

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13904 OF 2016

Balabai Dnyanu Gholap

.... Petitioner

V/s.

The Collector, Kolhapur & Ors.

.... Respondents

NILAM
SANTOSH
KAMBLE

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Mr.Prashant R. Suryawanshi i/b Mr.Gajanan M. Savagave, for the
Petitioner.

Mr.P.P. More, AGP, for Respondent Nos.1 to 4-State.

CORAM : G.S. KULKARNI &
ARUN R. PEDNEKER, JJ.

DATE : 11th JUNE 2024

P.C:-

. Heard learned counsel for the petitioner.

2. This Petition under Article 226 of the Constitution has
prayed for the following substantive reliefs.

*“Clause (b)-That this Hon’ble Court by way of appropriate writ,
order or direction, hold and declare that the Petitioner are entitled
for 1 H 35 Ares of the agricultural land as per the provisions of the
Maharashtra Project Affected Persons Rehabilitation Act, 1999
from the benefited zone of the said Project.”*

3. It seems from the averments made in the petition and
more particularly Paragraph No.2(a) thereof that the Petitioners land
was acquired for the purpose of Chandoli Reserved Forest project.The

land acquisition award was passed on 30th October 2001 as seen from (Exhibit-A) page 42. From the communication as referred in the averments as referred in the petition, it is seen that 65% of the amount of the compensation as payable to the Petitioner retained by the Sub Divisional Officer was Rs.44,068/-. It appears that at no point of time the Petitioner had approached the Respondent for any further steps to be taken for allotment of an alternate land. In this regard, for the first time a representation dated 21st June 2016 came to be made by the Petitioner. Such representation infact was not maintainable, considering the settled position in law and as held by the Division Bench of this Court, in the case of ***Tatoba Rama Chavan, Through her Legal heir : Sou.Nanda Balkrishna Mane V/s. Collector and Ors.***¹, wherein the Court in similar circumstances and in regard to the issues which had arisen under the Maharashtra Project Affected Persons Rehabilitation Act, 1999, has observed thus :-

“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

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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 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.

11. In the case of C. Jacob Vs. Director of Geology & Mining & Anr, the Supreme Court have observed in para 6 as under:

"6. Let us take the hypothetical case of an employee who is terminated from service in 1980. He does not challenge the termination. But nearly two decades later, say in the year 2000, he decides to challenge the termination. He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before Tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition before the Tribunal/High Court seeking a direction to the employer to consider and dispose of his representation. The Tribunals/High Courts

routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any 'decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee files an application/writ 1 AIR 2009 Supreme Court 264 petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

7. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim.

8. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of 'acknowledgment of a jural relationship' to give rise to a fresh cause of action.

9.

10. We are constrained to refer to the several facets of the issue only to emphasize the need for circumspection and care in issuing directions for 'consideration'. If the representation is on the face of it is stale, or does not contain particulars to show that it is regarding a live claim, courts should desist from directing 'consideration' of such claims."

13. The above referred decision in the case of C. Jacob (supra) has been followed by the Supreme Court in the following cases:

(i) Union of India & Ors V/s. C. Girija & Ors.

(ii) State of Uttaranchal & Another V/s. Shiv Charan Singh Bhandari & Ors.

(iii) Union of India & Ors V/s. M.K. Sarkar

14. We may also note the decision of the Supreme Court in case of The Govt. of India & Anr. vs. P. Venkatesh wherein with respect to delay in pursuing the remedy, the Supreme Court has refused the relief to the litigant in pursuing its remedy after huge delay from the date of cause of action."

4. Be that as it may, we are informed by the Assistant Government Pleader that the representation of the Petitioner came to be rejected by the Sub Divisional Officer around 12th March 2018, a copy of which is placed on record. This is about six years back, even on such communication the petitioner appears to have not taken any steps.

5. In the above circumstances, it is not possible for us to entertain the Petition. It is accordingly rejected. No costs.

(ARUN R. PEDNEKER, J.)

(G.S. KULKARNI, J.)