

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11693 OF 2022

Late Fakira Maruti Sonawane
Thr. LR's Shri. Kalpesh Fakira Sonawane ...Petitioner
Versus
State of Maharashtra and Ors. ...Respondents

....

Mr. Sumit V. Kahire for the Petitioner.

Ms. P. J. Gavhane, AGP for the State.

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

DATE : 23rd AUGUST, 2023.

PER COURT:

1. We have heard Mr. Sumit Khaire, learned counsel for the Petitioner and Ms. P. J. Gavhane, AGP for the State, the Petitioner claims to be a project affected person within the purview of the Maharashtra Project Affected Person Rehabilitation Act, in relation to the Chaskaman Dam Project. The averments as made in the petition are totally bereft of any particulars, in relation to the land acquisition as also notifications under the Maharashtra Project Affected Person Rehabilitation Act.

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2. The case of the Petitioner is that his lands Gat No.25/9 adm. 1 H 43 R, 15/3 area adm. 00 H 40 R, 25/19 area adm. 00 H 13 R, 25/12 area adm. 00 H 26 R + P. K. 00 H 1 R i.e. 00 H 27 R situated at village Koyali Tarfe Wada, Tal-Khed, District Pune were acquired for the said project. It is on such premise the case of the Petitioner that he being a project affected person is entitled for allotment of alternate land. The Petitioner has claimed that he has deposited the amounts for allotment of alternate land on 24th November, 1992 which is an amount of Rs.10,000/- as per the provisions of Section 16 of the Act. However, the certificate to that effect itself is stated to be of 9th September, 2016, which is purportedly issued by the Deputy Treasurer, Rajgurunagar, Tal. Khed, District Pune. From the annexures to the petition it is seen that there is no document evidencing the original payment being made on 24th November, 1992.

3. As informed on behalf of the Respondent, the land acquisition for the project was although completed prior to 1992, the Petitioner for the first time made a representation/application on 9th July, 2021, requesting for allotment of alternate land. It is this application, which the Petitioner says that the same has not been decided by the Respondents.

4. At the outset, we may observe that if the Petitioner is to be believed that the Petitioner is a project affected person and he had deposited an amount of Rs.10,000/- under Section 16 of Act on 24th November, 1992, it has taken almost 29 years for the Petitioner to make its application for allotment of alternate land. In our clear opinion, applying the well settled principles of law as laid down by the Supreme Court in the case of ***C.Jacob V/s. Director of Geology & Mining & Anr.***,¹ certainly the prayers as made in the petition would not be maintainable for any stale and belated claim to be examined by the State Government. In similar circumstances, in a decision as rendered by this Court in the case of ***Tatoba Rama Chavan V/s. Collector, Kolhapur District, Kolhapur And Ors.***,² the Court referring to the decisions of the Court in ***C.Jacob's*** case (*supra*) as also the decisions in ***Union of India & Ors. C. Girija & Ors.***,³ ***State of Uttaranchal & Another V/s. Shiv Charan Singh Bhandari & Ors.***,⁴ ***Union of India And Others V/s. M. K. Sarkar***⁵, ***The Govt. of India & Anr. V/s. P. Venkatesh***⁶ had dismissed the petition praying for similar reliefs.

1 AIR 2009 Supreme Court 364.

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

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.

5. The decision in ***Tatoba Rama Chavan (supra)*** was considered by this Court in a subsequent decision as rendered in the case of ***Nana Narayan Bhalerao V/s. District Resettlement Officer and Ors.***⁷ wherein in similar facts, the Court dismissed the said writ petition. The observations of the this Court in ***Tatoba Rama Chavan (supra)***, are required to be noted which in our opinion are clearly applicable to the facts of the present case which reads thus:

“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 has 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 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

⁷ Writ Petition No.1332 of 2023 dated 26th July, 2023.

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.

6. From the averments made in the petition, we are of the clear opinion that the writ jurisdiction of this Court cannot be invoked and called upon to be exercised to legitimize such claim which in our opinion is absolutely a stale and a dead claim.

7. Our attention is also drawn by learned counsel for the petitioner to notice dated 7th July, 2023 issued by the Deputy Collector (Resettlement), Pune, and that too in the context of the present petition calling upon the petitioner to submit documents. On the perusal of such communication it appears that such a communication was issued to enable the concerned officer to file a reply to this petition. It cannot be construed, that such communication is any notice to the petitioner to decide the claim of

the petitioner in regard to the allotment of alternate land.

8. In the light of the above observations, we have no manner of doubt that the petition deserves to be dismissed. It is accordingly dismissed. No costs.

[JITENDRA JAIN, J.]

[G. S. KULKARNI, J.]