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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1332 OF 2023

Nana Narayan Bhalerao

Since deceased through his legal heir:

Jalindar Nana Bhalerao,

Age about 47 Years, Occu.: Agri.

R/o. : Dhalewadi, Tal. Purandar,

District Pune

.. Petitioner

v/s.

1. District Resettlement Officer,
Pune Collector Compound,
District Pune.

2. Additional Collector,
District Pune.

3. Divisional Commissioner,
Pune Division, Pune.

4. State of Maharashtra

.. Respondents

....

Mr. Nitin P. Deshpande, for the Petitioner.

Ms. S.S. Bhende, AGP, for State.

....

CORAM: G.S. KULKARNI &
JITENDRA JAIN, JJ.

DATE : 26th JULY 2023

ORAL JUDGMENT (Per G.S. Kulkarni, J.):-

1. The only relief as prayed for by the petitioner under Article 226 of the Constitution reads thus:

“A. This Hon’ble Court may, by way of appropriate Writ order or direction, direct the respondents to allot to the petitioner remaining 40R land out of Gat No. 711/2 and Gat No. 327/2A admeasuring 40R totally 80R land at village Jwala Arjun, Tal. Purandar, Dist. Pune as an alternate land.”

2. The Petitioner claims to be a project affected person of an irrigation project, namely, the Nazare Project. Although, the petition is totally bereft of any details in regard to the details of his land acquired and the land acquisition award, however, in paragraph 4 of the petition, an averment is made that on 4th May 1974, the Respondents had allotted to the Petitioner 41R of land, out of Gat No.548/13 at Jwala Arjun, Purandar, District Pune. According to the Petitioner, the allotment of 41R land as undertaken about 49 years back is not sufficient as he should have been provided land admeasuring 80R.

3. The Petitioner having realised the shortfall in allotment for the first time in the year 2022 when the Petitioner made an application dated 23rd December 2022 claiming 80R of land to the Respondent/District Resettlement Officer, Pune. As the Respondent did not take any decision on the said application, the Petitioner has filed this petition.

4. There are only three cryptic grounds as set out in the petition. Firstly, that the Petitioner is entitled to additional 80R of land. Secondly, that the Respondents are under a legal obligation to rehabilitate the Petitioner and thirdly, that interest of justice demands this Court to allot 80R of land. There is no averment whatsoever of any legal right vested in the Petitioner to make such belated claim after the year 1974 that is after a period almost 49 years. There is not a whisper of a case as made out in the petition, justifying such inordinate delay and laches on the part of the Petitioner in approaching the Court.

5. The Petitioner appears to be of the opinion that merely making a representation/application for allotment of land after such long-long delay would originate a cause of action in his favour to resurrect/reopen the proceedings and, by making such application, there is an obligation on the Respondent to make an allotment order in favour of the Petitioner so as to maintain the prayers as noted by us. This appears to be the sole purpose of this petition. In forming such opinion either the Petitioner is not only over ambitious and adventurous, but appears to be totally misdirected.

6. We may observe that this Court was dealing with a similar situation of a stale claim being asserted for allotment of alternate land as a project affected person, in the case of *Tatoba Rama Chavan vs. Collector, Kolhapur District, Kolhapur And Others*¹, wherein land was

¹ Writ Petition No.3883 of 2022 dated 26th July 2023.

acquired in the year 1983, this Court referring to the decisions of the Supreme Court in *C. Jacob vs. Director of Geology & Mining & Anr.*², as also the decisions in *Union of India & Ors. vs. C. Girija & Ors.*³, *State of Uttaranchal & Another vs. Shiv Charan Singh Bhandari & Ors.*⁴, *Union of India And Others vs. M.K. Sarkar*⁵ and *The Govt. of India & Anr. vs. P. Venkatesh*⁶, had dismissed the petition. The situation in the present petition is not different from the said case. We may note the observations as made by this Court in the said decision, which, in our opinion, are aptly applicable in the facts of the present case:

“8. The Petitioner in the present petition is blissfully silent on several basic requirements for her to maintain this petition. She has not made any averments as to whether any occupancy price was paid by the Petitioner’s father and any other preconditions required for grant of land were complied with. The process of acquisition is over in the year 1983 itself. In the absence of the same, coupled with the fact of no explanation for the delay, it cannot be said that the Petitioner as made out even a prima facie case. On the contrary, it appears on the face of it a dead/stale claim is sought to be revived by filing the present petition.

9. We have come across some proceedings where, as a matter of course, the petitioners whose land was acquired ages back like in the present case. It appears to be a tendency to approach this Court seeking orders that their belated representations be considered. We may observe that when such petitioners have no legal rights, they cannot invoke equity or sympathy that they are project affected persons. This more particularly as the jurisdiction of this Court to

2 AIR 2009 Supreme Court 264.

3 (2019) 15 SCC 633

4 (2013) 12 SCC 179

5 (2010) 2 SCC 59

6 Civil Appeal No.2425 of 2019 (@ SLP (C) No.5810 of 2017), New Delhi, March 01, 2019.

issue writs although may be equitable jurisdiction, however, the same is on a foundation of an existing and a live claim on which a litigant may seek a relief on a grievance of infringement of any of his legal rights. If what is being canvassed by the petitioners is accepted, it would result in the Court acting contrary to the mandate of law in issuing directions to the Government to re-open dead cases and make allotment of lands irrespective of the statutory scheme under the enactment, which was prevalent at the relevant point of time and as noted by us above. In our considered opinion, a loud and clear message has to go to such litigants who in fact attempt to abuse the process of law to approach the Court in belated claims. The present case is one such classic example of such dead claim being pursued. The only consequence is that such petitions are required to be, at the threshold, kept away from crowding the Courts, as they are clearly an abuse of the process of law.

10. *Thus, in our view, the present petition is not maintainable under Article 226 of the Constitution of India. The Petitioner has approached this Court after an inordinate delay of almost 38 years from the date of the land having being acquired. The petitioner has not bothered to explain the delay of almost 37 years in making an application in the year 2020 to enforce the award passed in the year 1983. Even if the year 1999, when the Maharashtra Project Affected Persons Rehabilitation Act, 1999, came into existence is considered, even then the petitioner's application dated 17th January 2020 seeking allotment of the land is filed after a period of more than 20 years and there is no explanation for the delay of 20 years. In our view, as the petition is filed after gross delay and laches and such a Petitioner, who slept over his/her rights for almost three decades, cannot invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, moreso, when there is no averment in the petition explaining the delay.*

11. *In the case of C. Jacob vs. Director of Geology & Mining & Anr.⁷, the Supreme Court have observed in para 6 as under:*

“6. Let us take the hypothetical case of an employee who

⁷ AIR 2009 Supreme Court 264.

is terminated from service in 1980. He does not challenge the termination. But nearly two decades later, say in the year 2000, he decides to challenge the termination. He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before Tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition before the Tribunal/High Court seeking a direction to the employer to consider and dispose of his representation. The Tribunals/High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any 'decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

7. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim.

8. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of 'acknowledgment of a jural relationship' to give rise to a fresh cause of action.

9.

10. We are constrained to refer to the several facets of the issue only to emphasize the need for circumspection and care in issuing directions for 'consideration'. If the representation is on the face of it is stale, or does not contain particulars to show that it is regarding a live claim, courts should desist from directing 'consideration' of such claims."

7. We are, thus, of the clear opinion that the writ jurisdiction of this Court cannot be invoked and called upon to be exercised to re-open such claim, which, in our opinion, is a deadwood.

8. Even assuming that in a given case legal rights had accrued to a person, and for a long lapse of time as in the present case, such rights were not espoused and/or were kept in a cold storage, the only inference the law would require the Court to draw would be that rights were given up. These rights accordingly would stand extinguished by

the person's own conduct, and if the same is allowed to be re-agitated, it would result in permitting regeneration of a dead claim. This would be certainly contrary to the public policy when it comes to asserting rights on government lands, as also, contrary to the scheme of the legislation, i.e. the Maharashtra Project Affected Persons Rehabilitation Act, 1999, under which the Petitioner purports to make a claim. In fact the legislation itself would not provide for any such allowance to be made, as clear from a holistic reading of the provisions of the said Act. This petition, is thus, clearly barred by the principles of delay and laches.

9. For the aforesaid reasons, we are more than certain that the present petition is an absolute abuse of process of the Court. The Petitioner is not entitled to maintain the singular prayer as also any representation/application before the authorities to seek any allotment of land in respect of concluded acquisition of the year 1974.

10. Writ Petition is dismissed. No costs.

(JITENDRA JAIN, J.)

(G.S. KULKARNI, J.)