

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.480 OF 2020

Ramkripal Ramjas Upadhyay

..... Petitioner

Vs.

The State of Maharashtra and Ors.

..... Respondents

Mr.Dilip Kumar Mishra i/b Mr.Amarendra Mishra for petitioner
Mr.Kedar Dighe, A.G.P. for the respondent nos.1, 2 and 5 / State

**CORAM: K.R. SHRIRAM, J &
FIRDOSH P. POONIWALLA, J.**

DATED : 13TH JULY, 2023

P.C.

1. Petitioner is impugning the order dated 20th June 2003 passed by respondent no.5, the City Survey Officer, who had made a revenue entry in favour of respondent no.4 in respect of plot of land bearing CTS No.1439/A/2 of Village Eksar, Taluka Borivali Mumbai Suburban District (MSD). Petitioner is seeking revenue entry in favour of petitioner in respect of plot bearing CTS 1439/C and 1439/D of Village Eksar, Taluka Borivali MSD ("said land"). Petitioner is also seeking quashing of the said order dated 20th June 2003.

2. Petition appears to have been affirmed only on 19th August 2019 and lodged on or about 22nd August 2019. Office objections have been

removed on 7th February 2020 except the objection on absence of averment of limitation, jurisdiction, court fees and that no other efficacious remedy was available. Office objections also appear to have been complied with and petition was finally taken on record on 11th February 2020. As such, petition has been filed 16 to 17 years after the impugned order dated 20th June 2003 was passed.

3. Petitioner claims to have inherited the said land from his late father. According to Petitioner, his late father Shri Ramjas Upadhyay was owner and was occupying the said land for more than 40 years. Petitioner's father is stated to have expired on 19th March 2016. Petitioner claims to be the legal heir and executor under the will dated 7th November 2015 which was probated.

4. The said land was acquired by respondent no.4 for staff quarters of MTNL by an award in respect of land acquisition passed on 8th July 1986. This was followed by Notification that was published in Maharashtra State Gazette Part I on 28th February, 1980 and rectification dated 9th October 1980 under section 6 of Land Acquisition Act. Impugned order came to be passed by respondent no.5 under provisions of Maharashtra Land Revenue Code, 1966 on an application made by respondent no.4 to record its name along with award possession receipt and other documents. It appears that the land acquisition survey had taken place on or about 12th February 1979 and possession of acquired land has been taken by the concerned authority

on or about 23rd July 1986. Sub Division of CTS No.1439 took place on 2nd February 1982 and re-numbered as 1439/A, 1439/B, 1439/C and 1439/D and area was acquired. A new CTS No. allotted is 1439/A/2. After adding area of CTS No.1439/C and 1439/D in CTS 1439/A/2 the property cards have been cancelled.

5. In the petition, there is absolutely no explanation as to why the petition has been filed after a delay of 16 to 17 years for us to even consider whether there is a satisfactory explanation. In the meanwhile, since 1986, staff quarters of respondent no.4 has been constructed and third party rights have been created. A similar matter where the delay was only about 7 years came up before the Apex Court in the case of ***Madhya Pradesh Housing and Infrastructure Development Board and Another vs. Vijay Bodana and Others***¹ where paragraph 8 reads as under:

“8. The writ petition challenging the orders dated 12th May 2008 and 24th September 2008 was filed in 2015, nearly seven years after the approval for modification was granted. In the meanwhile, 42 out of 52 plots had been sold to third parties for consideration. The impugned judgment notices that many of these bonafide owner- purchasers had completed the construction and some houses were in advanced stages of construction. While the High Court has noticed and recorded these facts, it has failed to give due credence to the delay, the change in position and creation of third-party rights by wrongly applying the principle of promissory estoppel and lis pendens. Innocent plot owners on whom the brunt had fallen were not even heard before they were deprived and denied their rights by the adverse order. Considerable

1 (2020) 4 SCC 521

delay and laches of nearly seven years in approaching the court had resulted in change in position as third-party rights had been created. In view of delay and laches, the High Court should not have entertained the writ petition as 42 plot owners who had paid money would suffer adverse consequences for no fault of theirs. In Karnataka Power Corporation Ltd. and Another v. K. Thangappan (2006) 4 SCC 322 and Another, this Court, after citing State of M.P. and Others and v. Nandlal Jaiswal and Others (1986) 4 SCC 566 had observed:

“9. It was stated in State of M.P. v. Nandlal Jaiswal that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.” (emphasis supplied)

6. As noted earlier, in the case at hand, there has been considerable and unexplained delay and laches of 16 to 17 years in approaching the

court and in the meanwhile, third party rights have been created. In fact the said land has even been acquired under the provisions of Land Acquisition Act and certainly, acquisition would have been made after following due process. It is not even petitioner's case that even the acquisition, which was prior to the order passed by respondent no.5 under the Maharashtra Land Revenue Code, was illegal.

7. There is an inordinate delay on the part of petitioner and the delay is not even explained. We would say even an attempt to explain the delay has not been made. We do not, therefore, wish to exercise our extraordinary writ jurisdiction after such unreasonable delay because it will have the effect of inflicting not only hardship and inconvenience but also injustice to respondent no.4 and its staff in this case.

8. In the circumstances, petition is dismissed.

9. At the same time, petitioner has an alternate remedy under section 247 of the Maharashtra Land Revenue Code which petitioner may exercise. We are not commenting or making any observation on any delay condonation application that petitioner may file or on the merits of the appeal. The concerned authority may consider independently the merit of any delay condonation application and the appeal.

(FIRDOSH P.POONIWALLA, J.)

(K.R. SHRIRAM, J.)