

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 6639 Of 2019****Shri. Nana Shiva Tawande And Ors.****...Petitioners*****Versus*****The State Of Maharashtra Through Additional
Chief Secretary, Revenue And Forest
Department And Ors.****...Respondents**

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Mr. Yuvraj S. Gharal, Advocate for Petitioners.**Mr. S. H. Kankal, AGP, for Respondent Nos. 1 to 4.**

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**CORAM : NITIN JAMDAR &
M.M. SATHAYE, JJ.****DATE : 3 JANUARY 2024****P.C.:**

. By this Petition, the Petitioners have sought a declaration that the acquisition proceedings in respect of land admeasuring 1 Hectore and 21 Ares out of Gat No. 71 in Village Siddhanerli, Taluka-Kagal, District Kolhapur is deemed to have lapsed as per Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the Act of 2013"). The Petitioners have sought initiation of fresh acquisition proceedings.

2. The Petitioners contend that, by the alleged Award dated 3

May 1993, the land was acquired for rehabilitation of the project affected persons of Dudhganga Project. The Petitioners have stated in the Petition itself that the possession of the lands was taken by the Respondents from the Petitioners. The Petitioners have stated that the compensation is not deposited in the Reference Court. The Petition is based on this premise. The petition came to be filed on 25 April 2019.

3. Reply affidavit is filed by Respondents wherein Respondents have stated that as on the deemed date the total holding of the predecessor of the Petitioners was H 5-07 R. Out of the total holding of land, predecessor of the Petitioners voluntarily handed over the vacant and peaceful possession of the subject land and the revenue records was accordingly changed by the Mutation entry dated 11 May 1993. It is stated that funds for compensation are made available to the Executive Engineer, Medium Project for payment of compensation. Earlier the legal position was that acquisition would lapse in view of 24(2) of the Act of 2013 if either possession of the land was not taken or compensation was not paid. It underwent change, in view of dicta of the Hon'ble Supreme Court in *Indore Development Authority Vs. Manoharlal*¹ and for purpose of lapsing of the acquisition, both the factors need to be present.

4. Since the revenue record from 1993 till date demonstrate that possession was handed over to the State, we had called upon the Petitioners by order dated 13 September 2022 to explain the same,

¹ (2020) 8 SCC 129

whereby the learned counsel for the Petitioners sought liberty to file additional affidavit which has been filed. In the additional affidavit, for the first time Petitioners have come up with a theory that the possession was not voluntarily given but forcibly taken and that the Petitioners never gave up their right to claim their compensation.

5. The learned counsel for the Petitioners submitted that the Petitioners' possession could not have been divested by the State in this fashion and it would amount to taking over private property by the State without compensation and in such a case delay and laches should not come in the way of the Petitioners. Learned counsel relies on the decision of the Supreme Court in case of *Sukh Dutt Ratra and Anr. V State of Himachal Pradesh and Ors.*² The learned AGP submitted that the Petitioners have handed over possession voluntarily and the entry to that effect is in records since 1993 and at such belated stage without any challenge to entries in the revenue records, Petitioners cannot contend that they did not hand over possession voluntarily.

6. The decision in the case of *Sukh Dutt Ratra* arose in entirely different facts and circumstances. This was a case where an Award under the Land acquisition Act, 1894 was issued. Thereafter, the appeals were filed in the High Court. The High Court dismissed the Appeals. Thereafter similarly situated land owners filed writ petitions for direction to acquire the lands with consequential benefits and seeking compensation of subject land. The High Court dismissed the

² (2022) 7 SCC 508

Petition holding that the matter involved disputed question of law and the fact for determination on starting point of limitation could not be adjudicated in writ jurisdiction. It is in that context, the Hon'ble Supreme court had laid down the wider legal proposition.

7. In the case at hand however we are faced with an entry in the revenue record, which from the year 1993 remains unchallenged till date shows that the possession is handed over voluntarily. The factum of handing over possession is not in dispute. The Petitioners now, after thirty years seek to contend that the possession was not given voluntarily. The entry refers to the incident of 5 May 1993 of handing over the possession. If the possession was forcibly taken as sought to be contended, the petitioners would have taken steps to challenge such a forcible dispossession. The Petitioners would have taken steps to correct the revenue record. Nothing is done till date, even after we had called upon the Petitioners on 13 September 2022, to give explanation. Therefore, as on today, the entry in the revenue record remains unquestionable. There could be various reasons why possession was handed over. After lapse of three decades it is not possible to conclude that it was not voluntary.

8. As regards contention of the Petitioners that they never gave up the prayer of compensation, it would mean that from 1993. When after taking possession, the right to receive compensation accrued as contended by the Petitioners till 2019. Till filling of the Petition no steps were taken.

9. In these circumstances, we cannot overlook gross delay on the part of Petitioners. Delay and laches are germane consideration when writ jurisdiction is invoked.

10. Writ petition is accordingly rejected.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)