

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

WRIT PETITION NO.12287 OF 2017

Vinayak Natha Kamble

...Petitioner

Versus

Vita Nagarparishad and Anr.

...Respondents

....

Mr. V.S. Talkute for the Petitioner.

Mr. Nikhil Wadekar i/b. Mr. N.V. Pawar for the Respondent No.1.

Mr. R.P. Kadam, AGP for the Respondent No.2.

**CORAM : A.A. SAYED AND
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED : 17th JANUARY, 2020.

P.C.:-

Having heard learned Counsel for the Petitioner and learned Counsel for the Respondent No.1, we are of the view that the Petitioner has not approached the Court with clean hands.

2. In the Affidavit-In-Reply filed by the Chief Officer of the Respondent No.1 it is pointed out that the Petitioner had approached the Lokayukta and the Lokayukta passed an order granting compensation to the Petitioner. Only after the aforesaid fact was pointed out in the Affidavit-in-Reply, the Petitioner by way of amendment, has challenged the order of the Lokayukta on the ground that the Lokayukta did not have jurisdiction. We are of the

view that since the Petitioner himself had approached the Lokayukta and having participated in the proceedings before the Lokayukta, it is not open for the Petitioner to contend that the Lokayukta did not have jurisdiction. The Petitioner has suppressed this order in the Writ Petition and as stated above it is only by way of amendment, the said order of Lokayukta is sought to be challenged after it was pointed out in the Affidavit-in-Reply filed by the Respondent No.1.

3. Moreover, the Petition proceeds on the basis that there was no road in existence prior to 2014 and it was only for the first time that the Petitioner came to know about the construction of the road in the year 2014, as averred in paragraph 4 of the Affidavit of the Petition. It is however pointed out on behalf of the Respondent No.1 in the Affidavit-in-Reply that the Petitioner had himself executed a Deed of Rectification in the year 2003 and acknowledged the existence of the road. It is also noticed that the Petitioner has approached the Court after inordinate delay and latches as the alleged cause of action had arisen at least in the year 2004, however, the present Petition has been filed only in the year 2017.

4. On the point of delay, learned Counsel for the Petitioner

has relied upon the judgments in the case of ***Tukaram Kana Joshi and Ors. Through Power of Attorney Holder vs. M.I.D.C. and Ors. AIR 2013 SC 565***; and ***Vidya Devi vs. The State of Himachal Pradesh and Ors., MANU SC 16 2020***. So far as the judgment in the case ***Vidya Devi*** (supra) is concerned, as stated in paragraph 11 of the said judgment, the Supreme Court has interalia exercised its extraordinary jurisdiction under Article 142 of the Constitution. Insofar as the case of ***Tukaram Kana Joshi*** (supra) is concerned, in paragraph 12 of the said judgment itself it has been held that no hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party, who moves it after considerable delay and is otherwise guilty of laches.

5. A 3-Judge Bench of the Supreme Court in the case of ***State of Maharashtra vs. Digamber, (1995) 4 SCC 683***, has held in para 26 as follows:

“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 blameworthy conduct of undue delay or laches. 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 SLPs 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 SLPs 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."

6. Having regard to the facts and circumstances of the case, we are not inclined to exercise the extraordinary discretionary writ jurisdiction of this Court.

7. The Petition is accordingly dismissed. No costs. We however make it clear that the dismissal of this Petition shall not come in the way of the Petitioner in accepting the compensation as directed by the Lokayukta.

(ANUJA PRABHUDESSAI, J.)

(A.A. SAYED, J.)