



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11331 OF 2024

Chandru Mirchandani

...Petitioner

Versus

1. The Settlement Commissioner For Compensation
pool Property Cum Custodian Of Evacuee Property
2. Principal Secretary, Urban Development department,
Mantralaya, Mumbai 400 001.
3. The Tahsildar, Village Khandala, Taluka Bhokardan,
District Jalna
4. Managing Director & Vice-Chairman, CIDCO Bhavan,
CBD Belapur, Navi Mumbai.
5. State of Maharashtra

...Respondents

Mr. Shriram S. Kulkarni with Mr. Prajnal M. Khatavkar with Mr. Sujay S. Palshikar with Mr. Gaurav Ugale with Mr. Monish Vig with Mr. Swapnil Mhatre, for the petitioner.

Mr. A. I. Patel, Addl. Govt. Pleader with Mr. Manish M. Pabale, AGP for the State.

CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

RESERVED ON : 3 April 2025

PRONOUNCED ON : 9 May 2025

Judgment (Per G. S. Kulkarni, J.)

1. Rule returnable forthwith. By consent of the parties, heard finally.
2. The only prayer as made in this petition filed under Article 226 of the Constitution of India is that the respondents be directed to allot land / plot to the petitioner under the provisions of the Displaced Persons (Rehabilitation and Compensation) Act, 1954 (for short '**the Displaced Persons Act**'), equivalent to

the area of land allotted to the petitioner's father in the year 1969, from the compensation pool, of the evacuee properties available with the Custodian. The substantive prayer as made in the petition is required to be noted which reads thus:

“a. Be pleased to direct the Respondents to allot land/plot under the provisions of Displaced Person (rehabilitation and Compensation) Act, 1954 equivalent to the area allotted to the petitioner from the evacuee pool from land in custody of the custodian of Evacuee Properties from compensation pool where along with compensation plots ~ or lands available and allotable to displaced person from the compensation pool of Custodian of Evacuee property be allotted to the petitioner from the details given in the petition and/or any other land from the compensation pool in New Bombay area and from lands acquired for New Bombay International Airport;”

3. The petitioner contends that the petitioner's father at the time of partition had left lands in Pakistan, hence under the provisions of the Displaced Persons Act, the petitioner's father had become entitled for allotment of land. He had accordingly made an application for allotment of land. On such application, the claim of petitioner's father was verified at Rs.21,878/-, equivalent to area 91-12 ½ Local Acres. The petitioner has referred to the provisions of the Displaced Persons Act in relation to the amount of compensation which would become payable qua the lands left by the petitioner's father in Pakistan. It is the petitioner's case that his father Kishinchand P. Mirchandani after migration was staying in and around Mumbai. He expired on 21 December 1972.

4. It is the petitioner's case that respondent No.1 had allotted to the petitioner's father a land bearing Survey No.100 admeasuring about 32.26 Local

Acres equal to Std. Acres 4-1.3/10 at Village Khandala, Taluka Bhokardan, District Jalna (for short “Bhokardan Land”) under the provisions of the Displaced Persons Act. It is further contended that as per the payment of compensation and rehabilitation grant, the petitioner’s father was entitled to compensation of Rs.21,780/- and in lieu of the compensation amount, petitioner’s father was entitled to receive 48.8 units of land which was approximately valued at Rs.21,780/-.

5. The petitioner contends that by an allotment order No.Ko1/53A dated 10 March 1968, petitioner’s father was allotted the Bhokardan land. It is stated that such land was allotted for rehabilitation was almost 350 to 400 kms. away from Mumbai. A copy of such allotment order dated 10 March 1968 is annexed to the petition. The petitioner contends that although such allotment was made in favour of the petitioner’s father in the year 1968, he was never put in possession of the allotted land. It is averred that several inquiries in this regard were made, however, there was no response to the same. In such context, the petitioner refers to a letter dated 20 March 2013, addressed by the petitioner to the Tahsildar, Taluka Bhokardan, District Jalna with the subject “Handing over to the Possession of Land bearing S. No.100 at Village Khandala, Tal-Bhokardan.”, wherein the petitioner stated that the said land was allotted to the petitioner’s father in lieu of his verified evacuee claim, and although such land was allotted, the possession of the land was not handed over to him. The petitioner therefore requested that the possession of the said land be granted to the petitioner as per the provisions of the Displaced Persons Act. A photocopy of the allotment letter was also furnished.

6. Thereafter, after about 8 years i.e. on 13 December 2021 the petitioner addressed another letter to the Tahsildar, District Jalna, requesting that the possession of the said land be handed over to the petitioner. Thereafter, another letter dated 14 December 2021 was addressed by the petitioner to the Collector, District Jalna, requesting that the petitioner be put in possession of the land, subject matter of allotment to the petitioner's father dated 10 March 1968 (supra). The petitioner submitted that further reminders were sent to the State officials, however, no reply to the same was received.

7. It is the petitioner's case that recently when the petitioner conducted search and inspected the records of the allotted lands when the petitioner learnt that the land allotted to the petitioner's father vide allotment letter dated 10 March 1968 is not an evacuee property. It is contended that from the 7/12 extract of the land it was revealed that the same belonged to one Sayed Ahmed Sayed Karim/Rahim and that such land was in his possession. The petitioner contends that it was also revealed that the said person was not an evacuee and the land was not from the pool of evacuee property. In these circumstances, the petitioner addressed a letter dated 25 February 2023 to the Settlement Commissioner, that despite allotment of the land to the petitioner's father, the possession of the land was not given to him and that the said land, in fact belonged to a third party. The petitioner addressed another letter dated 28 February 2023 to the Tahsildar to supply information whether the said land was an evacuee property or not and to provide to the petitioner upto the date 7/12 extracts of the Bhokardan land.

8. It is contended that on 11 April 2023, the petitioner addressed a letter to

the 'Settlement Commissioner for Compensation Pool' that as the allotted land is not an evacuee property, the petitioner be allotted a land in the vicinity of Mumbai. As no reply was received, on 18 May 2023, the petitioner again addressed a reminder to the 'Settlement Commissioner for Compensation Pool', reiterating his request to allot an alternate land in the vicinity, equivalent to the balance verified claim. The petitioner addressed another letter to the Settlement Commissioner dated 16 September 2023, as also on 20 September 2023 the petitioner addressed a letter to the CIDCO. Thereafter, a representation dated 25 September 2023 was addressed by the petitioner to the Principal Secretary, Urban Development Department, Government of Maharashtra. The petitioner accordingly contends that he had approached several authorities, who could allot a suitable plot to the petitioner, however, all such efforts did not yield results.

9. The further case of the petitioner is that, he came in possession of two land acquisition awards made under Section 11 of the Land Acquisition Act, 1894, published by the Special Land Acquisition Officer, in favour of the Custodian of Evacuee properties, situated at village Padghe, in relation to the land bearing Survey No. 183 Hissa No. 19 admeasuring 0.13.8 R, Survey No. 188 Hissa No. 6 admeasuring 0.26.4 R, Survey No. 187 Hissa No. 2 admeasuring 0.13.8 R and Survey No. 190 Hissa No. 2 admeasuring 1.17.0 R situated at village Padghe and another Award under Section 11 of the Land Acquisition Act, 1894 also in favour of the Custodian of Evacuee properties, in regard to survey No. 186 admeasuring 7.02.0R situated at village Padghe, which according to the petitioner shows that the said property had stood in the name of the Custodian of the Evacuee property.

It is the petitioner's case that since such lands were available under the 12.5% land under the Scheme of the Government of Maharashtra, can be made available to the petitioner from the said acquired lands. The petitioner in such context has also referred to, as what he states to be a downloaded copy of the 7/12 extract obtained from the website of the revenue department of Gat No.21/3 admeasuring 0.40.40 R situated at Ovale, Taluka Panvel, District Raigad which stands in the name of the custodian and similar other lands, the details of which are set out in paragraph 28 of the petition.

10. The petitioner had also referred to his letter dated 22 November 2023 addressed to the Administrator, CIDCO recording that the petitioner had made a representation to the State Government being relevant as far as the CIDCO's land were concerned, to be allotted to the petitioner and relevant information be issued to the petitioner. The petitioner also refers to a letter dated 13 December 2023 addressed by the Development Officer to the CIDCO, a copy of which was marked to the petitioner. It the petitioner's case that the petitioner has also come across the Bombay Government Gazette dated 24 August 1950, whereunder various lands situated at Village Nanoshi, Taluka Panvel, District Kolaba, were notified for general information, which contained evacuee properties, which accordingly would be available for allotment. It is thus the petitioner's case that the lands which were acquired for the New Bombay project or for New Bombay International Airport, if such lands are still available and lying with the Custodian of Evacuee properties they may be allotted to the petitioner. It is in these circumstances, the petitioner has approached this Court seeking the reliefs as

prayed for.

Submissions

11. Mr. Kulkarni, learned Counsel for the petitioner has limited submissions. He would submit that there was a clear right which was available to the petitioner for allotment of the evacuee land, as derived from the land as granted to the petitioner's father vide order dated 10 March 1968, having not materialized, as the possession of the Bhokardan land was never handed over to the petitioner's father. It is submitted that when the said allotted land was not available and it was in possession of a third party, the petitioner necessarily was required to be allotted an alternate land. It is submitted that as pointed out to the respondents and as averred in the petition, alternate lands in the vicinity i.e. at New Bombay, acquired by CIDCO and in possession of the Custodian of Evacuee properties, are available which need to be allotted to the petitioner and the possession of the equivalent land needs to be handed over to the petitioner. It is submitted that the impugned inaction on the part of the respondents is arbitrary and illegal as it has deprived the petitioner of the right to allotment of the land which was in fact entitled to his father. The petitioner is made to suffer for many years. In support of such contentions, reliance is placed on the decision of the Supreme Court in **Union of India vs. International Sindhi Panchayats & Ors.¹** ; **Ismailbhai Kansara (dead) through legal representative vs. State of Gujarat & Ors.²** and on the decision in **Tukaram Kana Joshi & Ors Vs. MIDC & Ors.³**

1 (2020)11 SCC 679

2 (2021)20 SCC 587

3 (2013)1 SCC 353

12. On the other hand, Mr. Pabale, learned Assistant Government Pleader has opposed the petition relying on the reply affidavit filed on behalf of the respondents of Mr. Amol Yadav, Chief Settlement Commissioner for Compensation Pool properties cum Custodian of Evacuee Properties, Maharashtra State. Mr. Pable would draw our attention to paragraph 6 of the reply affidavit, wherein it is contended that, the petitioner is claiming rights pursuant to the allotment order “allegedly issued” by the then Administrative Officer dated 10 March 1968 to one Kishinchand P. Mirchandani, allotting plot bearing Survey No.100 area 32 acres 26 gunthas from Village Khandala, Taluka Bhokardan, District Jalna, equal to Std. Acres 4-1.3/10. It is stated that the said order is not available, in the records of the Government, hence, to verify the genuineness of the said order, a letter dated 18 October 2024 was also addressed to the Government of India, Ministry of Home Affairs, thereby requesting to verify the genuineness of the said order in allotting any agricultural land in the name of Kishinchand P. Mirchandani. It is next submitted that the petitioner is asserting and/or claiming rights under the alleged allotment order issued to his father, after a lapse of 56 years. In such context it is submitted that at the relevant time the power of allotment of land, to a displaced person for agricultural cultivation, stood vested with the Central Government till 1971. It is contended that the petitioner, however, has filed this petition after 56 years of the said letter dated 10 March 1968 being issued by the Central Government, hence, on the ground of inordinate delay and laches in filing the petition, the petition needs to be dismissed.

13. It is submitted that the claim of the petitioner, if it is to be considered after 56 years, it is necessary to verify whether the such person (petitioner's father) was a displaced person whether the petitioner's claim is genuine, and whether the person was allotted any agricultural land elsewhere in India. It is submitted that a report to this effect can be only obtained from the Central Government, and only after such verification by the Central Government, the petitioner's claim can be considered on merits. In such context Mr. Pable would submit that for the reasons best known to the petitioner, the petitioner has not impleaded the Central Government as a party respondent, it is hence submitted that the petition is bad for non-joinder of the necessary party and on such count alone it needs to be rejected.

14. Mr. Pable has drawn our attention to the reply affidavit where the respondent contends that the Central Government has repealed the Displaced Persons Act with effect from 5 September 2005, by virtue of the Displaced Persons Claims and Other Laws Repeal Act, 2005. It is submitted that after notification of such repeal in the year 2005, one Sindhi Panchayat had filed PIL No.52 of 2006 in this Court, in which interim relief was granted on 14 December 2006 in relation to the pending cases under the Displaced Persons Act, prior to its repeal. It is submitted that the proceedings had reached the Supreme Court in SLP No.6703 of 2008 on which an interim order was passed by the Supreme Court [Interim Application No.4 of 2011 dated 5 December 2008] wherein the Supreme Court directed that as per the General Clauses Act, cases pending prior to the Repeal Act, 2005 were to be considered on its own merit. It is submitted

that in the present case save and except the alleged allotment order, no proceedings were shown to be pending before the Central Government on the date of the repeal of the Displaced Persons Act 2005. It is submitted that the petitioner is not entitled for any relief as the petitioner does not fall within the orders passed by the Supreme Court.

15. It is next submitted that the petitioner is making a demand for allotment of land at New Bombay, in respect of which CIDCO was appointed as a Special Town Planning Authority, under Section 113 of the Maharashtra Regional Town Planning Act. It is submitted that apart from the fact that the petitioner has failed to justify any entitlement to the land as asserted, even otherwise the petitioner is not entitle to seek any land from the pool of lands available with CIDCO, as such land was acquired for CIDCO and the possession was handed over to the CIDCO. Hence, the petitioner cannot demand any such land which did not form part of the compensation pool much less on the alleged allotment order, which was purportedly issued in the year 1968. It is hence submitted that the petitioner is not entitled for 12.5% developed plots from New Bombay project, from CIDCO, as there is no such enforceable legal right. It is thus Mr. Pable's submission, as also it is averred in the reply affidavit, that this writ petition being filed after 56 years, the same is barred by delay and laches and on such count and on merits it deserves to be dismissed, with exemplary costs. In support of his contention that the petition being barred by delay and laches, Mr. Pable has placed reliance on the decision of this Court in **Abhay Kinwasara Vs. State of**

Maharashtra⁴ in which the Court was dealing with the case under the Land Acquisition Act, wherein the challenge was mounted in the proceedings to the land acquisition, which had taken place 38 years prior to filing of the petition. This Court considering the doctrine of delay and laches had rejected the said petition with costs. It is submitted by Mr. Pable that the principles of law as discussed in the said decision is squarely applicable in the facts of the present case which asserts the right to allotment of land after 56 years from the issuance of the alleged allotment letter, claimed to be issued to the petitioner's father.

16. Mr. Kulkarni has made submissions in rejoinder. He has placed reliance on the rejoinder affidavit filed on behalf of the petitioner. However, what is important to note are the averments as made in paragraph 3 of the said affidavit categorically show that the petitioner was allotted land in various districts in the State of Maharashtra apart from Jalna. It is submitted that the petitioner's father was allotted land at Panvel and in Thane district. The averments as made in paragraph 3 are required to be noted which read thus:

“3. The petitioner is allotted with lands in various district of Maharashtra apart from Aurangabad. The petitioner's father has been allotted lands in district Panvel and Thane which shows that the petitioner is a Displaced person under the Displaced person (Compensation and Rehabilitation) Act 1954. Hereto annexed and marked as EXHIBIT-A is the copy of Allotment order of Parvel & Thane district.”

17. The rejoinder affidavit, however, in no manner deals with the respondent's specific case of lack of an appropriate certification being not

4 2025 SCC OnLine Bom. 621

obtained by the petitioner from the Central Government and that the Central Government is a necessary party to the present petition. There is conspicuous silence on such issue as urged on behalf of the respondents. On the basis of which the respondent has urged that the petitioner is not entitled to the reliefs.

ANALYSIS & CONCLUSION

18. Having heard learned Counsel for the parties and having perused the record, at the outset we may observe that there are several grounds on which the petitioner cannot be granted the relief as prayed for. The following discussion would aid our conclusion.

19. At the outset, we may observe, that the petitioner is not asserting his own legal rights but is asserting rights under an allotment letter issued to the petitioner's father dated 10 March 1968. Such allotment letter is stated to be issued to the petitioner by the Managing Officer, Office of the Custodian of Evacuee property Government of India, whereby the petitioner's father is alleged to have been allotted, the Bhokardan's land [at Village Khandala, Tal-Bhokardan in Survey No.100 admeasuring about 32.26 Local Acres equal to Std. Acres 4-1.3/10]. It is seen from the averments made in the petition that the petitioner's father, who is claimed to be the beneficiary of the said allotment letter (assuming that he was a displaced person) expired on 21 December 1972. There is nothing on record to show that during his life time, the petitioner's father asserted anything qua the said allotment of land. The petitioner has averred that the petitioner for the first time raised his father's cause in the year 2013 (i.e. about 41 years after his father expired), when he addressed a letter in that regard to the

Tahasildar, Taluka Bhokerdan, District Jalna being letter dated 20 March 2013, requesting that the possession of the said land be handed over to the petitioner. Such assertion was made by the petitioner, in the capacity of the petitioner being the legal heir of Mr. Kishinchand P. Mirchandani (petitioner's father). However, as the said letter was not replied, after a long period 7 years, the petitioner again addressed a letter dated 13 December 2021, 14 December 2021 and 4 August 2022 and thereafter, letters were addressed to the concerned officers in the year 2023, which form basis of this petition.

20. In our opinion, considering such facts and circumstances, it would be difficult for us to subscribe to a contention that mere addressing of such letters / representations would *ipso facto* amount to the recognition of any vested legal right in the petitioner, firstly to assert a cause of action, which if at all, could be said to have accrued to the petitioner's father in the year 1968, which for reasons we do not know, was not pursued by him till his death in the year 1972. Further most importantly it not pursued by the petitioner, [on the petitioner's own showing] for a very long period of 41 years, till the petitioner addressed the first representation dated 20 March 2013. Secondly there is a further substantial delay/lapse, of addressing the second representation, straightway after 7 years i.e. in the year 2021. Such gross delay of any litigant in pursuing such cause cannot be overlooked and more particularly, when the litigant invokes the discretionary and equitable jurisdiction of the Court under Article 226 of the Constitution.

21. This apart, assertion of such legal right, which stood deeply buried by passage of time, undoubtedly would be fatal to the petition being entertained

applying the well settled principles underlying the doctrine of delay and laches. In our opinion, this is a clear case of a cause of action being resurrected by making representations which was not pursued from the year 1968 (date of alleged allotment order in favour of petitioner's father) i.e. about 56 years back and/or immediately on the petitioner's father having passed away in the year 1972 i.e. about 52 years back cannot be asserted in such manner. The present petition was filed on 9 May 2024. On such backdrop, we are in complete agreement with Mr.Pabale when he submits that the petition needs to be dismissed being barred by inordinate delay and laches.

22. A Division Bench of this Court of which one of us (G.S.Kulkarni, J.) was a member in **Tatoba Rama Chavan vs. Collector, Kolhapur District, Kolhapur And Others⁵**, which was a case in which, acquisition of land was concluded in the year 1983 and a writ petition asserting rights on such acquisition was filed in the year 2023, the Court made the following observations in the context of delay and laches:

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 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

⁵ Writ Petition No.3883 of 2022, decision dated 26th July 2023.

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."**

(emphasis supplied)

23. Mr. Pable's reliance on the decision of this Court in **Abhay Kinwasara** (supra) is also apposite. In such case, the petitioner was claiming rights of the petitioner's father, in questioning the acquisition of the land which had taken place in the year 1971 which was after 38 years from the death of the petitioner's father. In dismissing the said petition, the Court observed that there was no averment in the petition to explain and justify the delay, in filing of the writ petition, as also at no point of time during the life time of the petitioner's father, he had ever raised any objection much less a challenge in the manner known to law. This case was also akin to the petitioner's case wherein contentions similar to the one's raised in the

present petition were urged by the respondent, on acquisition of the land which had taken place almost 38 years back. The petitioner therein was taking advantage of the fact that the records were not available with the State Government, and when it was not possible to verify the contentions as urged on behalf of the petitioner in assailing the acquisition. In such context, the Court made the following observations, which in our opinion, aptly applicable in the present facts:-

“41. As rightly contended on behalf of the respondents, this was a well thought of modus operandi, as this made it possible for the petitioner to raise a plea that no record of acquisition was available with the respondents, hence, a contention could be raised of the land being not acquired. If such plea is accepted, every acquisition which had taken place about 30-50 years back for want of record would be required to be held illegal. This is too much of expectation of the petitioner and in fact a frivolous plea.

42. In our opinion, the record clearly shows that much water had flown under the bridge since the time the land had stood vested with the State Government, i.e., on the publication of notice under section 32(1) of the MID Act on 16 October 1971 and the clear position on record that the possession of the land was taken over and consequential revenue entries being made in the record of rights recognizing the acquisition, which is also being disputed by the petitioner.

43. We may observe that in respect of old concluded acquisitions, it is certainly not possible for the State Government to preserve documents in respect of hundreds of acquisitions which take place long-long years back, as in the present case. The acquisition in question is not a contemporary acquisition, which could be said to have happened in the near past, and it is for such reason the State Government on affidavit has stated that it is not in a position to provide any documents of compensation being paid to his father, who had never asserted for compensation and possibly nay imminently for the reason that he has received compensation more significantly when he was a person so conscious of his legal rights, even to knock the doors of this Court questioning the

acquisition in the proceedings of Special Civil Application no. 767 of 1966 and thereafter compromising the said proceedings.

44. If the contention as urged on behalf of the petitioner to reopen such past acquisitions, which are very old acquisitions, is to be accepted, it would bring about a chaotic situation, inasmuch as, concluded land acquisitions would be required to be reopened on such ground, when record of such acquisitions and compensations or other record in relation to the acquisition is not available, on a presumption that the land was not acquired. Thus, such contention looked from any angle needs to fail. The reason being that non-existent or dead legal rights to assert such contentions cannot be resurrected as any right to question such acquisition as in the present case had certainly stood lapsed and deeply buried about 40 years back.”

24. In the aforesaid decision, on the principles of delay and laches, the Court referred to the decisions of the Supreme Court in **Mutha Associates & Ors. vs. State of Maharashtra & Ors.**⁶; **State of Maharashtra v. Digambar**⁷; **Chennai Metropolitan Water Supply and Sewerage Board & Ors. vs. T.T. Murali Babu**⁸; **Baljeet Singh (Decd.) through LR and Ors. vs. State of Uttar Pradesh & Ors.**⁹; and the decision of the Division Bench of this Court in **Dnyanu Bhiku Tanpure (Since deceased) through LR's Suresh Dnyane Tanpure vs. Deputy Collector, Rehabilitation, Pune & Ors.**¹⁰ to which one of us (G. S. Kulkarni, J.) was a member; as also the decision in **Tatoba Rama Chavan** (supra), wherein again the principles of delay and laches were discussed and applied. The relevant observations in that regard are required

6 (2013) 14 SCC 304

7 (1995) 4 SCC 683

8 (2014) 4 SCC 108

9 (2019) 15 SCC 33

10 2023 SCC OnLine Bom 2017

to be noted which read thus:

“45. If at the relevant time a legitimate grievance was raised and redressed, the party who was to be aggrieved could have taken recourse to appropriate remedy available in law. Thus, the acceptance of the petitioner’s arguments would also lead to a complete absurdity inasmuch as all such rights, which stood concluded during the lifetime of the petitioner’s father without the petitioner’s father asserting the same, cannot now be reopened. To accept the petitioner’s contention, the well-settled principles of estoppel and the principles of doctrine of delay and laches would be required to be discarded to entertain such plea. In our considered opinion, the respondent’s contention of this petition being barred by delay and laches deserves total acceptance. The legal principles on delay and laches can be discussed.

46. In *Mutha Associates & Ors. vs. State of Maharashtra & Ors.*¹¹, the Supreme Court in the context of the provisions of Section 48(1) read with Sections 4 and 6 of the Land Acquisition Act, 1894 had an occasion to consider the principles of delay and laches, when it was held that the appellants therein ought to have challenged the acquisition proceedings without any loss of time and having failed to do so, they were not entitled to claim any relief in the extraordinary jurisdiction exercised by the High Court under Article 226 of the Constitution. Referring to several decisions on such issue, the Supreme Court observed that the common thread running through all such decisions, was to the effect that in order to succeed in a challenge to the acquisition proceedings, the interested person must remain vigilant and watchful. It was observed that if instead of doing so, the interested person allows the grass to grow under his feet, he cannot invoke the powers of judicial review exercisable under Article 226 of the Constitution. It was observed that the failure of the interested persons to seek redressal at the appropriate stage and without undue delay, in such cases would give rise to an inference that they have waived of their objections to the acquisitions. It was held that the High Court can legitimately decline to invoke its powers of judicial review to interfere with the acquisition proceedings under Article 226 of the Constitution if the challenge to such proceedings is belated and the explanation offered a mere moonshine. The observations as made by the Supreme Court are required to be noted, which reads thus:

11 (2013) 14 SCC 304

“21. The position is no different in the instant case. The appellant owners or Mutha Associates, the builders did not file any objections or move their little finger till the making of the award by the Collector. Instead of filing of the objections, opposing the proposed acquisition before the Collector and seeking redress at the appropriate stage they remained content with making representations to the Minister which was not a remedy recognised by the statute. It was only after the Collector had made his award and after notice for taking over possession was issued by the appellants that they rushed to the civil court with a suit in which too they did not assail the validity of the declaration under Section 26(2) of the MRTP Act read with Section 6 of the Land Acquisition Act. The remedy by way of a suit was clearly misconceived as indeed this Court declared it to be so in *State of Bihar v. Dharendra Kumar* [(1995) 4 SCC 229] . The appellants could and ought to have challenged the acquisition proceedings without any loss of time. Having failed to do so, they were not entitled to claim any relief in the extraordinary jurisdiction exercised by the High Court under Article 226 of the Constitution.

22. The view taken by the Constitution Bench in *Aflatoon case* [*Aflatoon v. Lt. Governor of Delhi*, (1975) 4 SCC 285] has been reiterated by another Constitution Bench decision in *Indrapuri Griha Nirman Sahakari Samiti Ltd. v. State of Rajasthan* [(1975) 4 SCC 296] . To the same effect are the decisions of this Court in *Municipal Corpn. of Greater Bombay v. Industrial Development Investment Co. (P) Ltd.* [(1996) 11 SCC 501], *Ramjas Foundation v. Union of India* [1993 Supp (2) SCC 20] and *Larsen & Toubro Ltd. v. State of Gujarat* [*Larsen & Toubro Ltd. v. State of Gujarat*, (1998) 4 SCC 387 : AIR 1998 SC 1608] . The common thread that runs through all these decisions is that in order to succeed in a challenge to the acquisition proceedings the interested person must remain vigilant and watchful. If instead of doing so, the interested person allows grass to grow under his feet, he cannot invoke the powers of judicial review exercisable under Article 226 of the Constitution. The failure of the interested persons to seek redress at the appropriate stage and without undue delay would in such cases give rise to an inference that they have waived of their objections to the acquisitions. The bottom line is that the High Court

can legitimately decline to invoke their powers of judicial review to interfere with the acquisition proceedings under Article 226 of the Constitution if the challenge to such proceedings is belated and the explanation offered a mere moonshine as is the position in the case at hand. The High Court has in the fact situation of this case rightly exercised its discretion in refusing to interfere with the acquisition proceedings.”

47. The applicability of the decision of the Supreme Court in **State of Maharashtra vs. Digambar**¹² is apt insofar as the present proceedings are concerned, inasmuch as, on an undue delay of 20 years on the part of writ petitioner in invoking the High Court’s jurisdiction under Article 226 of the Constitution for grant of compensation of the land alleged to have been taken by the Government agencies, it was contended that the land was not at all taken. The Supreme Court observed that it could not be overlooked that it was easy to make such kind of allegations against anybody and that too against the State and in respect of the event which had occurred 20 years earlier, when the State may not at all be in a position to dispute such allegation, having regard to the manner in which it would be required to carry on its governmental functions. The Supreme Court accordingly set aside the order passed by the High Court.”

48. In **Chennai Metropolitan Water Supply and Sewerage Board & Ors. vs. T.T. Murali Babu**¹³, the Supreme Court explained the importance of the doctrine of delay and laches and what it observed that the principles of delay and laches cannot be brushed aside and that a writ Court is required to weigh the explanation offered and the acceptability of the same in a case which had four years of delay although not in the context of land acquisition. The observations of the Court on the principle of law would apply with full vigour in the facts of the present case. The Supreme Court held thus:

... ..

“16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary

12 (1995) 4 SCC 683

13(2014) 4 SCC 108

and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant — a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.”

(emphasis supplied)

49. In *Baljeet Singh (Decd.) through LR and Ors. vs. State of Uttar Pradesh & Ors.*¹⁴, the Supreme Court in considering the doctrine of delay and laches in the context of the Land Acquisition Act, made the following observations:

“7. The matter requires examination from another aspect viz. laches and delay. It is a very recognised principle of jurisprudence that a right not exercised for a long time is non-existent. Even when there is no limitation period prescribed by any statute relating to certain proceedings, in such cases, courts have coined the doctrine of laches and delay as well as doctrine of acquiescence and non-suited the litigants who approached the court belatedly without any justifiable explanation for bringing the action after unreasonable delay. In those cases, where the period of limitation is prescribed within which the action is to be brought before the court, if the action is not brought within that prescribed period, the aggrieved party loses remedy and cannot enforce his legal right after the period of limitation is over, however, subject to the prayer for condonation of delay and if there is a justifiable explanation for bringing the action after the prescribed period of limitation is over and sufficient cause is shown, the court may condone the delay. Therefore, in a case where the period of limitation is prescribed and the action is not brought within the period of limitation and subsequently proceedings are initiated

after the period of limitation along with the prayer for condonation of delay, in that case, the applicant has to make out a sufficient cause and justify the cause for delay with a proper explanation. It is not that in each and every case despite the sufficient cause is not shown and the delay is not properly explained, the court may condone the delay. To make out a case for condonation of delay, the applicant has to make out a sufficient cause/reason which prevented him in initiating the proceedings within the period of limitation. Otherwise, he will be accused of gross negligence. **If the aggrieved party does not initiate the proceedings within the period of limitation without any sufficient cause, he can be denied the relief on the ground of unexplained laches and delay and on the presumption that such person has waived his right or acquiesced with the order. These principles are based on the principles relatable to sound public policy that if a person does not exercise his right for a long time then such right is non-existent.”**

(emphasis supplied)

50. In a recent decision of the Division Bench of this Court in **Dnyanu Bhiku Tanpure (Since deceased) through LR's Suresh Dnyane Tanpure vs. Deputy Collector, Rehabilitation, Pune & Ors.**¹⁵, to which one of us (Justice G.S. Kulkarni) was a member, the petitioner had approached this Court almost after a period of 33 years of the land acquisition award being passed to assail the acquisition. The Court dismissing the petition made the following observations:

“9. On a perusal of the averments as made in the petition, there is not a whisper in regard to such gross and inordinate delay of more than 33 years in filing present proceedings of both these petitions. In any event, such a prayer which is on the basis that no notice under Section 16(2)(a) was received at the relevant time in the year 1989, is itself a disputed question of fact as the original land owners/predecessors of the petitioners appear to have not raised such issue, if that be so the petitioners are precluded from raising the same for the first time that too after such long long lapse of time. Thus, such issue cannot be gone into the present proceedings. It could not have also been agitated in a civil suit after such a long lapse of 33 years of which the petitioners are aware and for such reason, this is a chance litigation, a total abuse of the process of law. Even otherwise, it is beyond one's imagination as to how such plea as taken in the petition can at all be entertained as the plea is that the predecessor of the petitioner had not received a notice. The successor cannot maintain such assertion and a claim.”

.....

52. In **Sureshkumar Shrikisan Bhayya & Anr. vs. State of Maharashtra, through Secretary, Urban Development Dept. & Ors.**¹⁶, a Division Bench of this Court, to which one of us (Justice G.S. Kulkarni) was a member, was dealing with a case where the cause of action was being espoused after a delay of 12 years in respect of the land which had stood vested with the Municipal Corporation. Considering the objection of delay and laches in maintaining a Writ Petition, the Court observed that the petitioners have slept over their rights for a period of 12 years. The Court held that the petition being barred by the principles of delay and laches considering the principles of law as discussed in the decision of this Court in **Sansar Texturisers Pvt. Ltd. vs. Union of India & Ors.**¹⁷ and the decisions of the Supreme Court in **Shiv Dass vs. Union of India**¹⁸, **Chennai Metropolitan Water Supply and Sewerage Board vs. T.T. Murali Babu** (*supra*), **Baljeet Singh (dead) through Legal Representatives vs. State of Uttar Pradesh** (*supra*) and **Union of India vs. N. Murugesan**¹⁹ when it was held that the petition being filed with an inordinate delay was not maintainable.

53. Thus, advertent to the well-settled principles of law on the doctrine of delay and laches as applied to the facts of this case, it would be unconscionable that this Court nonetheless exercise jurisdiction under Article 226 of the Constitution to entertain a plea against the acquisition of the land in question, which had taken place in the year 1971 and 1972 and grant reliefs to the petitioner. Thus, the reliefs as prayed for, in our opinion, surpass all canons of judicial principles which are required to be adhered by the Court in exercising its extraordinary jurisdiction under Article 226 of the Constitution.”

(emphasis supplied)

25. Applying the aforesaid principles of law, we are certain that the petition needs to be dismissed on the ground of delay and laches.

26. The petitioner has urged other contentions, as noted by us. For the sake of completeness, we deal with such contentions. Mr. Kulkarni has submitted that on survey and search undertaken by the petitioner, it

16 Writ Petition No. 638 of 2021 decided on 29 February, 2024

17 2024 SCC OnLine Bom 235

18 (2007) 9 SCC 274

19 (2022) 2 SCC 25

appeared to the petitioner that land was available at New Bombay under the CIDCO lands as available under the New Bombay International Airport project. In this regard, the position has been clarified on behalf of the respondents that all such lands have stood vested with the CIDCO which is a Special Planning Authority under Section 113 of the Maharashtra Regional and Town Planning Act, 1966, and hence, no such land is available. In any event, such contention also ought not to detain us, inasmuch as, the basic entitlement of the petitioner of allotment of any alternate land itself has not been established by the petitioner, which could have been established only if the petitioner had a certificate of a live claim, being issued by the Central Government, which was the appropriate authority at the relevant time, when the allotment was alleged to have been made to the petitioner's father under the allotment letter dated 10 March 1968, such allotment is not on the record of the State Government. Moreover, the State Government had no role to play in such allotments at the relevant time as it was the authority of the Central Government, which is not a party to the petition. The State Government is an alien to any such claim being made by the petitioner. Thus, as the petitioner's assertion of any entitlement or any vested legal right, itself not being established, no relief of any allotment of land could have been prayed by the petitioner. In such context, Mr. Pabale is also correct in his contention that it cannot be

ruled out that the petitioner's father may have accepted compensation in some other manner/form, from the Government of India, and now after 56 years there are no means with the respondents to verify this, nor the petitioner has attempted to verify the same which is an impossibility after such long lapse of time. Mr. Pable in this regard has drawn the Court's attention to paragraph 4 of the rejoinder affidavit filed by the petitioner wherein it is stated that the petitioner was well aware about the land available in the Panvel area i.e. the area in New Bombay, where the petitioner's father was allotted land. Mr. Pabale's contention would be correct that if the petitioner's father was well aware, that the land in question as allotted to him at Bhokerdan was not available, and land at the relevant time was available nearby to Mumbai i.e. at Panvel and when some land at Panvel was in fact allotted to the petitioner's father, as to why the petitioner's father or for that matter the petitioner did not assert any rights, against the Government of India in regard to allotment of land at Panvel in lieu of the Bhokardan land, when at such point of time the acquisition of the land for New Bombay Project was yet to take place.

27. Thus, there is substance in Mr. Pabale's contention that the petitioner's father if at all had any rights under the allotment letter dated 18 July 1968, he had given up and/or had waived such rights. Such rights which were given up by the petitioner's father and to which the petitioner

has acquiesced for long years i.e. from the year 1972, after the petitioner's father expired, till this petition was filed in the year 2024. This certainly makes it to be a clear case, of the petitioner merely taking a chance by this litigation and in our opinion, amounting to misuse of the process of law. It appears to be a systematic *modus operandi* on the part of the petitioner to address letters as noted by us hereinabove to resurrect a dead cause of action or which was no cause of action, being the sole basis on which the present petition is filed. We may also observe that in this situation the basic requirement for the litigant to invoke the writ jurisdiction of the Court, that the petition was not barred by delay and laches was required to be explained by the petitioner in the memo of the writ petition. The principles of law in this regard are well settled. However, it is interesting to note as to how the petitioner has explained the delay and laches as averred in paragraph 37 of the petition which reads thus:

“37. The Petitioners states that there is no delay or laches in filing the present petition.”

Thus, this petition has been filed is in fact misleading. We are afraid that as a Constitutional Court we cannot permit the process of law to be abused in such manner, by entertaining the present petition.

28. Insofar as the decision as relied by Mr.Kulkarni is concerned, the

decision in **Union of India vs. International Sindhi Panchayats & Ors.** (supra) is certainly not applicable in the present facts, as there is no material whatsoever brought on record, by the petitioner to indicate that the case of the petitioner's father was in any manner pending on the date of repeal of the Displaced Persons Act in the year 2005 so as to accept any recognition of the applicability Section 6 of the General Clauses Act, 1897. Also the decision in **Ismailbhai Kansara (dead) through legal representative vs. State of Gujarat & Ors.** (supra) would not assist the petitioner. In this decision, the Court was dealing with the case of the appellant who was an encroacher of public land and who had unsuccessfully questioned his eviction before the High Court. The land in question was in fact allotted. One of the ground for eviction of the appellant was that the land was evacuee land which was unauthorisedly occupied by him and which was in fact being allotted to a displaced persons. It is in such context, the Court held that it is the displaced person who would have better right than the encroacher. We fail to understand as to how this decision would assist the petitioner.

29. Mr. Kulkarni's reliance on the decision in **Tukaram Kana Joshi & Ors Vs. MIDC & Ors.** (supra), in our opinion also does not assist the petitioner. In this decision, the case of the appellant before the High Court was a claim for compensation due to him, for the land taken by the respondent-authority without resorting to the due process of law. The proceedings as filed

by the appellant were rejected by the High Court. The respondent being an acquiring body had conceded that due procedure in law was not followed in acquiring the land. It is in such context, the Supreme Court made observations that although the possession of the land was taken way back, the facts of the case warranted a due procedure to be followed. It is in such context, the Court observed that the question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It was observed that in a situation where the demand for justice is compelling, the Courts would be inclined to interfere despite delay which is a matter within the discretion of the Court and such discretion would be required to be exercised judicially and reasonably. There can be no dispute on the principles of law as laid down by the Court. However, certainly such principles of law and considering several decisions which we have noted hereinabove, are of no avail, insofar as the petitioner's case is concerned.

30. In view of the above discussion, we have no manner of doubt that this petition is wholly misconceived, and in fact, an abuse of the process of law. We accordingly dismiss this petition. Although this is a case which would justify imposing of costs, we refrain from doing so.

(ADVAIT M. SETHNA, J.)

(G. S. KULKARNI, J.)