

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2449 OF 2021

Smt. Madhavi Kalekar.

...Petitioner.

Versus

State of Maharashtra & Others.

..Respondents.

Dr. Ramdas P. Sabban for the Petitioner.

Mr. S. B. Kalel, AGP for the Respondent-State.

Ms. Shraddha Pawar i/b Mr. Dilip Bodake for Respondent No. 3.

CORAM : PRASANNA B. VARALE &
S.M. MODAK, JJ.

Date : November 26, 2021.

P. C. :

1. In view of the fact that we are taking this petition for final disposal with the consent of learned counsel appearing for the respective parties, other petitions, namely, Writ Petition Nos. 2448 of 2021, 3522 of 2021 and 4593 of 2021, which are tagged with this writ petition, are hereby de-tagged.

2. Heard learned counsel for the Petitioner. With the consent of learned counsel appearing for the respective parties, the petition is taken up for final disposal. In the present petition, the submission of the Petitioner is that the Petitioner is owner of the land situated in mouje Majrewadi, North Solapur and the area admeasuring to the extent of 896.40 square meters out of area largely known as "Kadadi Plots" was

utilised by Respondent No.3-Solapur Municipal Corporation for construction of road. It is the grievance raised in petition that though the road was constructed on the land belonging to the Petitioner, the Petitioner was not paid any compensation to which the Petitioner was entitled to. The prayer couched on the backdrop of these facts goes to the extent that the Petitioner be paid compensation by considering the market value as per the ready reckoner of the year 2021. Then other prayers are in the nature of direction to pay additional components such as rental compensation etc.

3. The bare perusal of petition shows that the Petitioner himself submitted that the said road was constructed in the year 2013-14 and this statement finds place in paragraph 3 of petition. Then there is a document placed on record at Annexure-“A” page no.9 of petition whereby the Petitioner had approached Respondent No.3-Corporation for initiation of a proceeding in the nature of declaration of award and consequently payment of compensation. At this stage itself it may not be out of place to state that even assuming the contentions raised in the petition are true, the Petitioner had approached Respondent No. 3 – Corporation after 6 years from the act of construction of road. It is difficult to stand to anybody’s reason.

4. On issuance of notice to the respondents, an affidavit-in-reply is filed on behalf of respondent No.3-Corporation. The statement made in the affidavit-in-reply shows that there is controversy on the basic fact as to which authority had constructed the said road. It is submitted in the affidavit-in-reply that as per certain information provided to the petitioner, which was not at the instance of respondent No.3-Corporation, it was informed that the said road was not constructed by Solapur Municipal Corporation but it was constructed and developed by the Public Works Department, Government of Maharashtra. Then, it is stated in paragraph 11 of the affidavit-in-reply that Solapur Municipal Corporation has neither acquired the petitioner's land nor constructed the DP road; moreover the same is not integrated in the development plan of Solapur Municipal Corporation. It is then submitted that initially the road was not within the Corporation limits and when the limits of Corporation were extended, said road came within the limits of Solapur municipal corporation and thereafter the corporation is maintaining the said road. It was further submitted that the petitioner ought to have raised the claim before the necessary authorities, that is, the Public Works Department, Government of Maharashtra.

5. In view of the statements made in the affidavit-in-reply by respondent No.3-Corporation, an amendment was carried out to the

petition by adding respondent No.4- the Executive Engineer, Public Works Department, Solapur.

6. Thus, what is revealed from the above referred facts is that there is a dispute insofar as the factual statements made in petition in respect of construction of road is concerned, namely, as to whether the road was constructed by respondent No.3 - Corporation or respondent No.4 - the Public Works Department.

. Learned Counsel for the petitioner then submitted that the delay caused in filing petition shall not be a hurdle for the petitioner. In support of his submissions, learned counsel relied on the judgment of the Apex Court in Vidya Devi versus State of Himachal Pradesh [2020(2) SCC 569]. Though, at the first blush submission of learned counsel that the delay shall not be a hurdle for the petitioner looks attractive, after going through judgment of the Apex Court, we are unable to accept the submission for the reason that the Apex Court while dealing with the facts of that matter and considering the aspect of delay and resultantly condoning the delay, in clear and unambiguous words observed thus :

“we exercised our extraordinary jurisdiction under Articles 136 and 142 of the Constitution of India and directed the State to pay compensation to the appellant”

7. Learned counsel for the petitioner then invited our attention

to the order passed by this court which is placed on record at Exhibit-“C” (page No.15). It is submitted by learned counsel for the petitioner that as the petitioner had approached Solapur Municipal Corporation by submitting his claim and as there is no decision on the application submitted to the Corporation, Respondent No.3 -Corporation be directed to decide the claim submitted by way of communication dated 29th February 2020 in the light of directions of the division bench of this court vide order dated 20th March 2020 in Writ Petition No. 11118 of 2018.

8. In view of the facts above-referred and more particularly in view of the disputed facts, as we are not inclined to entertain the writ petition and at the same time we find some merit in the submissions of learned counsel for the petitioner so as to seek a decision from respondent No.3 on the application dated 29th February 2020 on the backdrop of order of division bench, we deem it appropriate to dispose of this petition with a direction to respondent no.3- Corporation to take a decision on the petitioner's communication/application dated 29th February 2020 expeditiously and in any case not later than 12 weeks from the date of receipt of a copy of this order. The petitioner is permitted to supply additional documents before Respondent No.3 - Solapur municipal corporation on or before 1st of December 2021. In

case the petitioner prays for, an opportunity of personal hearing, in person or through representative, respondent no.3 - Corporation may consider that request accordingly.

9. With these observations, the petition is disposed of.

[S. M. Modak, J.]

[Prasanna B. Varale, J.]