

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

WRIT PETITION NO. 6172 OF 2012

Arvind Narayan Golande Age adult, Occ-Business
Manish Medicals, Jyotiprasad Vidyalaya Building,
Main road, At & Taluka Daund, Dist. Pune ... Petitioner

Versus

1. State Of Maharashtra,
Through its Chief Secretary, Mantralaya
Mumbai 400 032.
2. The Collector, Pune Collector Office
Compound, Pune 411 001.
3. The Commandant, State Reserve Police Force,
Group No. V. Having his Office At Daund, Dist. Pune.
4. The Commandant, State Reserve Police Force,
Group No. VII. Having his Office At Daund, Dist. Pune.
5. The Special Land Acquisition Officer No. 19
Pune, having his officer at Collector Office
Compound, Pune 411 001. ... Respondents

**WITH
WRIT PETITION NO. 6175 OF 2012**

Mahesh Kantilal Bhayani 101, Rajdeep Apartments,
S.No. 29-47/48, Chaitanya Nagar, Pune-Satara road,
Pune 411 043. ... Petitioner

Versus

1. State Of Maharashtra,
Through its Chief Secretary, Mantralaya
Mumbai 400 032.

2. The Collector, Pune Collector Office
Compound, Pune 411 001.
3. The Commandant, State Reserve Police Force,
Group No. V. Having his Office At Daund, Dist. Pune.
4. The Commandant, State Reserve Police Force,
Group No. VII. Having his Office At Daund, Dist. Pune.
5. The Special Land Acquisition Officer No. 19
Pune, having his officer at Collector Office
Compound, Pune 411 001. ... Respondents

**WITH
WRIT PETITION NO. 6188 OF 2012**

Iqbal Usman Shaikh Age Adult, R/at Flat No. 304,
Third Floor, Daud Manzil Building, Opposite
Asmita Supermarket, Naya Nagar, Mira Road
Mumbai.

... Petitioner

Versus

1. State Of Maharashtra,
Through its Chief Secretary, Mantralaya
Mumbai 400 032.
2. The Collector, Pune Collector Office
Compound, Pune 411 001.
3. The Commandant, State Reserve Police Force,
Group No. V. Having his Office At Daund, Dist. Pune.
4. The Commandant, State Reserve Police Force,
Group No. VII. Having his Office At Daund, Dist. Pune.
5. The Special Land Acquisition Officer No. 19
Pune, having his officer at Collector Office
Compound, Pune 411 001. ... Respondents

**WITH
WRIT PETITION NO. 7576 OF 2012**

Sudhakar Shantaram Jogalekar Age Adult,
Occ-Retired from Service. R/at post and Taluka
Daund, Dist. Pune.

... Petitioner

Versus

1. State Of Maharashtra,
Through its Chief Secretary, Mantralaya
Mumbai 400 032.
2. The Collector, Pune Collector Office
Compound, Pune 411 001.
3. The Commandant, State Reserve Police Force,
Group No. V. Having his Office At Daund, Dist. Pune.
4. The Commandant, State Reserve Police Force,
Group No. VII. Having his Office At Daund, Dist. Pune.
5. The Special Land Acquisition Officer No. 19
Pune, having his officer at Collector Office
Compound, Pune 411 001. ... Respondents

**WITH
WRIT PETITION NO. 8992 OF 2012**

Dr. Raja Kushadhwaj Kulkarni Occ-Medical Practice
R/at Shalimar Chowk, Daund-Kurkumbh Road
Daund, Taluka Daund, Dist. Pune
(deceased through legal heirs)

1A] Sushrut Raja Alias Rangnath Kulkarni Occ-Service
R/at Yogeshwari Hospital, shalimar Chowk, Daund,
Taluka Daund, Dist. Pune

1B] Smt. Suman Raja Alias Rangnath Kulkarni
Age-74 years Occ-Household work, R/at R/at

Yogeshwari Hospital, shalimar Chowk, Daund,
Taluka Daund, Dist. Pune

1C] Dr. Siddharth Raja Alias Rangnath Kulkarni
R/at Yogeshwari Hospital, shalimar Chowk, Daund,
Taluka Daund, Dist. Pune.

...Petitioner

Versus

1. State Of Maharashtra,
Through its Chief Secretary, Mantralaya
Mumbai 400 032.
2. The Collector, Pune Collector Office
Compound, Pune 411 001.
3. The Commandant, State Reserve Police Force,
Group No. V. Having his Office At Daund, Dist. Pune.
4. The Commandant, State Reserve Police Force,
Group No. VII. Having his Office At Daund, Dist. Pune.
5. The Special Land Acquisition Officer No. 19
Pune, having his officer at Collector Office
Compound, Pune 411 001. ... Respondents

**WITH
WRIT PETITION NO. 8974 OF 2012**

Dr. Laxman Somnath Bidwe Age Adult
Occ-Medical Practice. R/at Daund, Taluka
Daund, Dist. Pune.
Petitioner

...

Versus

1. State Of Maharashtra,
Through its Chief Secretary, Mantralaya
Mumbai 400 032.
2. The Collector, Pune Collector Office
Compound, Pune 411 001.

3. The Commandant, State Reserve Police Force,
Group No. V. Having his Office At Daund, Dist. Pune.
4. The Commandant, State Reserve Police Force,
Group No. VII. Having his Office At Daund, Dist. Pune.
5. The Special Land Acquisition Officer No. 19
Pune, having his officer at Collector Office
Compound, Pune 411 001. ... Respondents

Mr. P. K. Hushing Advocate for Petitioners in Writ Petition No. 6172 of 2012, Writ Petition No. 6188 of 2012 & Writ Petition No. 7576 of 2012

Mr. P. H. Bhoite Advocate for the Petitioners in Writ Petition No. 6175 of 2012, Writ Petition No. 8992 of 2012 And Writ Petition No. 8974 of 2012

Mr. N. K. Rajpurohit – AGP for the State/Respondent Nos. 1 to 5 In Writ Petition No. 6172 of 2012.

Mr. A. P. Vanarase – AGP for the State/Respondent Nos. 1 to 5 in Writ Petition No. 7576 of 2012

Mr. V. S. Gokhale 'B' Panel Counsel for State in Writ Petition No. 8992 of 2012 with Interim Application No./19653 of 2022 & Writ Petition No. 8974 of 2012 and.

**CORAM: R. D. DHANUKA AND
M.M.SATHAYE , JJ.**

**RESERVED ON: 3rd FEBRUARY, 2023
PRONOUNCED ON : 3rd MAY, 2023**

JUDGMENT [Per M.M.SATHAYE, J.]

1. Rule. Ld. AGPs waive service in all the Writ Petitions. Rule is made returnable forthwith. Taken up for final disposal with consent. By this group of 6 Writ Petitions filed under Article 226 of the Constitution of India, the Petitioners are praying for direction to the Respondents to consider notices issued by Petitioners and withdraw their subject matter lands from acquisition u/s. 48 of the Land Acquisition Act, 1894 ("the said Act" for short) and put Petitioners in possession thereof. The Petitioners are also praying in the alternative for return of subject matter lands to them by accepting consideration from the Petitioners at the current Government rate or consideration as may be fixed by the Court and take all steps including executions of documents so as to transfer full and complete title of the subject lands in favour of the Petitioners and to put them in physical and peaceful possession thereof. The Petitioners are also praying in the alternative for appropriate writ or direction directing the Respondents to sell the subject matter lands by public auction and permit the Petitioners to take part in the said public auction. All the petitions stand on similar factual footing and common questions are involved for decision. In that view of the matter, these petitions are being heard together and disposed of by a common order.

SUBMISSIONS AND CASE

2. Learned Counsel Mr. Hushing has made his submissions in Writ Petition No. 6172 of 2012, Writ Petition No. 6188 of 2012, Writ Petition No. 7576 of 2012 and Mr. Bhoite has made submissions in support of Writ Petition No. 8992 of 2012, Writ Petition No. 8974 of 2012 and Writ Petition No. 6175 of 2012. They have assisted the Court with following charts showing details of subject matter lands/ properties involved in the Petition.

Civil W.P. No.	Property Description	Date of Award Under Land Acquisition Act, 1894	Date of Order Under Sec.7 of Bombay Land Requisition Act, 1948
7576/2012	Survey No. 121/3 (New) i.e. 198A/3(Old) Admeasuring 00 H 27R, Situated at Daund, Tal. Daund Dist. Pune.	23/09/1986	06/04/1951
6172/2012	Survey No. 196/1, Admeasuring 01 H 20R, Daund, Tal. Daund Dist. Pune	15/07/1982	06/04/1951
6188/2012	Survey No. 99/1/A (New) i.e. 201/1/A (Old), Admeasuring 00H 41R, Situated at Daund, Tal. Daund Dist. Pune.	23/09/1986	06/04/1951

Civil W.P. No.	Property Description	Date of Award Under Land Acquisition Act, 1894	Date of Order Under Sec.7 of Bombay Land Requisition Act, 1948
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8992/2012	Survey No. 197-4A/3, admeasuring H 00 Ares 7.5, Situated at Daund, Tal. Daund Dist. Pune.	1986	06/04/1951
8974/2012	Survey No. 197-4A/3, admeasuring H 00 Ares 7.5, Situated at Daund, Tal. Daund Dist. Pune.	1986	06/04/1951
6175/2012	Survey No. 99/1 (New) & 201/1/1 (old), admeasuring H 00 Ares 41, Situated at Daund, Tal. Daund Dist. Pune.	1986	06/04/1951

3. Mr. Bhoite has relied upon the Judgment of the Apex Court in the matter of *H.D. Vora Vs. State of Maharashtra and Ors. Reported in (1984) 2 SCC 337*, specially the portion of para 6 in which distinction between the concept of acquisition or requisition of property is explained.

4. Learned Counsel for the Petitioners submitted that the subject matter lands were requisitioned under the old Defence of India Act some time in 1941 as part of big chunk of lands at Village Daund, Dist. Pune. These lands then continued to remain under requisition even post independence under provisions of Bombay Land Requisition Act 1948 and were transferred to Police authority (presently SRPF). It is submitted that during the period from 1982 to

1986, notifications were issued under Section 4 and 6 of the Land Acquisition Act and awards were passed.

5. It is submitted that this group of petitions were decided earlier by this Court under Order dated 30th November 2015, which was carried to the Supreme Court by Respondents, where the said order was set aside and the matters were remanded back for fresh consideration. He submitted that even today, the lands do not vest in Government free from all encumbrances and whether the Respondents have come into possession legally or illegally is required to be seen.

6. It is submitted that the Respondents are trespassers in the eyes of the law and their possession is illegal. He raised serious objections about the mode of taking possession. He submitted that the Petitioners, who are owners of the subject matter lands have never surrendered the possession but the possession taken under Land Requisition Act is simply continued as possession under Land Acquisition Act, which is not permitted under law, in view of Section 9(3) of the Maharashtra Land Requisition Act, which reads as under :

“9(3) When any land is to be released from requisition, the State Government may, after making such inquiry, if any, as it deems fit, specify by order in writing the person to whom possession of the land shall be given”

7. Relying on the said provision, learned Counsel for the Petitioners submitted that there has to be an Order in writing when the land is to be released from requisition specifying therein the person to whom possession of the said land shall be given. He submitted that this exercise has not been done in the present matter and as such the possession of the subject matter land has not passed legally to the Respondents. He urged that there is no provisions for automatic conversation of possession from “requisition to acquisition” and the procedure as contemplated under Section 9(3) ought to be followed. Learned Counsel went to the extent of arguing that even if the acquisition proceedings are complete, it cannot be held as legal, in view of absence of legal transfer of possession.

8. Learned Counsel relied upon definition of the word “completed” which according to him, includes “absence of any omission or deficiencies”. Relying on para 136 of the judgment of

Indore Development Authority vs. Manoharlal and Ors (2020) 8 SCC

129, he further submitted that the land cannot vest in Government if possession has not been taken by following the due process of law. He submitted that the award is bad in law and there is no surrender of possession under Section 9(3) of the Maharashtra Land Requisition Act. The Petitioners are deprived of their right since 1951 and under the guise of land requisition, the authorities have acquired the land and continued with the possession. He therefore, made an additional alternate prayer for determining the compensation under the said Act of 2013.

9. *Per contra* learned AGPs appearing for Respondent/State in various matters, opposed the present petitions. According to him following dates, details and chronological events are necessary to be considered for proper adjudication in the matter.

9.1) On 09/10/1972, notification was issued u/s 4 of the said Act and corrigendum was issued on 26/05/1974 and many lands including the subject matter lands have been proposed to be acquired for the building, residential quarters and training grounds for SRPF Group V and VII.

9.2) On 26/04/1974, notification was issued u/s 6 of the said Act.

9.3) On 15/07/1982 & 23/09/1986 Awards under the said Act have been passed thereby acquiring the subject matter land of the Petitioners

9.4) On 05/11/1982, mutation entry no.7646 was effected, whereby the name of SRPF Group No.5 & 7 was mutated in the 7/12 extract of the acquired lands.

9.5) On 07/11/1988, notice u/s 12(2) of the said Act came to be issued and compensation has been deposited in the Revenue Deposit account.

9.6) In 2012, the Petitioners filed various petitions before this Hon'ble Court and by amendment during pendency of the petitions, prayed that, the acquisition of the subject matter lands should lapse in view of the provisions of Sec.24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (For short "Fair Compensation Act")

9.7) In 2013 and 2015, Respondents filed their affidavits in reply alongwith relevant documents such as Panchnama, *Kami Jast Patrak* (a chart showing change in record) & M. E. No. 7646 and prayed to dismiss the writ petitions.

9.8) On 30/11/2015 and 15/12/2015, this Court allowed these writ petitions thereby holding that the proceedings in relation to the

lands of the Petitioner stand lapsed in view of Sec.24(2) of the said Fair Compensation Act.

9.9) The State of Maharashtra & Ors filed SLP(Civil) No.256/2016 and others before the Hon'ble Apex Court and challenged the Orders passed by this Court.

9.10) On 14/11/2017, the Hon'ble Supreme Court was pleased to set aside the common Judgment & Order of the Hon'ble High Court passed in WP No.6172 of 2012 & Ors and remanded the matter back to this Court for fresh consideration.

10. On the aforesaid set of facts, learned AGP submitted that no objection has ever been taken by any of the Petitioners since 1972 when notification was issued under Section 4 of the said Act and when corrigendum was issued in May, 1974. It is submitted that the notices issued by the Petitioners in April, 2012 before filing the present Petitions, are belated ones. It is submitted that there is gross and unexplained delay / laches on the part of the Petitioners and therefore no indulgence should be shown in the extraordinary writ jurisdiction of this Court.

11. Learned Counsel relied upon para 345 of the Judgment of the

Apex Court in the matter of *Indore Development Authority vs. Manoharlal and Ors (supra)* and submitted that even umbrella of Section 24(2) of the Fair Compensation Act cannot be taken in the present case, because there is no lethargy of Authorities involved in the present matter. It is urged that even according to Petitioners the awards are passed in 1982 and 1986 of which copies are placed on record, which show that due process of law is followed. It is submitted that Petitioners have come before the Court after a lapse of many years when much water has already flown and there is no explanation for the same. Ultimately, it is urged that petitions be dismissed.

REASONS AND CONCLUSIONS

12. The case of the Petitioners, as can be seen from the averments in the Petitions, is that their respective lands were already acquired under award dated 15th July, 1982 and 23rd September, 1986. It is specifically contended that the Petitioners' lands were in possession of Respondents under the Maharashtra Land Requisition Act, and is not under Land Acquisition Act. It is contended that in March, 2000 some of the lands from the said chunk, were returned to the respective owners under the order of the Respondents. However though their lands were near such returned lands, their lands were

not returned to Petitioners and they were not put in possession as is the case with some of the other owners. It is contended that they have not received compensation for requisition/acquisition of the their lands and their lands are not at all used for the purpose for which it was either requisitioned (required) or acquired and the same are being wasted.

13. It is contended that Respondent/SRPF has committed breach of conditions in as much as some lands so requisitioned and acquired, are disposed by way of auction, or used for sugarcane growing or some Mangal Karyalaya is constructed or Temple is constructed etc. It is further contended that the Petitioners' lands also ought to have been included in the order dated 28th March, 2000 and should have been returned to them as is done with some others land owners. It is also contended that Respondents ought to have withdrawn the Petitioners' land from the acquisition under the provisions of Section 48 of the said Act. It is contended that the Respondent/Government is expected under law to acquire the land only if genuine public purpose exists and should not sit over the acquired lands without utilizing the same. It is also contended that in appropriate cases, such as the Petitioners', the Government is bound

to exercise power under Section 48 of the said Act and withdraw their lands from acquisition. The Petitioners have also alleged that certain illegal allotments have also taken place in similarly situated lands at Taluka Daund.

14. It appears that in the earlier round of litigation, when the matter was argued, a ground was taken by the Petitioners by way of amendment about lapsing of acquisition in view of provisions of Section 24(2) of the said Fair Compensation Act. It is seen from the record that on 30th November, 2015, this Court had allowed these batch of Writ Petitions by a common order, holding that the acquisition proceedings in relation to the subject matter lands had lapsed and the Respondent/Government/SRPF was directed to restore the possession of the acquired land to Petitioner's.

15. It is a matter of record that these cases were carried to the Apex Court, where the said common order 30th November, 2015 was set aside and the matters were remanded back to this Court for fresh consideration. In this view of the matter, now the matter is argued again and a fresh line of arguments are adopted by the Petitioners.

16. Now the main argument of the Petitioners is based on Section 9(3) of the Maharashtra Land Requisition Act. What is now being argued is that there is no proper “taking of possession” either by way of surrender from the Petitioners or under an order of release from requisition specifying the person to whom possession of the land shall be given u/s. 9(3) of the Maharashtra Land Requisition Act.

17. It is not in dispute that the Petitioners lands are already acquired under the awards dated 15th July, 1982 and 23rd September, 1986. It is further not in dispute that the Petitioners lands were actually taken in possession under the old Defence of India Act, 1915 which possession continued with the Respondents under the Bombay Land Requisition Act, 1948. The Petitioners in para 6 of the petitions, have specifically taken a stand that the possession of the Respondents is continued under Land Requisition Act, however the same is not under Land Acquisition Act. With such specific case, the factual aspect of possession of the Petitioners’ lands with the Respondent cannot be disputed. However the question is what is the effect of absence of order under Section 9(3) of the Maharashtra

Land Requisition Act on the facts of the case, in the light of the argument advanced by learned Counsel for the Petitioners.

18. Bare reading of the said provision shows that when the land is to be “released” from requisition, the Government “may”, after making such inquiry, if any, as it deems fit, specify by order in writing the person to whom possession of the land shall be given. In the first place, there is no mandate of law. The word used is “may”. In the facts and circumstances of the present case, it is not disputed that the procedure under Land Acquisition Act, viz. issuance of notification under Section 4 and 6 thereof have been followed and thereafter the acquisition proceedings have been completed and awards have been passed. Therefore, it is obvious that Respondents never intended to “release” the lands in order to give it back in possession of the owners or anybody else for that matter. This is a case where the Respondents changed the nature of its holding from requisition to acquisition and therefore the very first condition of Section 9(3) is not met. The Respondents have decided to change its ‘right of dominant control over the property without acquiring the right of ownership’ to ‘acquiring the lands and getting its ownership’ by following the procedure under law i.e. Land Acquisition Act. In

view of this fact, not passing of order under Section 9(3) of Maharashtra Land Requisition Act, in our considered view, does not have material effect.

19. The prayers made in the petitions are, in essence, a direction to Respondents to take all necessary steps for transfer of full and complete title in favour of the Petitioners and ultimately place them in possession of the subject matter lands. It is settled law that once the award is passed, the land vests free from all encumbrances in the government / acquiring body. It is seen in this matter that after following due process of law, the subject matter lands were acquired and they vested in Respondents.

20. The nature of averments and the prayers show that the Petitioners have made broad-based prayers on very specious averments, such as Respondents ought to have deleted Petitioners' lands from award; Respondents should have returned Petitioners' lands as was allegedly done with some lands in the vicinity; Respondents should have passed order u/s. 9(3). The Petitioners seem to be oblivious to the moot question that when all this was not being done, what steps they were taking? The real and material

question on which we must record our subjective satisfaction is - *what Petitioners have done? What action Petitioners have taken in so many years that passed in the interregnum? Can judicial discretion be exercised in favour of party who has slept over his rights and has knocked the doors of this Court, far too late in a day ?* We are afraid, the answer to these questions is “no” because there is nothing on record to show what steps Petitioners took prior to April, 2012, when they issued notices.

21. The Petitions are filed in the year 2012. Admittedly, the notification under Section 4 of the Land Acquisition Act was issued sometime in 1972, for which corrigendum was issued in the year 1974. Even notification under Section 6 of the said Act is issued in the year 1974 and final awards have been passed in July, 1982 and September 1986. Perusal of the affidavits in reply and annexures thereto, filed by the Respondents, show that the notices under Section 12 (2) of the said Act were issued in the year 1988 and the compensation amount as per the said Act has been deposited in the revenue deposit accounts and even mutation entries have been effected in the name of Respondent after the final awards are passed.

22. It appears from the record that after the petitions were filed in 2012, the said Fair Compensation Act came into effect from 1st January, 2014 and incidentally when the matter was being argued in the year 2015 leave to amend was sought and the grounds regarding lapsing of acquisition proceedings under Section 24(2) of the Fair Compensation Act was raised, which is now not pressed in service. The conduct of the Petitioners who have slept over their rights and issued 1st notice sometime in April 2012, in our view, has its own effect on the propriety in exercising the extra-ordinary writ jurisdiction under Article 226 of the Constitution of India.

23. The argument of the Petitioners that they have never surrendered possession of the subject lands is *ex-facie* not maintainable in view of specific pleadings in the body of the petition that the subject matter lands were requisitioned under The Defence of India Act and even after the Bombay Land Requisition Act came into force, possession continued with Respondents under that Act.

24. Learned AGP has rightly placed reliance on para 345 of the Judgment of the Apex Court in the matter of ***Indore Development Authority vs. Manoharlal and Ors*** (*supra*). Indeed, in

the present matter, at such belated stage, even umbrella of Section 24(2) of the said Fair Compensation can not be taken, because there is no case of lethargy of Authorities involved in the present matter. So also in view of admitted fact of possession of Respondents, continued from “under Requisition” to “under Acquisition”, once vesting takes place, possession is presumed to be of Government. For the same reason, the reliance placed by Petitioners on para 136 of the said Judgment is misplaced. Therefore such challenges (as raised in these petitions) cannot be entertained at this stage.

25. So far as the case of ***H.D. Vora Vs. State of Maharashtra (supra)*** relied upon by Mr. Bhoite is concerned, it is clear from opening part of para no. 2 of the said judgement that, the question involved there was ‘*whether an order of requisition can be continued for an indefinite period of time or it must necessarily be of temporary duration ?*’ Careful reading of the said judgment shows that Hon’ble Apex Court, in the said judgment has held that – “*We do not think that Government can under the guise of requisition continued for an indefinite period of time, in substance acquire the property, because that would be a fraud on the power conferred on the Government. If the Government wants to take over the property*

for an indefinite period of time the Government must acquire the property but it cannot use the power of requisition for achieving that object”

26. There is no doubt about said proposition of law and we respectfully agree with it. But, in the present matter, admittedly the Respondent/Government has acquired the subject matter lands by passing awards after following due process of law. Therefore, present case being clearly distinguishable, the said judgment will not help the case of the Petitioners.

27. Therefore in the peculiar facts and circumstances narrated above, this is not a fit case to exercise our extra ordinary writ jurisdiction for grant of any relief. All the petitions are accordingly dismissed. Rule is discharged. No order as to cost.

[M.M.SATHAYE,J.]

[R. D. DHANUKA, J.]