



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5634 OF 2014
WITH
CIVIL APPLICATION NO. 2197 OF 2019

Mangal Bhauso Patil & Ors. ... Petitioners

vs.

The Commissioner, Pune Division, Pune & Ors. ... Respondents

WITH
WRIT PETITION NO. 5653 OF 2014

Nitin Algonda Patil & Ors. ... Petitioners

vs.

The Commissioner, Pune Division, Pune & Ors. ... Respondents

Mr. Sanjeev Kadam a/w. Ms. Varsha Thorat, Mr. Prashant Raul, Ms. Aditi Rajput, Mr. Mayur Sanap and Mr. Pratik Deshmukh for the petitioner in WP/5653/2014.

Mr. Kuldeep U. Patil a/w. Mr. Prasad Avhad for the petitioner in WP/5634/2014.

Mr. A.I. Patel, Addl. G.P. a.w, Ms. M.S. Bane. AGP for the State/respondent nos. 1 to 7.

Mr. Tanaji Mhatugade for respondent nos. 8 to 10 in WP/5653/2014.

Mr. Chetan Patil a/w. Mr. Mandar G. Bagkar for respondent nos. 11 to 15 in WP/5653/2014.

Mr. Kalpesh U. Patil for respondent nos. 16 to 20 in WP/5653/2014.

CORAM: G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.
DATED: 8 August, 2024

P.C.

Writ Petition No. 5653/2014

1. This petition, in our opinion, is a total abuse of process of law and more particularly when the petitioners have invoked the jurisdiction of this Court

for a discretionary and equitable relief under Article 226 of the Constitution of India. The substantive prayers as made in the petition is required to be noted, which reads thus:

“a) This Hon’ble Court may be pleased to issue writ of certiorari or any other appropriate writ, order or direction, thereby quash and set aside the impugned judgment and order dated 10.04.2014 passed by the Id. Divisional Commissioner, Pune in Appeal bearing No. Punarva/Appeal/SR/11/2012.

b) Be pleased to issue writ Certiorari or any other appropriate writ thereby quash and set aside the impugned award/Niwada dated 19.11.1988 as well as the impugned communication dated 30.05.2012 (Exhibit F1 herein) issued by the respondents.

c) Be pleased to issue a writ of Mandamus thereby directing the respondent not to acquire the said land of the petitioners specifically mentioned in paragraph 1 in the present petition.

d) This Hon’ble Court may pleased to issue appropriate writ, order, direction, interim in nature, during the pendency of the present petition, thereby stay the effect and implementation of the impugned award dated 19.11.1988 and further direct the respondents/their agents not to take any coercive action/possession of the petitioner’s said land specifically mentioned in the paragraph 1 of the petition.”

2. At the outset, we are constrained to make the aforesaid observations for the reason that this is a second round of proceedings before this Court and without any justification as also sans an appropriate disclosure of the material events and documents being made in the present petition, to the effect that the petitioner’s father had earlier approached this Court by filing Writ Petition, being Writ Petition No. 975 of 1989, in regard to the very land acquisition in question seeking extensive reliefs. The canvass of the prayers as made in such petition included a challenge to the notification issued under section 15(1)

dated 29 May, 1982 under the Maharashtra Resettlement of Project Displaced Persons Act, 1976 as also notifications under Sections 4 and 6 issued under the Land Acquisition Act, 1894. The prayers as made in the Writ Petition No. 975 of 1989 are required to be noted, which reads thus:

“a) issue a writ of certiorari and/or any other appropriate writ or direction or order in the nature of such writ to quash the notification under section 15(1) dated 29 May, 1982 of the Maharashtra Resettlement of Project Displaced Persons Act, 1976 by holding that the said notification is ultra vires the Maharashtra Resettlement of Project Displaced Persons Act, 1976 as amended by the Maharashtra Act No. XIII of 1985, assuming the said amending and validation Act, i.e., Maharashtra Act No. XIII of 1985, is valid.

b) issue a writ of certiorari and/or any other appropriate writ and/or direction and/or order quashing the notifications under sections 4 and 6 of the Land Acquisition Act, 1894 issued by the respondent no. 4, which are at Exhibits.”

3. It appears that on the proceedings of the said petition, on 17 March, 1989, an order of status quo until further orders was passed. The fate of the said petition, however, was met by the petitioner making a request to this Court to withdraw this petition. The said petition was accordingly permitted to be withdrawn by an order dated 2 February, 1996. The said order passed by this Court reads thus:

**“CORAM : A.P. SHAH AND
D.K. TRIVEDI, JJ.**

DATE : 02/02/1996

On the oral request of Mr. Pandit, Petition is allowed to be withdrawn as dismissed. No costs.”

4. Thus, referring to the said order passed about 28 years back, it is urged on behalf of the respondents that all the contentions of the petitioners in regard to the acquisition of land and subject matter of said petition had come to an end when the proceedings were withdrawn that too in the absence of any liberty granted by the Court to institute fresh proceedings on the same cause of action.

5. We may observe that whatsoever the circumstances, the litigant who approaches the Court ought to approach with clean hands by making appropriate disclosures which would be relevant for the Court to consider any adjudication of the proceedings and more particularly when the proceedings being instituted under Article 226 of the Constitution of India. It cannot be accepted that the petitioners were not aware of the proceedings of earlier petition filed by his father and more particularly when the said proceedings were wholly relevant and would in fact have affected the course of adjudication of the present proceeding. Neither a copy of the earlier writ petition nor the orders passed on the said petition were annexed to the present proceedings. Thus, to us it is certainly suppression on the part of the petitioners.

6. On this, Mr. Kadam's contention is that the petitioners were not aware of the proceedings and therefore the petitioners did not annex the copy of the order as also the copy of the earlier petition. Mr. Kadam's contention is totally untenable inasmuch as, on the reading of the impugned order, we discover that

the authority has made a specific reference to the earlier proceedings, when he records that the petitioners had approached this Court in the proceedings of Writ Petition No. 975 of 1989. Thus, the impugned order dated 10 April, 2014 passed by the Divisional Commissioner in paragraph 3 specifically referred to the proceedings of Writ Petition No. 975 of 1989 and to the orders passed by this Court on the said proceedings dated 18 October, 1996. Once the proceedings of the Writ Petition and the orders passed thereon are explicitly referred in paragraph 3 of the impugned order, the petitioners cannot say that they were not aware of the said proceedings and therefore they did not disclose the said proceedings. This appears to be an argument in desperation, however, in our opinion, a false and a lame excuse/stand taken by the petitioners. The petitioners are in fact guilty of *suppressio veri and suggestio falsi*.

7. Be that as it may, even otherwise the facts are quite gross. The notification under section 4 of the Land Acquisition Act to acquire the land was issued on 27 January, 1983. Thereafter, Section 6 declaration came to be issued on 24 January, 1986. Following an appropriate procedure, a land acquisition award was rendered on 19 November, 1988. On 16 March, 1989 the petitioner's father moved this Court in the proceedings of Writ Petition No. 975 of 1989. On such proceedings, an interim order was passed, as a consequence of which the possession of land could not be taken over. It

appears to be not in dispute that the possession of land was taken over on 11 June, 2012 and it is after two years of taking over possession of land, i.e., on 25 June, 2014, the petitioner filed an application under section 48(1) of the Land Acquisition Act seeking withdrawal of the land in question from acquisition. Such application was filed before the competent authority/Divisional Commissioner, Pune, who rejected the said application by the impugned order dated 10 April, 2014, which is subject matter of challenge in the present proceedings.

8. We may observe that the basic jurisdictional requirement under section 14(1) of the Land Acquisition Act, to maintain an application would be only when the possession of the land is not taken over and remains with the owner of the land. This apart, as seen from the prayers made in this petition, the petitioners have also challenged the land acquisition award dated 19 November, 1988 in the present proceedings, which is almost after the period of 26 years of the award being declared. The petitioners have not explained such gross delay and laches in approaching the Court in the present proceedings except for the following statement as made in paragraph 8, which reads thus:

“8. There is no delay and/or laches in filing the present petition.”

9. In the aforesaid circumstances, we are of the clear opinion that the petition deserves to be dismissed for more than one reason. **Firstly**, on the

ground that it is a gross abuse of process of law, as the petitioner has suppressed material facts while invoking the discretionary and equitable jurisdiction of this Court under Article 226 of the Constitution of India. The principles of law on this are well settled; **secondly**, the delay and laches caused in filing the present petition on 13 June, 2014 to assail the land acquisition award dated 19 November, 1988, have been not explained in the petition; **thirdly**, as to why in the teeth of unconditional withdrawal of the earlier writ petition, such a relief can be prayed by the petitioners when the Division Bench did not grant liberty to the petitioners to file fresh petition, have also not been answered by the petitioners and **lastly**, the challenge to the order dated 10 April, 2014 passed by the Divisional Commissioner, Pune, in rejecting the petitioners application under section 48(1) of the Land Acquisition Act also cannot be held to be illegal, for the reason that apart from reasons as set out by the Divisional Commissioner, Pune, justifying its rejection, the fundamental premise that the jurisdictional requirement to maintain such application, namely, that an application under section 48(1) of the Land Acquisition Act would be maintainable only after the possession of the land is not taken over, itself was not satisfied. Section 48(1) reads thus:

“48. Completion of acquisition not compulsory, but compensation to be awarded when not completed

(1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(emphasis supplied)

10. The possession of the land was taken over and thereafter such application was made, the jurisdictional requirement to maintain such application itself was not met by the petitioners.

11. Thus, looked from any angle, the petitioners are not entitled to reliefs as prayed for in the petition. Unhesitantly, the petition deserves to be rejected. It is accordingly dismissed. Although this was a fit case in which we should have imposed cost, we refrain from doing so.

Writ Petition No. 5634 of 2014

12. Insofar as this petition is concerned, learned counsel for the petitioners fairly states that these petitioner also had approached this Court in the earlier round of proceedings similar to what we have observed hereinabove. For the reasons which we have set out in the aforesaid order, this petition would also be required to be dismissed. It is accordingly dismissed. No costs.

13. Interim Application would also not survive, it is accordingly disposed of.

(SOMASEKHAR SUNDARESAN, J.)

(G. S. KULKARNI, J.)