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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO.3932 OF 2022

Kiritkumar B. Shah

...Petitioner

V/s.

State of Maharashtra & Ors.

...Respondents

Mr.Rajendra V. Pai, Senior Advocate with Alaikik P. Pai, Mr.Akshay R. Pai, Atharva Sane, Ms.Maanasi R. Gupta and Ms.Prajakta Shringarpure i/b Bina R. Pai for the Petitioner.

Mr.A.I. Patel, Additional Government Pleader with Mr.N.K. Rajpurohit, AGP, and Ms.K.N. Solunke, AGP for the State – Respondent.

Mrs.Neeta V. Masurkar for the Respondent Nos.4 and 6.

Mr.Sandesh D. Patil with Mr.Ajinkya Jaibhave for the Respondent No.5.

CORAM : R.D. DHANUKA &
M.M. SATHAYE, JJ.
DATE : 18TH JANUARY, 2023.

ORAL JUDGMENT (Per R.D. Dhanuka, J. :-

1. By this petition filed under Article 226 of the Constitution of India, the Petitioner seeks a writ of mandamus against the Respondents directing them to duly consider, assess and grant compensation for the land bearing Survey No.53A/1/A/6, Pen Village, Taluka Pen, District Raigad admeasuring about 15.90 Ares acquired for the benefit of the Respondent Nos.5 and 6 on such

terms and conditions as this Court deems fit.

2. In the alternate prayer, the Petitioner seeks an order and direction against the Respondents to demolish all the structures and buildings standing on the writ property and thereafter hand over the quiet, vacant and peaceful possession of writ property on such terms and conditions as this Court deems fit. The Petitioner also seeks an order and direction against the Respondents to duly assess and grant separate and/or additional compensation in the nature of compensation for delayed payment.

3. It is the case of the Petitioner that, the Petitioner was the owner in respect of the writ property which has been purportedly acquired by the Respondents in the year 1983 for the benefits of the Department of Telecommunication, Government of India.

4. It is the case of the Petitioner that when the writ property was acquired in the year 1983, the business of the said Authority was taken over at the instance of the Respondent No.5 for the purpose of two storied commercial office building - Bharat Sanchar Nigam Limited (BSNL). At the relevant time the said Authority paid over *ad-hoc* amount of Rs.5,000/- as and by way of compensation. According to the Petitioner, he accepted the *ad-hoc* amount of Rs.5,000/- under protest as it was too meager considering the real market value of the said property.

5. In paragraph 4(d), it is alleged by the Petitioner that the Petitioner diligently followed up with the Respondent Nos.2 and 3 in respect of the said claim for compensation however, no payment of compensation was made.

6. On 8th January, 2019, the Petitioner filed Writ Petition No.2003 of 2019 in this Court *inter-alia* praying for a writ of mandamus directing the Respondents to consider the claim of the Petitioner for compensation for acquisition of the writ property. The Writ Petition was listed before this Court on 10th April, 2019. After hearing the learned counsel for the parties, this Court dismissed the said writ petition having found it devoid of any substance. This Court observed that no steps had been taken by the Petitioner. There was no explanation of delay of more than 36 years in approaching this Court. This Court also recorded that the Petitioner attributed the delay to the Respondents and alleged non-availability of relevant record in the office of Land Acquisition Officer. This Court accordingly held that the grievance raised by the Petitioner of unexplained delay and laches of more than 36 years in approaching this Court need not be entertained in exercise of extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India.

7. The Petitioner did not challenge the said order dated 10th April, 2019 passed by this Court, dismissing the said writ petition but

chose to file Review Petition in this Court bearing Review Petition No.10 of 2022. The Petitioner also filed this Petition *inter-alia* for a writ of mandamus against the Respondents to grant compensation in respect of the writ property. During the pendency of this Petition, on 21st February, 2022 the Petitioner sought liberty to withdraw the said Review Petition No.10 of 2022. This Court accordingly dismissed the said Review Petition as withdrawn and dismissed the Interim Application, as the same did not survive.

8. Mr.Pai, learned senior advocate for the Petitioner invited our attention to the correspondence exchanged between the office of the Hon'ble Chief Minister and the office of the Collector and other Authorities forwarding the representation made by the Petitioner for payment of compensation and requesting to make an enquiry about the payment of compensation. He submitted that this Court having found that the Petitioner had already filed this Writ Petition explaining delay of 36 years in filing earlier Writ Petition, this Court granted liberty to the Petitioner to withdraw the said Review Petition No.10 of 2022.

9. It is submitted by the learned senior advocate that the Respondents never produced the copy of the award for acquiring the land of the Petitioner. He submitted that no notice under Section 12(2) of the Land Acquisition Act, 1894 was ever issued to the

Petitioner informing about declaration of the award and for calculating the compensation. He submitted that a meager amount of Rs.5,000/- was paid to the Petitioner by way of compensation which was accepted by the Petitioner without prejudice to the rights and contentions. He submitted that the Respondents thus cannot deprive the Petitioner for payment of the balance amount of compensation.

10. Insofar as the issue of delay is concerned, learned senior advocate placed reliance on the judgment of the Supreme Court in case of **Tukaram Kana Joshi & Ors. vs. Maharashtra Industrial Development Corporation & Ors., (2013) 1 SCC 353** and in particular paragraphs 11 to 14. He also placed reliance on the judgment delivered by a Division Bench of this Court in case of **Bhaguji & Ors. vs. State of Maharashtra & Ors., 2021 SCC OnLine Bom. 982** and in particular paragraph 24 and submitted that though the right to property ceased to be a fundamental right by the Constitution (Forty Fourth Amendment) Act, 1978, however, it continued to be a human right in a welfare state. He submitted that even if there is any delay on the part of the Petitioner in making a claim for compensation, this Court has ample power to direct the Respondents to award compensation to the Petitioner.

11. Mr.Patel, learned Additional Government Pleader on behalf of the State submitted that the award was already made by the

Special Land Acquisition Officer, in respect of the writ property. He relied upon the correspondence exchanged between the Petitioner and more particularly the letter dated 9th June, 2020 from the Petitioner to the Special Land Acquisition Officer, annexed to the affidavit in reply filed by the Respondent Nos.2 to 4 and submitted that in the said letter, it was clearly admitted that there was an award made by the Special Land Acquisition Officer pursuant to which a sum of Rs.5,000/- was paid to the Petitioner.

12. It is submitted by the learned Additional Government Pleader that the Petitioner had already filed a Writ Petition No.2003 of 2019 *inter-alia* praying for the same reliefs, which was dismissed admittedly by this Court by an order dated 10th April, 2019. He submitted that this Writ Petition filed for the same reliefs is thus, not maintainable. The Petitioner withdrew the Review Petition No.10 of 2022.

13. It is submitted that even if according to the Petitioner a sum of Rs.5,000/- was not adequate compensation for acquisition of the writ property in the year 1983, the Petitioner never applied for referring the issue of compensation to the Reference Court under Section 18 of the Land Acquisition Act, 1894.

14. The other Respondents appearing in the matter adopted the submissions made by Mr.Patel, Additional Government Pleader.

15. In his rejoinder argument, Mr.Pai, learned senior advocate for the Petitioner submitted that since there was no notice issued under Section 12(2) of the Land Acquisition Act, 1894 in this matter, time to make a reference under Section 18 of the Land Acquisition Act, 1894 did not commence. He submitted that in any event, since this Court has discretionary power to condone delay in filing the claim in view of the writ property being a human right involved, this Court shall exercise such power in this Writ Petition.

16. A perusal of the record clearly indicates that it is an admitted position that the award in respect of the writ property was made in the year 1983. It is the case of the Petitioner himself in Writ Petition No.2003 of 2019 that the award was made and BSNL confirmed that as per the award dated 12th October, 1983, the land of the Petitioner was transferred in their favour. A perusal of the averments made in the said Writ Petition and prayers would clearly indicate that the prayer was only in respect of compensation. The existence of the award was not disputed. There was no challenge to the acquisition proceedings on the ground that there was no award made by the Special Land Acquisition Officer even in the said Writ Petition.

17. By an order dated 10th April, 2019 passed by this Court, after considering the submissions made by both the parties and more

particularly that though possession was taken prior to 1983, the amount of compensation had not been paid, this Court has rendered a finding that the Petitioner had not explained the delay of 36 years in approaching this Court. Admittedly, the said order passed by this Court, has not been challenged by the Petitioner by filing a Special Leave Petition.

18. Instead of challenging the said order rejecting the Petition on the ground of delay, the Petitioner filed this Writ Petition and simultaneously pursued the Review Petition No.10 of 2022. By an order dated 21st February, 2022 passed by a Division Bench of this Court, leave was granted to the Petitioner to withdraw the said Review Petition. It is thus, clear that the order passed in Writ Petition No.2003 of 2019 dismissing the said Writ Petition has attained finality.

19. A perusal of the prayers in this Writ Petition clearly indicate that the Petitioner has prayed for compensation in respect of the Writ property.

20. Insofar as the issue raised by Mr.Pai, learned senior advocate for the Petitioner that there is no award made by the Special Land Acquisition Officer is concerned, in our view, this submission of the learned senior advocate for the Petitioner is contrary to the averments made in both the Writ Petitions and also

contrary to the letter dated 1st June, 2020, where the details of the award made by the Special Land Acquisition Officer are furnished by the Petitioner himself.

21. The question that could have arisen was in respect of adequacy of compensation for acquisition of the writ property due if any in the year 1983. The Petitioner was paid a sum of Rs.5,000/- as and by way of compensation. The said amount was paid as and by way of compensation to the Petitioner in the Writ Petition. The Petitioner could not explain the delay of 36 years even at this stage in the petition and across the bar. The documents and the pleadings in the Writ Petition would clearly indicate that except the bare allegations that the Petitioner was pursuing the claim for compensation with the Respondents, no material is produced.

22. Insofar as the submission of Mr.Pai, learned senior advocate for the Petitioner that no notice under Section 12(2) of the Land Acquisition Act, 1894 was given to the Petitioner and thus time to make reference under Section 18 of the Land Acquisition Act, 1894 did not commence is concerned, a perusal of Section 12(2) clearly indicates that the Collector has to give immediate notice of his award to such of the persons interested as are not present personally or by their representative when the award is made. In this case, it is the case of the Petitioner himself that the Petitioner was offered

compensation of Rs.5,000/- when the award was made by the Special Land Acquisition Officer. There is thus no substance in this submissions made by the learned senior advocate for the Petitioner.

23. Insofar as the judgment of the Supreme Court in case of **Tukaram Kana Joshi & Ors.** (supra) pressed in service by the learned senior advocate for the Petitioner is concerned, it is held by the Supreme Court in the said judgment that, if the whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third party interest is involved. In this case, the possession of the writ property was already handed over to the Respondent No.6 in the year 1983 itself and since then the same is in possession, use and occupation of the Respondent No.6. Be that as it may, the earlier Writ Petition filed by the Petitioner for similar relief invoking discretionary power under Article 226 of the Constitution of India, having failed, the Petitioner cannot apply for exercise of discretionary power once again in this Petition. The principles laid down by the Supreme Court in case of **Tukaram Kana Joshi & Ors.** (supra) are not disputed.

24. In the facts and circumstances of this Case, the Petitioner has not made out any case for exercise of power under Article 226 of the Constitution of India in view of unexplained delay of 36 years and more so also for the reasons that the rights are already created in

favour of the beneficiary of the acquisition proceedings and possession thereof has already been handed over to the beneficiary. The compensation in respect of the acquisition proceedings has been already paid as demanded in the year 1983. At this stage, awarding any additional amount of compensation by condoning delay would cause substantial injustice to the beneficiary of the award.

25. Insofar as the judgment of the Division Bench of this Court in case of **Bhaguji & Ors.** (supra) is concerned, the principles laid down by this Court that the right to property is a human right and according to Article 300-A of the Constitution of India, a person cannot be deprived of his property save by authority of law is not in dispute. The Petitioner was paid the compensation in the year 1983. If the same was inadequate according to the Petitioner, the Petitioner could have exercised his rights and remedy available under the provisions of the Land Acquisition Act, 1894. The Petitioner not having exercised the said rights for more than 36 years, cannot contend that this Court shall exercise its discretion under Article 226 of the Constitution of India. The judgment in case of **Bhaguji & Ors.** (supra) thus would not advance the case of the Petitioner. A person who has not exercised his rights and remedies permissible in law diligently cannot invoke the extraordinary jurisdiction of this Court at the cost and prejudice of others.

26. The Writ Petition is devoid of merits and the same is accordingly dismissed. There shall be no order as to costs.

(M.M. SATHAYE , J.)

(R.D. DHANUKA, J.)