

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

WRIT PETITION NO. 3615 OF 2017

Bapusaheb Krushnaji Patil
Through GPA holder
Ashok Abasaheb Patil .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Nileshsingh J. Patil, Advocate for the Petitioner.
Shri S. B. Yawalkar, Addl.G.P. for the Respondent Nos. 1 to 3.
Shri A. S. Bajaj, Advocate for Respondent Nos. 4 and 5.

**CORAM : NITIN W. SAMBRE AND
S. G. CHAPALGAONKAR, JJ.
DATE : 12TH APRIL, 2023.**

FINAL ORDER :

. It is the case of the petitioner that he is owner of land gut No. 1083 (Old Sy. No. 472/152) admeasuring 32 Acres 32 Gunthas situated at Renapur, Dist. Latur. According to the him out of the aforesaid 32 Acres land, land adm. 24 Acres had gone to the share of protected tenant. Out of balance holding of 08 Acres 32 Guntha, petitioner claim to have executed a sale deed on August 31, 1974 to the extent of land 02 Acres 32 Guntha land in favour of Magasvargiya Seva Sangh, Renapur. According to petitioner till 1979 on the balance area of 06 acres i. e. 2H 44R out of gut No. 1083, name of the petitioner was shown to be owner. However, the same name stood deleted and replaced with

the name of the last respondent. In the aforesaid background, it is the contention of the petitioner that without acquiring land of the petitioner, the respondents have constructed electricity sub station. As such he has prayed for directions to the respondents to pass an award in respect of land admeasuring 04 Acres from gut No. 1083, which is used for electricity sub station. As far as remaining 02 Acres of land is concerned, it is prayed that an injunction be ordered against the respondents restraining them from using the land in question.

2. Learned counsel for the petitioner submits that he has made representation to the respondents on 04th January, 2016, pointing out that the revenue entries initially stood in the name of the petitioner. According to him without there being any acquisition proceedings, the property is shown to have been mutated in the name of the respondents that too without any authority of law. Drawing support from the statutory provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Article 300-A of the Constitution of India, learned counsel for the petitioner would urge that the petitioner cannot be deprived of his right to enjoy the property in question. The respondents cannot divest the petitioner, the owner of the property mentioned hereinabove without following due process of law. As such it is claimed that he is entitled for compensation from the respondents.

3. Learned counsel for the respondent Nos. 4 and 5 has opposed the claim of the petitioner. According to him the fact about existence of the electricity sub station was well within the knowledge of the petitioner. So as to substantiate said contention the respondents have placed on record true copy of the sale deed dated 27th August, 1974 executed by the petitioner, wherein a specific mention about existence of electricity sub station could be noticed. It is as such claimed that the petitioner has approached this Court at much belated stage i. e. after 1974, the year in which he was aware about existence of electricity sub station on his land. In view of above, learned counsel for the respondent relying on the judgment of Apex Court in the matter of **State of Maharashtra Vs. Digambar** reported in ***AIR 1995 SC 1991*** submits that the petition which is preferred after lapse of almost 35 years is not maintainable and is liable to be dismissed.

4. We have appreciated aforesaid submissions.

5. The petitioner has come out with a case that the petitioner unlawfully was divested of land without initiation of acquisition proceedings. So as to substantiate said claim he has relied on the representation taken out by him to the revenue authorities.

6. Merely making a submission that the land of the petitioner was never subjected to acquisition will not result in discharging of initial burden by the petitioner so as to assert that his land

was never subjected to acquisition.

7. In respect of the aforesaid observations, we would place reliance on the recitals in the sale deed executed by the petitioner on 27th August, 1974, while describing dimensions/details of the property which was transferred by virtue of aforesaid sale deed, the petitioner in the recitals of the said sale deed has specifically mentioned about existence of the electricity sub station. In view of aforesaid undisputed factual matrix, the fact about existence of sub station prior to 1974 was well within the knowledge of the petitioner. Act of the petitioner in approaching before this Court after lapse of almost 35 years prompts this court not to exercise writ jurisdiction and grant discretionary relief in favour of the petitioner. The reliance placed by the petitioner on the judgment of this Court delivered on 19th March, 2018 in Writ Petition No. 10104 of 2013 in the matter of **Ganesh Narsing Lolge and another Vs. State of Maharashtra and others** and the judgment of the Apex Court in the matter of **Vidya Devi Vs. State of Himachal Pradesh and others** reported in **(2020) 2 SCC 569** will be hardly of any assistance to the petitioner in the backdrop of above observations.

8. In the judgment of the Apex Court in the matter of **Vidya Devi Vs. State of Himachal Pradesh and others** (supra) in para No. 13 the Supreme Court has specifically taken recourse to Article 136 and 142 of the Constitution of India. Special powers

are vested with the Supreme Court so as to do complete justice. Same are not available to the High Court. As such observations made therein cannot be said to be applicable to the case in hand.

9. As far as judgment in the matter of **Ganesh Narsing Lolge and another Vs. State of Maharashtra and others** (supra) is concerned, fact remains that the petitioner was aware about the fact, i. e. existence of sub station. As such the respondents were using the land in question prior to 1974. The petitioner has for the first time preferred a representation in the year 2016 with the revenue authorities in relation to the alleged use of land by the respondents. Merely by taking out representation in the year 2016, the time barred claim of the petitioner cannot be brought within the limitation so as to assert that the petitioner is entitled for compensation. The possession of the respondent for more than thirty five years appears to be uninterrupted.

10. One more contention of the petitioner needs to be taken judicial note of. Perusal of the recitals of the sale deed dated 27th August, 1974 in categorical terms speaks of existence of sub station. As such land in question was in occupation of the respondent authorities is a fact, which can be inferred from the recitals of the said sale deed. The petitioner though has referred aforesaid pleadings in the sale deed, but intentionally suppressed recitals in the said sale deed from this Court so as to draw undue benefit in support of his case of not being aware about the settled possession of the respondent authorities over the property in

question. The aforesaid fact in our opinion also dis-entitles petitioner for grant of discretionary relief.

11. The petitioner has rather permitted the respondents to occupy the land in question for last more than 35 years that too without there being any impediment. That being so the aforesaid judgment will be of hardly of any assistance to the petitioner. In our opinion petition lacks merit as such stands dismissed.

[S. G. CHAPALGAONKAR, J.]

[NITIN W. SAMBRE , J.]

bsb/April 23