

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

WRIT PETITION NO.718 OF 2022

Housabai w/o Gahininath Pawar,
deceased through her L.Rs.
Laxman s/o Gahininath Pawar,
age 40 years, Occ. Agriculture,
R/o Naichakur, Tq. Omerga,
District Osmanabad.

..Petitoiner..
(Claimant)

Versus

The State of Maharashtra,
Through Collector, Osmanabad.
District Osmanabad.

..Respondent..

...
WITH

WRIT PETITION NO.719 OF 2022

Sow. Komalbai Ramesh Jadhav,
age 58 yrs, Occ. Agriculture,
R/o Turori, Tq. Omerga,
Dist Osmanabad.

...Petitoiner...
(orig. claimant)

Versus

1. The State of Maharashtra,
through Collector, Osmanabad
Dist. Osmanabad.
2. The Special Land Acquisition Officer,
or Sub Divisional Officer, Osmanabad
Dist. Osmanabad.
3. The Executive Engineer,
Maharashtra State Electricity Board,
CCM Division, Osmanabad, District
Osmanabad. ..Respondents...

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WITH

WRIT PETITION NO. 728 OF 2022

Vitthal s/o Devrao Mashale,
age 48 yrs, Occ. Agriculture,
R/o Kasagiwadi, Tq. Omerga,
Dist. Osmanabad.

...Petitioner..

Versus

The State of Maharashtra,
Through the Collector, Osmanabad
Osmanabad.

..Respondent.

...
WITH

WRIT PETITION NO.730 OF 2022

Raghunath s/o Dhondiba Mashale,
age 43 yrs, Occ. Agriculture,
R/o Kasagiwadi, Tq. Omerga,
Dist. Osmanabad.

..Petitioner..

Versus

The State of Maharashtra,
Through the Collector, Osmanabad
Dist. Osmanabad.

..Respondent..

...
Mr. P V Ambade Advocate for petitioner/s in all writ
petitions.

Mr. S N Morampalle AGP for Respondent State.

...
CORAM : SANDEEP V. MARNE, J.
Dated: November 25, 2022
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ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. With the consent of the parties, heard finally at admission stage.

2. By filing these writ petitions, an attempt is made to infuse life into dead claims filed by Petitioners for enhancement of compensation. Various orders passed by Civil Judge Sr. Division, Omerga rejecting Petitioners' respective Land Acquisition References on account of their default to remain present are the subject matter of challenge in the present petitions.

3. Following are the details of the proceedings initiated by petitioners and dates on which they have been dismissed :-

Sr.no.	Writ Petition No	LAR No.	LAR Dismissed on
1.	WP 718 of 2022	238 of 1994 renumbered as 252 of 2004	2.5.2008
2.	WP 719 of 2022	47 of 2000 renumbered as 1333 of 2009	4.3.2014
3.	WP 728 of 2022	26 of 1996 renumbered as 401 of 2004	31.1.2009
4.	WP 730 of 2022	11 of 1996 renumbered as 387 of 2004	31.1.2009

4. Challenging the aforesaid orders rejecting their LARs, present petitions are filed after long and inordinate delay either in December 2021 or January, 2022. The orders dismissing the LARs are sought to be set aside on a specious plea that the reference filed under section 18 of the Land Acquisition Act is not an appeal against an award and that in absence of any material being produced in support of claim for higher compensation, reference cannot be rejected. Reliance is placed on the decision of this Court in **Ganpati Rama Hazare Vs. The State of Maharashtra and others in Writ Petition No.10237 of 2022 decided on 11.10.2022** wherein this Court held in paragraph nos.8 to 11 as under :-

“8. However, it is now a settled position that reference filed under Section 18 of the Land Acquisition Act is not an appeal against award and it is necessary to produce the material based on which the higher compensation is claimed. No doubt, in **Ramanlal Deochand Shah** (*supra*) relied upon by Mr. Gaikwad, the Apex Court has held that the burden of adducing evidence in support of higher claim for compensation is on the plaintiffs, but ultimately the Apex Court has also granted an opportunity to the appellant therein to adduce evidence in support of the claim for enhancement of compensation.

9. In **Walmik Trimbak Tupe** (*supra*) this Court was dealing with somewhat similar situation. In the bunch of cases, this Court dealt with cases of petitioners therein who had not adduced the evidence due to unavoidable circumstances. After considering the entire law of the subject, this Court held in para 10 and 11 as under :

‘10. In para 4 (1) of the aforesaid case, the Supreme Court observed that a reference under Section 18 of the

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Land Acquisition Act is not an appeal against the award and the court cannot take into account the material relied upon by the Land Acquisition Officer in his award unless the said material is produced and proved before the court. In almost all the land Acquisition references, which are subject matter of the present writ petitions, the learned Judges of the respective Reference Courts *suo moto* gone through the award and sale instances relied upon by the Land Acquisition Officers even wp12795.19 though the said sale instances are not produced and proved before the Reference Courts.

11. In view of the same, even though there was an attempt on the part of Reference Courts to decide the reference on merits, however, in the given set of facts and in terms of the ratio laid down by the Supreme Court in the cases, as referred above, I conclude that the Land Acquisition Reference petitions, which are subject matter of these writ petitions, are not decided on merits and as such, the impugned judgment and orders passed by the respective Reference Courts in Land Acquisition References, as mentioned in the chart in para 3 of this judgment, are not sustainable in the eyes of law and thus required to be quashed and set aside.'

10. The decision in **Walmik Trimbak Tupe** (*supra*) has been followed by this Court in **Ranganath Ganpati Pathak** (*supra*) in which it is held in para 5 as under :-

'5. Indisputably the issue involved in this petition is covered by the judgment of this Court (Coram: V.K. Jadhav, J.) in Writ Petition No. 12795 of 2019 and connected writ petitions wherein this Court has held that the reference has to be decided on merits. Since, in those matters, references were rejected due to failure on the part of the petitioners therein to adduce evidence, this Court has held that the reference Court did not decide the references on merits and therefore set aside the orders passed by the reference Court and restored the references and directed to decide the references on merits.'

11. Therefore, it would be appropriate that the petitioners are granted an opportunity to lead evidence in support of their claims for enhanced compensation. The valid concern expressed by Ms. Deshpande, the learned AGP about burden of interest is already taken care of by a fair statement made by Mr. More not to claim interest on enhanced amount of compensation, if awarded."

5. Mr. Ambade, the learned counsel appearing for petitioner submits that the proceedings were initially

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filed in the Court at Osmanabad, which were later transferred to the Court at Omerga. He submits that Advocate engaged by petitioner had assured them that he would conduct the proceedings in LARs in the Court of Omerga as well. That he failed to give any intimation to the petitioners about decision in the proceedings. He would therefore submit that petitioners were totally in dark about the orders passed by the Court rejecting the LARs. He would contend that the present petitions are similar to several other petitions which have been allowed by this court granting an opportunity to the Petitioners therein to lead evidence in support of their claims for enhanced compensation.

6. There is long and inordinate delay ranging from 14 years to 8 years in filing these petitions. For the sake of convenience, relevant averments made in writ petition no.718 of 2022 in support of justification for delay in filing the petitions are reproduced as under :-

“9. The petitioner submits that, reference petition was filed by mother of petitioner before trial court for enhancement of compensation u/s 18 of the Land Acquisition Act for her acquired land. She was illiterate and old lady, she was looking after the reference matter and till her death petitioner was aware about filing of reference petition by his mother. The petitioner's mother expired due to old age on 20.8.2008 i.e. after passing of judgment and award by trial court. Copies of

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death certificate and heir certificate issued by Gram Panchayat Naichakur on 14.8.2014 are annexed herewith and marked as Exhibit B.

10. The petitioner submits that the petitioner in the month of November, 2021 came to know about judgment and award passed by learned Civil Judge S.D. Omerga through villagers of whose reference also rejected alongwith reference petition of his mother. At that time, firstly he got knowledge about rejection of reference by the Court by judgment and award dated 2.5.2008. Therefore, petitioner immediately rushed to Omerga Court, applied for certified copies and after receipt of copies of Judgment and Award dated 2.5.2008 immediately filed present writ petition challenging Judgment and Award dated 2.5.2008 in LAR No.252 of 2004 (old No.238 of 1994) passed by learned Civil Judge S.D., Omerga. The petitioner is L.R. of deceased claimant, he is poor agriculturist and residing in remote area from Omerga Court. As such, the delay caused for filing present writ petition may kindly be condoned in the interest of justice.”

7. Perusal of the above pleadings would indicate that pretext of Advocate at Osmanabad promising to look after the transferred LARs at Omerga is not pleaded in the petition. Thus reasons sought to be advanced during the oral submissions by the learned counsel for petitioners and ones pleaded in the petitions are completely at variance. Even otherwise, the averments made in the petition are absolutely vague. The only justification sought to be given in the petitions for filing them after an inordinate delay is alleged lack of knowledge of passing of impugned judgments and order by petitioners till November, 2021. Such knowledge is

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claimed to have been acquired by them through their Advocate. However, what was the occasion for the Advocate to share knowledge about dismissal of LARs in the year 2008 / 2014 in November, 2021 is not sought to be explained in any manner. Just by blaming their Advocate for not giving intimation of dismissal of their LARs, Petitioners cannot seek to revive their claims for enhanced compensation, which they had long since given up after dismissal of their LARs. Petitioners seem to have woken out of their deep slumber only after noticing orders passed by this court holding that LARs cannot be dismissed without providing an opportunity of leading evidence to the claimant.

8. In these petitions, Petitioners are guilty not only of delay but also of laches. The doctrine of Laches emanates from the principle that the Courts will not help a litigant who sleeps over his rights and would help only those who are aware and vigilant about their rights. It is well settled principle that 'delay defeats equity'. Therefore mere grant of relief to other similarly placed persons who approach this court vigilantly cannot be a reason for entertaining stale petitions filed
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by Petitioners. In present cases, LARs were instituted way back in 1994-96 and remained pending for over 12-14 years when Petitioners showed lack of diligence in prosecuting them. The Court was left with no option but to dismiss them for default on the part of Petitioners. They slept again over the matter and did not bother to know the result of proceedings instituted by them. Such conduct in my view is clearly indicative of laches on their part.

9. Though the doctrine of delay and laches has been expounded in catena of judgments by the Apex Court, it may be profitable to make reference to only few of them.

In **Chairman/Managing Director, U.P. Power Corporation Ltd. and Others Vs. Ram Gopal** 2020

SCC OnLine SC 101, the Apex Court has held as under:

16. Whilst it is true that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution of India, nevertheless, such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in writ actions, and writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fencesitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere op-

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portunists. On multiple occasions, it has been re-stated that there are implicit limitations of time within which writ remedies can be enforced. In *SS Balu v. State of Kerala*², this Court observed thus:

“17. It is also well-settled principle of law that “delay defeats equity”. ...It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment.”

10. The Constitution Bench in **Indore Development Authority v. Shailendra** reported at (2018) 3 SCC 412 has dealt with the issue of delay and laches in land acquisition proceedings and revival of dead claims. Though the observations are with respect to reopening of settled claims under Section 24 of the The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the principles of impermissibility of reviving dead claims are apposite to the present proceedings. It is held:

"128. In our considered opinion **section 24** cannot be used to revive the dead or stale claims and the matters, which have been contested up to this Court or even in the High Court having lost the cases or where reference has been sought for enhancement of the compensation. Compensation obtained and still it is urged that physical possession has not been taken from them, such claims cannot be entertained under the guise of **section**

[24\(2\)](#). We have come across the cases in which findings have been recorded that by which of drawing a Panchnama, possession has been taken, now again under [Section 24\(2\)](#) it is asserted again that physical possession is still with them. Such claims cannot be entertained in view of the previous decisions in which such plea ought to have been raised and such decisions would operate as res judicata or constructive res judicata. As either the plea raised is negated or such plea ought to have been raised or was not raised in the previous round of litigation. [Section 24](#) of the Act of 2013 does not supersede or annul the court's decision and the provisions cannot be misused to reassert such claims once over again. Once Panchnama has been drawn and by way of drawing the Panchnama physical possession has been taken, the case cannot be reopened under the guise of [section 24](#) of Act of 2013.

129. [Section 24](#) is not intended to come to the aid of those who first deliberately refuse to accept the compensation, and then indulge in ill-advised litigation, and often ill-motivated dilatory tactics, for decades together. On the contrary, the section is intended to help those who have not been offered or paid the compensation despite it being the legal obligation of the acquiring body so to do, and/or who have been illegally deprived of their possession for five years or more; in both the scenarios, fault/cause not being attributable to the landowners/claimants.

130. We are of the view that stale or dead claims cannot be the subject-matter of judicial probing under [section 24](#) of the Act of 2013. The provisions of [section 24](#) do not invalidate those judgment/orders of the courts where under rights/claims have been lost/negated, neither do they revive those rights which have come barred, either due to inaction or otherwise by operation of law. Fraudulent and stale claims are not at all to be raised under the guise of [section 24](#). Misuse of provisions of [section 24\(2\)](#) cannot be permitted. Protection by the courts in cases of such blatant misuse of the

provisions of law could never have been the intention behind enacting the provisions of [section 24](#) (2) of the 2013 Act; and, by the decision laid down in Pune Municipal Corporation (supra), and this Court never, even for a moment, intended that such cases would be received or entertained by the courts."

11. In the present cases also, there can be no iota of doubt that the claims for enhanced compensation of Petitioners were long since dead. They cannot be revived after passage of such a long time.

12. Strong reliance placed by the Advocate for the petitioners on the order of this Court in **Ganpati Rama Hazare Vs. The State of Maharashtra in writ petition no.10237 of 2022 with connected writ petition decided on 11.10.2022**. However in that case, the LARs were dismissed on 25.1.2022 and 16.4.2022 and writ petition was filed in the year 2022. There was no issue of delay or laches on the part of petitioners in filing the petitions. The land references were rejected on the ground of failure on the part of petitioners therein to adduce evidence. Therefore that order is of little assistance to the Petitioners.

13. The principle that claimants are required to be given due opportunity to lead evidence in support of their claims for enhanced compensation cannot be overstretched to mean that each and every LAR dismissed in the past of account of their default or failure to lead evidence must be restored as a matter of course. No doubt, this Court has repeatedly followed that principle and restored such LARs by granting an opportunity to them to lead evidence in support of their claims. However Claimants who have simply slept over their dismissed LARs for number of years cannot be permitted to misuse the said principle by seeking to infuse life into dead claims dismissed number of years ago. Entertaining petitions filed restoration of LARs dismissed in 2008/09 would also open floodgates for other similar claimants whose LARs are dismissed several years ago.

14. In the present case petitioners are clearly guilty of delay and laches as observed above. Even otherwise, aforequoted decisions of this Court rendered in cases of diligent Petitioners cannot be relied upon by those Claimants who slept over their dismissed LARs for
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number of years and thereby acquiesced in such dismissal. The writ petitions are therefore liable to be dismissed on the ground of delay and laches.

15. Writ Petitions are accordingly dismissed without any order as to costs. Rule stands discharged.

(SANDEEP V. MARNE, J.)

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