of Rs.1,00,000/- (Rupees One Lakh).

JUDGE

JUDGE

adgokar