

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

WRIT PETITION NO. 6811 OF 2015

Babasaheb Haji Abdul Mullani

Age: 57 years, Occ.: Business

R/o-689, "E" Ward, Shahupuri, 3rd lane

Kolhapur.

... Petitioner

Versus

1. Kolhapur Municipal Corporation

Through its Commissioner

Bhausingji Road, Kolhapur,

Dist.: Kolhapur.

2. Estate Officer,

Kolhapur Municipal Corporation.

... Respondents

Mr Manoj A. Patil for the Petitioner.

Mr Abhijit M Adagule a/w Ms Harvinder Kaur Rogi for the
Respondent/Corporation.

***CORAM: G. S. KULKARNI &
R. N. LADDHA, JJ.***

DATE : 9 MARCH 2023

Judgment (Per R. N. Laddha, J.) :

Heard Mr Manoj Patil, learned counsel for the petitioner, and
Mr Abhijit Adagule, learned counsel, who appears along with Ms
Arvinder Kaur Rogi, learned counsel for the respondent/
Corporation.

2. Rule. Rule made returnable forthwith. Respondents waive service. At the instance and the request of the learned counsel for the parties, heard finally.

3. It is the case of the petitioner that a land, i.e. Regular Survey No. 52/1 to 9, admeasuring 13,000 sq. ft., situated at Bapat Camp, Kolhapur, was originally owned by his predecessors. In 1978, by a resolution, the respondent/Corporation (for short, 'the Corporation') had acquired the land of the petitioner for the construction of the approach road to the slaughterhouse. As against the acquisition, in 1983, the Standing Committee of the Corporation passed a resolution to allot plots no. 74 and 75, each admeasuring 3150 sq. ft., situated at Regular Survey No. 87C to the petitioner. It is the grievance of the petitioner that although he is entitled to allotment of an alternate land from the Corporation in lieu of his acquired land, still such alternate land has not been allotted to him, despite a resolution having been passed by the Corporation's Standing Committee in the year 1983, to allot to the petitioner alternate land, namely, plots no. 74 and 75 to the petitioner.

4. Mr Manoj Patil, learned counsel for the petitioner, submitted that the petitioner, from time to time, requested the officials of the

Corporation to look into his grievance and take appropriate steps for handing over these plots as sanctioned and resolved under the decision of the Standing Committee, however, no steps were taken by the Corporation. He submitted that the resolution of the Standing Committee is not acted upon till today. Mr Patil submitted that on 9 January 2013, the Estate Officer of the Corporation informed the petitioner that the compensation amount of Rs.44,137.54/- was already paid to the father of the petitioner. According to him, the chart annexed with the said communication is silent about the mode of payment, and there was no signature of the petitioner or his family members. He submitted that the Assistant Director of Town Planning and the Chief Accountant of the Corporation had clarified the fact that the compensation amount had not been paid to the petitioner or his family members.

5. Mr Patil submitted that there is some delay in filing the present petition, however, the delay is neither intentional nor deliberate. The petitioner, on various occasions, met the officials of the Corporation and tried to convince them, but they asked the petitioner to approach the Court, however, due to financial problems, the petitioner could not approach the Court at the earliest.

6. Based upon the aforesaid contentions, Mr Patil urged that the rule in this petition may be made absolute and direction be issued to the Corporation to allot the alternate land against the petitioner's acquired land.

7. Mr Abhijit Adagule, the learned counsel for the Corporation, submitted that the present petition is not maintainable on the ground of inordinate delay, which is unexplained. According to him, on 25 January 1984, by following due process, the possession of the said land was taken by the Corporation by paying compensation of Rs.44,137.54/- to the predecessor of the petitioner. He invited our attention to a copy of the register maintained by the Corporation, and annexed to the petition to submit that in the year 1984, when the Corporation took possession of the land, the compensation was duly paid to the petitioner's father and, therefore, the question of allotment of alternate land does not arise at all.

8. Mr Adagule submitted that the father of the petitioner, during his lifetime and/or anyone, including the petitioner, never raised any objection regarding non-payment of the compensation till 2012, i.e. almost for a period of thirty years and no explanation or reason whatsoever is disclosed in the entire petition about the delay caused in filing the petition. He submitted that the record

available with the Corporation demonstrates that the compensation was duly paid to the father of the petitioner. Mr Adagule referred to the provisions of the Maharashtra Public Records Act, 2005 and the Destruction of the Records Act, 1977, to submit that such records have to be maintained and preserved for a period of five years only and due to the inordinate delay in raising the grievance, the Corporation was prevented from defending equitably. He submitted that the petitioner, taking advantage of the destruction of the records, approached this Court with a patently false case. He, therefore, submits that this petition may be dismissed.

9. The rival contentions now fall for our determination.

10. From the pleadings, it can be seen that there is no dispute that, on 7 March 1978, to construct the approach road to the slaughterhouse, the Corporation acquired the land of the petitioner. Further, the record bears out that in 1983, the Standing Committee of the Corporation passed a resolution to allot plots no. 74 and 75 to the petitioner, as against his acquired land. The petitioner himself has placed on record (pages 35 and 36) a copy of the register maintained by the Corporation, which indicates that on 25 January 1984, possession of the petitioner's acquired land was taken over from the father of the petitioner and on 26 April 1984, an amount of Rs.44,137.54/- was paid to him towards

compensation of the acquired land. This material on record, at least *prima facie*, suggests that the compensation of the acquired land was duly paid to the petitioner's father in the year 1984 itself.

11. In these circumstances, according to us, the petition as instituted, at the best, raises several disputed questions of facts that cannot ordinarily be gone into in the exercise of our summary and extraordinary jurisdiction under Article 226 of the Constitution of India.

12. There is yet another vulnerability in the claim of the petition which cannot be lost sight of. As can be seen from the record that the present petition was instituted at a quite belated stage, after about 37 years of acquisition of the land. It is a well-settled principle of law that 'delay defeats equity'. The father of the petitioner, during his lifetime, did not make any grievance about the non-payment of the compensation amount or an alternate land as against his acquired land. Also, the petitioner did not agitate his grievance for a long time. He, for the first time in the year 2012, entered into a correspondence with the Corporation and made a demand for an alternate land in lieu of the compensation. After that, also, for about a period of three years till the filing of the petition in the year 2015, he was simply content with forwarding

the communications to buttress his claim. The inordinate delay in approaching the Court gains more significance, as the details of payment of compensation amount, including the mode of payment, are not available, which as per the mandate of the Maharashtra Public Records Act, 2005, are required to be preserved only for a period of five years.

13. In *Northern Indian Glass Industry v/s. Jaswant Singh & Ors.*¹, the Supreme Court, observed that the High Court could not ignore the delay and laches in approaching the writ Court and there must be a satisfactory explanation by the petitioner as to how he could not come to the Court well in time.

14. Similarly, in *State of M.P. & Ors. v/s. Nandlal Jaiswal & Ors.*², the Court observed that:

“24. ... it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic.”

It has been further stated therein that :

“24. ... If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction.”

1 2002 Supp(3) SCR 534.

2 (1986) 4 SCC 566.

15. Again, in ***Chennai Metropolitan Water Supply & Sewerage Board & Ors. v/s. T. T. Murali Babu***³, while dealing with the concept of inordinate delay in filing the petition, it was held that:

“16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to be keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects in activity and in action on the part of a litigant- a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.”

16. A similar view was reiterated by the Apex Court in ***Prabhakar v/s. Joint Director, Sericulture Department & Anr.***⁴, wherein it was held that:

“38. It is now a well-recognised principle of jurisprudence that a right not exercised for a long time is non-existent. Even when there is no limitation period prescribed by any statute relating to certain proceedings, in such cases courts have coined the doctrine of laches

³ (2014) 4 SCC 108.

⁴ (2015) 15 SCC 1.

and delays as well as doctrine of acquiescence and non-suited the litigants who approached the Court belatedly without any justifiable explanation for bringing the action after unreasonable delay. Doctrine of laches is in fact an application of maxim of equity “delay defeats equities”.

39. This principle is applied in those cases where discretionary orders of the court are claimed, such as specific performance, permanent or temporary injunction, appointment of Receiver, etc. These principles are also applied in the writ petitions filed under Articles 32 and 226 of the Constitution of India. In such cases, courts can still refuse relief where the delay on the petitioner's part has prejudiced the respondent even though the petitioner might have come to court within the period prescribed by the Limitation Act.”

17. In view of the above-settled principles of law, we are certain that the present petition is clearly barred by the doctrine of delay and laches. We cannot re-open issues on the acquisition of petitioner's land, which have stood concluded in the year 1984, in respect of which the petitioner's father never raised a dispute. If the contentions as raised by the petitioner to entertain an issue on concluded acquisition are to be re-opened after more than four decades, the entire sanctity of the land acquisition proceedings would be lost. This apart, on the first count, granting such relief to open issues on a matter of land acquisition compensation after more than 40 years of the land having vested with the Corporation would result in opening floodgates of litigation, causing a

deleterious effect on the concluded land acquisition proceedings. In any event, the factual disputes cannot be gone into in the exercise of our writ jurisdiction.

18. For the aforementioned reasons have no hesitation in dismissing this petition. It is accordingly dismissed. Rule stands discharged. There shall be no order for costs.

R. N. LADDHA, J.

G. S. KULKARNI, J.

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DHARMENDER
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