

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
955 WRIT PETITION NO. 8627 OF 2018**

1. Ram S/o. Abarao Patil, **...PETITIONERS**
Age-Major, Occ-Agri,
R/o. Madaj, Tq. Omerga,
Dist. Osmanabad
2. Avinath S/o. Ram Patil,
Age-Major, Occu-Agri,
R/o. Madaj, Tq. Omerga,
Dist. Osmanabad
3. Ravi S/o. Ram Patil,
Age-Major, Occu-Agri,
R/o. Madaj, Tq. Omerga,
Dist. Osmanabad
4. Sau. Alka Ram Patil,
Age-Major, Occu-Agri,
R/o. Madaj, Tq. Omerga,
Dist. Osmanabad
5. Gopinath Ramchi Suryawanshi,
Age-Major, Occu-Agri,
R/o. Madaj, Tq. Omerga,
Dist. Osmanabad
6. Sau. Anuradha Sham Patil,
Age-Major, Occu-Agri,
R/o. Madaj, Tq. Omerga,
Dist. Osmanabad
7. Shashiraj S/o. Sham Patil,
Age-Major, Occu-Agri,

R/o. Madaj, Tq. Omerga,
Dist. Osmanabad

VERSUS

1. The State of Maharashtra, ...RESPONDENTS
Through Its Principal Secretary,
Earthquake and Rehabilitation Department,
Mantralaya, Mumbai
2. The Collector, Osmanabad
Dist. Osmanabad
3. The Sub-Divisional Officer,
@ the Land Acquisition Officer,
Omerga, Tq. Omerga, Dist. Osmanabad

Mr. A. B. Kale, Advocate for the petitioners
Mr. A. R. Kale, AGP for the respondents/State

**CORAM : RAVINDRA V. GHUGE &
ANIL L. PANSARE, JJ.**

RESERVED ON : 28th June, 2022

PRONOUNCED ON : 28th July, 2022

JUDGMENT [PER: ANIL L. PANSARE, J.]

1. Rule. Rule made returnable forthwith.
Heard finally with the consent of the parties.

2. The petitioners are seeking directions to the respondents to initiate and complete the proceedings under the provisions of the Right to Fair Compensation and Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the Act of 2013') in respect of lands of the petitioners bearing Gat Nos. 197/1, 197/2, 198/2, 5/2, 197/4 to the extent of 6-H 2-R, 6-H 2-R, 3-H 7-R, 1-H 91-R, 0-H 50-R respectively situated at village Madaj, Tq. Osmanabad, Dist. Osmanabad.

3. The petitioners have come up with a case that they are the owners and possessors of the lands mentioned above. In the year 1993 Osmanabad District suffered an earthquake disaster. The respondent authorities decided to rehabilitate the affected persons. The government was required to take up a huge task. The petitioners, upon request

made by the then Collector, have handed over the possession of their lands to the respondent authorities for the purpose of re-settlement and rehabilitation of the affected persons in the earthquake. The petitioners were given an understanding by the respondent authorities that the necessary acquisition proceedings will be initiated and the amount of compensation will be paid to them. However, the respondent authorities have failed to do so, in spite of repeated request made by the petitioners.

4. The petitioners have relied upon Section 24 of the Act of 2013.

5. According to the petitioners, though the possession has been taken by the respondent authorities of the lands belonging to the

petitioners, till date, no steps of whatsoever nature have been taken by the authorities for the acquisition of the said lands. They were given an understanding that they will be suitably compensated. However, till today, the respondent authorities have not taken any steps. They have made repeated request but to no avail. Hence, the present petitioners are taking aid of Section 24 of the Act of 2013.

6. The reply filed by the respondent No.3 has provided the other side of the story. It is not disputed by the respondents that in the year 1993 earthquake has caused disaster in Osmanabad district. The Government in order to rehabilitate the affected persons issued various Government Resolutions. The Government also took steps for rehabilitation of the public/persons by appointing private agencies like public trust. Taking into

consideration the gravity of the matter, the State Government allowed the private agencies/public trust to purchase the lands and construct houses for rehabilitation of the earthquake affected persons. Various Government Resolutions dated 31-12-1997, 27-07-1998 and 16-06-1998 were issued in this regard.

7. The petitioners are residents of village Madaj. One Trust namely Unique Service Trust, was assigned the work of rehabilitation in the said village and other villages. The State Government had issued grants to such institution for purchasing the lands and constructing the houses on the said lands.

8. The said trust has accordingly purchased the lands from the villagers including the petitioners and constructed the houses upon some

lands. There were some difficulties in constructing the houses at village Madaj. There was demand by villagers of Madaj to increase the rate. The enquiry was made and say was submitted by the then Additional Collector, Osmanabad (Earthquake Resettlement Officer) to the higher authority. The Chairman of Unique Services Trust, has then handed over the possession of the lands, that were purchased by the trust, to the respondents. The Unique Services Trust has also furnished notarized and registered documents executed by them with the villagers. The panchanama dated 20-08-2001 in this regard was drawn. The panchanama shows that in respect of some lands, sale deeds were executed. However, in respect of others, only the possession was handed over. It further shows that petitioner No.5 has executed a sale deed.

9. The respondents have placed on record communication dated 14-03-2004, addressed to the Janta Sahakari Bank. Ltd. Pune (Branch Latur), issued by Additional Collector, Osmanabad (Earthquake Resettlement Officer) alongwith list calling details of payment made to the affected persons. The Janta Sahakari Bank Ltd. has furnished the list which shows, amongst others, that amount of consideration has been paid to the petitioner Nos. 1 & 5.

10. According to the respondents, the consideration amount has been paid to all the petitioners. The possession of the lands is now vested with the Additional Collector (Earthquake Resettlement Officer). Merely because the registered sale deeds with some of the petitioners have not been executed, would not mean that the lands were not purchased by the Unique Services

Trust.

11. We find it surprising that the petitioners have not disclosed the above facts at the first instance. The pleadings in the petition are silent on these points. The petitioners, through rejoinder have admitted that amount of consideration was paid to them. However, the petitioners have termed it to be a token amount paid by the respondent authorities. We have not heard of Government giving token amounts.

12. The petitioners by way of rejoinder have now come up with the case that the possession was handed over in special circumstances. The petitioners have then admitted that the lands belonging to some villagers who were in agreement with the consideration amount, were purchased by executing registered sale deed. The petitioners

were not in agreement with the amount offered and therefore, token amount was paid to them without executing any sale deed. The petitioners were made to understand that the proceedings for acquisition will be initiated and amount of compensation would be determined.

13. Thus, the petitioners are trying to take an advantage of the cases in which, sale deeds were not executed. They have modified their initial stand that no steps of whatsoever nature were taken by the respondent authorities. The petitioners have not disputed the panchanama or the documents issued by the Janta Sahakari Bank Ltd. The documents would show that some of the petitioners have executed registered sale deed, and some have received sale price. All the petitioners have handed over the possession of their lands.

14. The documents placed on record by the learned AGP would also show that the Government has issued various Government Resolutions to rehabilitate the affected persons. It appears that emergent situation required the government to take a decision that the work of construction of houses for affected persons be carried out through various trusts and societies. It further appears that one of such trust namely Unique Services Trust was entrusted with the work of construction of 1062 houses for rehabilitation. The Unique Services Trust appears to have had private negotiations with the villagers for purchasing the lands. The said trust has purchased substantial acres of lands and have constructed the houses thereon. The government has paid requisite cost to the trust.

15. It further appears that the said trust could not complete the project of construction in time and therefore, the work was handed over to some other agency. The said trust, therefore, handed over the possession of the land purchased by them which includes the lands of the petitioners, to the government. The trust vide letter dated 10-08-2001 issued to the Chief Secretary, Government of Maharashtra conveyed that the said trust will not seek any amount against the lands handed over to the government. Thus, there appears transaction between the petitioners and the Unique Services Trust, which is not party before this court.

16. The documents placed on record would further show that the petitioner No.5 has executed registered sale deed. It means he has received consideration amount. The petitioner No.1 has also

received consideration amount, though he did not execute the sale deed. Admittedly, the lands in issue have now been vested with the respondents. These facts would clearly indicate that the petitioners were suitably compensated. It's too late to revisit and test the validity of the transaction entered into by and between the petitioners and the Unique Services Trust.

17. We, therefore, have a serious doubt about the genuineness of the claim made by the petitioners. The petitioners ought to have pleaded in the petition that they have received token amount or advance amount against their properties. They have conveniently suppressed the facts. The petition is silent on the point of their transaction with the Unique Services Trust. It is difficult to believe that the petitioners have handed over the lands and have waited for about 25

years without getting amount of consideration /compensation. The petitioners have not given any justification for approaching this court after such a long period.

18. The Hon'ble Supreme Court in the case of Karnataka Power Corpn. Ltd. and another Vs K. Thangappan and another, (2006) 4 SCC 322 has held in paragraph Nos. 6,7 & 9 as under:-

"6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prasad v. Chief Controller of Imports and Exports (AIR 1970 SC 769). Of course, the discretion has to be exercised judicially and reasonably.

7. What was stated in this regard by Sir Barnes Peacock in Lindsay Petroleum Company v. Prosper Armstrong Hurd etc. (1874 (5) P.C. 221 at page 239) was approved by this Court in Moon Mills

Ltd. v. Industrial Courts (AIR 1967 SC 1450) and Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service (AIR 1969 SC 329). Sir Barnes had stated:

"Now, the doctrine of laches in Courts of Equity is not an arbitrary or technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

9. It was stated in *State of M.P. v. Nandlal* (AIR 1987 SC 251), that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion

and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

19. Thus, where there is a delay, the circumstances which are always important are length of delay and nature of the acts done during the interval which might affect either party. In the present case there is an unexplained inordinate delay of about 25 years. The petitioners have not put forth as to what have they done in the intervening period. The confusion on the point of transaction between the petitioners and the Unique Services Trust is not clear. The Unique Services Trust is not made party to this petition.

20. The present petition not only suffers from delay and laches, but also from suppressing the material facts. The petitioners have not come with clean hands. The petitioners' plea that no steps of whatsoever nature were taken by the respondent authorities is found to be false. The petitioner No.5 has executed registered sale deed. The sale price has been paid to the respondent Nos. 1 and 5. There is no reason why these facts were not disclosed in the petition. There appears many disputed facts. It will be, thus, risky to exercise writ jurisdiction after lapse of about 25 years. The petitioners, therefore, are not entitled for any relief.

21. The petition stands dismissed. Rule is discharged.

[ANIL L. PANSARE, J.]

[RAVINDRA V. GHUGE, J.]