

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

WRIT PETITION NO. 5807 OF 2019

1. Shri Visawas Trambak Patil)
Age-49, Occupation-Agriculturist)
A/P Kopar, Tal-Panvel, District-Raigad)
2. Shri Kashinath Shataram Mhatre)
Age-68, Occupation-Agriculturist)
A/P Kopar, Tal-Panvel, District-Raigad)
3. Late. Maibai Dharma Patil)
Through her legal heir)
Shri Shashikant Pundalik Patil)
Age-35, Occupation-Agriculturist)
A/P Kopar, Tal-Panvel, District-Raigad)
4. Shri Haribhau Balaram Patil)
Age-80, Occupation-Agriculturist)
A/P Kopar, Tal-Panvel, District-Raigad)
5. Shri Ananta Lahu Patil)
Age-75, Occupation-Agriculturist)
A/P Kopar, Tal-Panvel, District-Raigad)
6. Shri Nakul Govind Patil)
Age-55, Occupation-Agriculturist)
A/P Kopar, Tal-Panvel, District-Raigad)
7. Shri Nitesh Krushna Patil)
Age-35, Occupation-Agriculturist)
A/P Kopar, Tal-Panvel, District-Raigad)

8. Shri Krushna Ambo Patil)
Age-80, Occupation-Agriculturist)
A/P Kopar, Tal-Panvel, District-Raigad)
9. Shri Rambhau Bando Patil)
Age-70, Occupation-Agriculturist)
A/P Kopar, Tal-Panvel, District-Raigad)
10. Shri Rambhau Joma Mhatre)
Age-70, Occupation-Agriculturist)
A/P Kopar, Tal-Panvel, District-Raigad)
11. Shri Jayendrath Aanat Patil)
Age-58, Occupation-Agriculturist)
A/P Kopar, Tal-Panvel, District-Raigad)
12. Shri Datta Mahadu Mhatre)
Age-68, Occupation-Agriculturist)
A/P Kopar, Tal-Panvel, District-Raigad)
13. Shri Vinayak Khana Zuge)
Age-66, Occupation-Agriculturist)
A/P Kopar, Tal-Panvel, District-Raigad)
14. Shri Namdev Sadanand Pawar)
Age-45, Occupation-Agriculturist)
A/P Kopar, Tal-Panvel, District-Raigad)
15. Shri Ramabhau Nama Patil)
Age-75, Occupation-Agriculturist)
A/P Kopar, Tal-Panvel, District-Raigad)
16. Shri Ram Laxman Patil)
Age-50, Occupation-Agriculturist)
A/P Kopar, Tal-Panvel, District-Raigad)

17. Shri Ram Chandar Patil)
 Age-58, Occupation-Agriculturist)
 A/P Kopar, Tal-Panvel, District-Raigad)
18. Shri Krishna Gopal Mhatre)
 Age-75, Occupation-Agriculturist)
 A/P Kopar, Tal-Panvel, District-Raigad)
19. Shri Bhalchandra Maruti Mhatre)
 Age-50, Occupation-Agriculturist)
 A/P Kopar, Tal-Panvel, District-Raigad)
20. Shri Natha Hadku Patil)
 Age-70, Occupation-Agriculturist)
 A/P Kopar, Tal-Panvel, District-Raigad)
21. Shri Vinod Changya Patil)
 Age-35, Occupation-Agriculturist)
 A/P Kopar, Tal-Panvel, District-Raigad)
22. Rupesh Gopinath Patil)
 Age-70, Occupation-Agriculturist)
 A/P Kopar, Tal-Panvel, District-Raigad)
22. Maruti Babu Patil)
 Age-35, Occupation-Agriculturist)
 A/P Kopar, Tal-Panvel, District-Raigad)
- All Petitioners through their Power of)
 Attorney holder viz. Shri Rajendra)
 Madhukar Joshi,)
 Age-42, Occupation-Agriculturist and)
 Business, R/o. Flat No. 101, Tulsi Corner)
 Plot No. 87 and 88 Kamothe)
 Navi Mumbai – 420209)

...Petitioners

Versus

1. State of Maharashtra)
 (Summons to be served on the learned)
 Government pleader appearing for)
 State of Maharashtra under order XXVII)
 Rule 4 of the Code of Civil Procedure, 1908))
2. Municipal Corporation of Panvel)
 (Summons to be served on the learned)
 Government pleader appearing for)
 State of Maharashtra under order XXVII)
 Rule 4 of the Code of Civil Procedure, 1908))
3. City and Industrial Development Corporation)
 (Summons to be served on the learned)
 Government pleader appearing for)
 State of Maharashtra under order XXVII)
 Rule 4 of the Code of Civil Procedure, 1908))
4. Land Acquisition Officer)
 (Summons to be served on the learned)
 Government pleader appearing for)
 State of Maharashtra under order XXVII)
 Rule 4 of the Code of Civil Procedure, 1908)
5. Commissioner of Mumbai Division)
 Kokan Division Mumbai)
 (Summons to be served on the learned)
 Government pleader appearing for)
 State of Maharashtra under order XXVII)
 Rule 4 of the Code of Civil Procedure, 1908)
6. The Union of India)
 Through its Secretary, Civil Aviation)

- Department, Ministry of Civil Aviation)
New Delhi)
7. Airport Authority of India)
Through its Chairman, Rajiv Gandhi Bhawan)
Safdarjung Airport, New Delhi- 110003)
8. The Collector,)
Raigad (Alibag))
9. The GVK Ltd.)
Managing Director)
Paigah House, 156-159, SP Road,)
Secunderabad – 500003, Telangana, India)

Mr. Vishwajeet Kapse i/b Fast Track Legal for Petitioners

Mr. B. V. Samant, Addl. GP a/w Ms. Tejas J. Kapre, AGP for State-Respondent

Mr. A. S. Rao, for Respondent No.2

Mr. Ashutosh M. Kulkarni a/w Mr. Akshay Kulkarni for Respondent No. 3

**CORAM : NITIN JAMDAR &
M. M. SATHAYE, JJ.**

DATED : 2 MAY 2024

JUDGMENT (Per M. M. Sathaye J) :

1. Heard learned Counsel for the parties. Perused the record. The matter is arising out of land acquisition. Therefore hereinafter, The Right to Fair Compensation and Transparency in Land Acquisition,

Rehabilitation and Resettlement Act, 2013 is referred to as “the 2013 Act” and the Land Acquisition Act, 1894 is referred to as “the 1894 Act”.

2. The Petitioners claim to be the owners of the various lands at Village Kopar, Taluka Panvel Dist. Raigad, as specifically described in Exhibit A to the Petition (Page 23). The Petitioners also claim to be still in possession of the subject matter lands. Here and now, it is necessary to note that all 7x12 extracts (revenue records) of the subject matter lands, annexed by the Petitioners themselves at Exh. ‘B’ show name of CIDCO as holder.

3. By this Petition under Article 226 of the Constitution of India, the Petitioners, 23 in number, all through a Power of Attorney holder, initially challenged the acquisition of the subject matter lands on the ground that their respective lands are still in their possession and that no compensation is paid to them. The Petition was initially filed seeking declaration that the acquisition in respect of subject matter lands has lapsed under section 24(2) of the 2013 Act and therefore claiming compensation as per the provisions thereof at today’s market rate. Further alternative prayer is made seeking directions to the Respondents to give benefit of 22.5% scheme to the Petitioners as decided by the State in CIDCO areas.

4. This Petition was amended multiple times.

5. The first amendment is of 2 December 2019. Under this

amendment, averments challenging the section 4 notification dated 24 December 1959 and section 6 declaration dated 2 September 1965 issued under the 1894 Act were incorporated. The declaration under section 6 was sought to be challenged on the ground that it is not made within 3 years from the publication of notification under section 4 of the Act of 1894 Act. The challenge was also raised to the award dated 28 February 1970, that it is passed beyond the period of 10 years and therefore, it is vitiated. It was sought to be contended that though the name of Panvel Municipal Council (for short “the PMC”) was included in 7/12 extracts way back on 19 December 1959, the Petitioners continue to be in actual possession of the subject matter lands.

6. On 18 December 2019, the Petition was again amended and the Union of India, Airport Authority of India, Collector, Raigad and GVK Limited were made parties. This time, it was sought to be contended that the subject matter lands have been allotted to CIDCO for construction of Navi Mumbai International Airport (for short “NMIA”) vide order dated 5 June 2012 and the CIDCO awarded the contract to construct the NMIA to GVK Limited sometime in 2017. It is sought to be contended that employees and workers of GVK Limited entered into the plot of the Petitioner No. 21 for levelling on 09 December 2019 but due to strong resistance of the Petitioners and other local residents, the workers left the place. Again, an assertion was made that the Petitioners are in possession of the subject matter lands. An omnibus statement is made claiming that

there are almost 100 more families who still need to be rehabilitated in 10 villages, which are affected by the NMIA project. The details of the alleged 100 families or alleged need of rehabilitation or which 10 villages are affected are conveniently omitted.

7. It was contended that the proposed work of the airport is going to result in irreparable loss to the Petitioners without payment of compensation. It was contended that the order allotting the subject matter lands to CIDCO for construction of NMIA is arbitrary and unjust. It was then contended that since the lands in question are not the government property, the Collector has no authority to allot or transfer the subject lands to CIDCO or to the construction company for NMIA. It was contended that this could not have been done without compensating the Petitioners under the 2013 Act or before giving the benefits of 22.5% scheme to them. In this round of amendment, prayers were added to quash the order dated 5 June 2012 under which the subject matter lands were transferred to CIDCO, Navi Mumbai. An injunction was sought restraining the Respondents from in any way interfering with the alleged possession of the Petitioners.

8. For the reasons best known to the Petitioners, the Petition was yet again amended, on 22 April 2022. This time, a completely new line of contention was raised, which is apparent from the amended paragraph nos. 33Z-1 to 33Z-36. In short, this amendment stated that in the Government Resolution dated 10 October 1973, the Collector must take

steps for restoration of the subject lands to the original owners on payment of market value which should not exceed double the amount of compensation paid while acquiring the land. It is imperative to note right here that the Petitioners had originally contended that they have not received any compensation and now diametrically opposite stand was taken that on payment of market value not exceeding double 'the compensation received', the subject lands should be restored to them. Reference was made to the judgment of *State of Kerala and Ors. Vs M. Bhaskaran Pillai and Anr.*¹ and it is sought to be contended that the said case law of Hon'ble Supreme Court does not lay down a law having precedential value. It is sought to be contended that the policy of the government of restoration of land to original owners under Government Resolution dated 10 October 1973 was neither challenged nor quashed at any point and as such policy is intact. It is contended that this policy is reiterated in section 101 of the 2013 Act, which contemplates return of unutilized land. Again, an omnibus statement is made that Government of Maharashtra has returned thousands of hectares of land which were although acquired, not utilized for the purpose for which they were acquired. No details of 'thousands of hectares' are given.

9. It is contended that the subject lands are acquired under award dated 28 February 1970 but the same have remained unutilized for the purpose for which it was acquired i.e. construction of Panvel Drainage

¹ (1997) 5 SCC 432

Scheme or any other purpose for more than 40 years, but the Government decided to hand over the lands to CIDCO for the development of NMIA vide order dated 30 May 2012.

10. It is contended that once the subject lands were acquired for Panvel Drainage System, it stood vested in Panvel Municipal Council and neither the Government nor the Collector were competent to transfer the said land to the CIDCO contrary to the Government Policy under Government Resolution dated 10 October 1973. It is again asserted that though the subject lands are shown to have been taken in the possession in paper panchanama on 19 March 1971, they are still in actual possession of the Petitioners.

11. Interestingly enough, the Petitioners themselves have then pleaded that the State Government has issued Government Resolution dated 12 March 2004 holding that earlier Government Resolution dated 10 October 1973 is rendered meaningless and ineffective in the light of the judgment of the Hon'ble Supreme Court in case of *M Bhaskaran Pillai(supra)*. It is sought to be contended that the policy decision adopted by the Government cannot be rendered meaningless unless in a challenge in this Court or Hon'ble Supreme Court, the policy is quashed and set aside or held as unconstitutional. Reference is made to the judgment of the Hon'ble Supreme Court in *Nagpur Improvement Trust and Anr. vs. Vitthalrao and Ors.*² A challenge is set up to Government

² (1973) 1 SCC 500

Resolution dated 12 March 2004 in the amendment of April 2022. This time, one more prayer is added seeking declaration that GR dated 12 March 2004 is *ultra-vires* of Article 14 and 300A of the Constitution.

12. On the other hand, the Deputy Collector of Land Acquisition, Raigad has filed affidavit-in-reply dated 4 February 2020 opposing the Petition, on behalf of the State. It is contended *inter alia* by the State that the subject matter lands have been acquired for the purpose of drainage system at Kopar and the compensation thereof has been deposited as Revenue Deposit and the possession of the said lands have been taken and handed over to the acquiring body. It is contended therefore the Petitioners are not entitled to claim any relief.

13. It is pointed out that Section 4 notification and section 6 declaration under 1894 Act were duly issued on 24 December 1959 and 2 September 1965 for acquisition of the subject matter lands. The award under section 11 of the 1894 Act has been passed on 28 February 1970, copy of the award is produced on record. The total amount of compensation under the award has been quantified. Revenue reduction order dated 26 April 1971 is passed in due course. Its copy is produced on record. It is contended that the entire amount of compensation has been received by many villagers, except 39 land owners who have not accepted the amount, which are listed in the revenue deposit list. Copy of the said deposit list dated 31 March 1970 is produced on record. The possession receipt dated 19 March 1971 taking over the subject matter

lands by the acquiring body has been placed on record. It mentions that the land owners have declined to sign on the same and therefore possession is taken in presence of *panch* witnesses. It is further pointed out that vide letters dated 24 May 2010 and 2 February 2011, CIDCO requested for allotment of the subject matter lands for NMIA. As per the directions of Government of Maharashtra, Collector Raigad has passed the order dated 5 June 2012 directing restoration of land with the State Government and its hand over to CIDCO for NMIA. Copy of the said order is produced on record.

14. Additional Chief Lands and Survey Officer of the Respondent – CIDCO has filed the affidavit in reply dated 5 April 2022 opposing the Petition. It is contended *inter alia* by CIDCO that for the construction of NMIA and acquisition relating thereto, the State Government is an acquiring body. The Petition suffers from gross delay and laches, which are unexplained. The Petitioners are challenging the acquisition done in the year 1970. the Petitioners or their predecessors were aware of initial taking over of the possession and handing over to Panvel Municipal Council and thereafter to CIDCO. The dates of section 4 notification and Section 6 declaration are reiterated. Copies of said notification and declaration are produced on record. It is reiterated that the award has been passed on 28 February 1970. Its copy is produced on record. Copy of the possession receipt dated 19 March 1971 has been produced on record. Notice under section 12(2) of the 1894 Act has been produced on

record. It is reiterated that under order of Collector, Raigad the subject matter lands were handed over for construction of NMIA and necessary copies of the Government Decisions dated 30 May 2012 and 5 June 2012 are produced on record.

15. The contention of the Petitioners that they are in possession of the lands is categorically denied. The survey report dated 31 May 2016 by the Circle officer allegedly showing Petitioners' possession is also denied. It is contended that name of the CIDCO is mutated in the revenue records. It is contended that the arguments about section 6 declaration or award being passed beyond the prescribed period of limitation cannot be considered after long delay and laches of more than 50 years. It is contended that this case is not covered under section 24 of the 2013 Act. The CIDCO is carrying out work of NMIA. It is contended that the subject matter lands are crucial and integral for the construction of NMIA. On these grounds the Petition was opposed.

16. We have carefully considered the submissions of Mr. Kapse for the Petitioners, Mr. Kulkarni for the Respondent-CIDCO and Mr. Rao for the Respondent PMC.

17. In the facts of this case, the observations of the Hon'ble Supreme Court made in paragraph 14 of the Judgment of *State of Maharashtra v/s. Digambar*³ assumes importance in the context of undue delay and laches. In the said judgment, the Hon'ble Supreme Court has explained how the

³ (1995) 4 SCC 683

State may not be able to show that its actions were legal or correct for want of records or for the reason of non-availability of the Officers who were responsible for the action complained of, in petitions filed after undue delay. Paragraph 14 of the Judgment is reproduced below:

“14. How a person who alleges against the State of deprivation of his legal right, can get relief of compensation from the State by invoking writ jurisdiction of the High Court under Article 226 of the Constitution even though, he is guilty of laches or undue delay is difficult to comprehend, when it is well settled by decisions of this Court that no person, be he a citizen or otherwise, is entitled to obtain the equitable relief under Article 226 of the Constitution if his conduct is blameworthy because of laches, undue delay, acquiescence, waiver and the like. Moreover, how a citizen claiming discretionary relief under Article 226 of the Constitution against a State, could be relieved of his obligation to establish his unblameworthy conduct for getting such relief, where the State against which relief is sought is a Welfare State, is also difficult to comprehend. Where the relief sought under Article 226 of the Constitution by a person against the Welfare State is founded on its alleged illegal or wrongful executive action, the need to explain laches or undue delay on his part to obtain such relief, should, if anything, be more stringent than in other cases, for the reason that the State due to laches or undue delay on the part of the person seeking relief, may not be able to show that the executive action complained of was legal or correct for want of records pertaining to the action or for the officers who were responsible for such action not being available later on. Further, where granting of relief is claimed against the State on alleged unwarranted executive action, is bound to result

in loss to the public exchequer of the State or in damage to other public interest, the High Court before granting such relief is required to satisfy itself that the delay or laches on the part of a citizen or any other person in approaching for relief under Article 226 of the Constitution on the alleged violation of his legal right, was wholly justified in the facts and circumstances, instead of ignoring the same or leniently considering it. Thus, in our view, persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot get discretionary relief obtainable thereunder unless they fully satisfy the High Court that the facts and circumstances of the case clearly justified the laches or undue delay on their part in approaching the Court for grant of such discretionary relief. Therefore, where a High Court grants relief to a citizen or any other person under Article 226 of the Constitution against any person including the State without considering his blameworthy conduct, such as laches or undue delay, acquiescence or waiver, the relief so granted becomes unsustainable even if the relief was granted in respect of alleged deprivation of his legal right by the State.”

[Emphasis supplied]

18. To say the least, this Petition is one more example of chance litigation. The dates of section 4 notification, section 6 declaration, award, possession receipt, revenue deposit receipt (as already given above) clearly show that this petition suffers from unexplained laches of more than 50 years. It is hopelessly belated. The award, the possession receipt, the deposit list and the revenue reduction order produced along with both replies include subject matter land numbers and names of either Petitioners or their predecessors. There is clear material on record

to establish that due process of law has been followed while acquiring the subject lands.

19. Taking advantage of the old acquisitions, details whereof are likely to have been lost due to passage of time, Petitions like this are filed after the 2013 Act came into force. Since the compensation provided under the 2013 Act is available on the basis of current market value, the Petitioners have seen an opportunity and the Petition seems to have been filed. From the nature of the challenge set up by the Petitioners from time to time during the pendency of the Petition, as explained above in detail, we are forced to observe that the Petitioners, at various points of time, have sought to contend differently to the extent of taking self-destructive and diametrically opposite stands. This tendency must be deprecated. We place our disapproval on record. We have no manner of doubt that the Petitioners have tried to ride on the wave of chance and this Petition is nothing but an effort to dig old graves in search of chance treasures. We are certain that our jurisdiction cannot be exercised in aid of such efforts.

20. Looking at the ages of the Petitioners, some of the Petitioners were obviously themselves alive when the award was passed. For remaining petitioners, their predecessors were there. In short either Petitioners or their predecessors had every opportunity to challenge the award within a reasonable time in accordance with law. That is obviously not done on the spacious case of their alleged existing possession. This case is only stated to be rejected. Petitioners' own Exh. B are 7x12 extracts showing

CIDCO's name in holder column for the said lands on the date of petition.

21. The list of persons who have not taken compensation is produced by the Respondents. The possession receipt is produced by the Respondents. It is a settled position of law, in the judgment of *Indore Development Authority vs Manoharlal*⁴ that on the aspect of possession, panchanama and possession receipt are valid pieces of evidence. Therefore, claim of the Petitioners that they are still in possession, cannot be accepted in the eyes of law. Once, one of the two conditions are met, there is no question of lapsing of acquisition under section 24(2) of the 2013 act after the authoritative pronouncement under *Indore Development Authority (supra)*. Since possession is found to have been taken and compensation is also found to have been deposited, the challenge to the acquisition must fail.

22. The argument of section 6 notification or award being issued belatedly and therefore being vitiated, cannot be considered after more than 50 years in our extraordinary writ jurisdiction, as the same suffers from hopelessly long unexplained laches.

23. This petition is certainly 'an attempt to revive stale and time barred claims' which are expressly prohibited under conclusion given by the Hon'ble Supreme Court in the case of *Indore Development Authority (Supra)*. We draw support from clause 366.9 of the said Judgment,

⁴ (2020) 8 SCC 129

wherein the Hon'ble Supreme Court has concluded as below:

“366.9. Section 24(2) of the 2013 Act does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the 2013 Act i.e. 1-1-2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition.”

(Emphasis supplied)

24. At this stage, it is necessary to record that although in the pleadings, petitioners have challenged the Government Resolution of 12 March 2004 as *ultra vires* and claimed restitution of the subject matter lands under the alleged existence of the policy under the Government Resolution of 10 October 1973 as also claimed entitlement to 22.5% scheme, none of these are either pressed or argued before us.

25. In the aforesaid factual and legal position, there are no merits in this writ petition and the same is accordingly dismissed. No costs.

(M. M. SATHAYE, J.)

(NITIN JAMDAR, J.)