

Amol

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

INTERIM APPLICATION NO. 13171 OF 2024

IN

WRIT PETITION NO. 676 OF 2023

Satish Poptlal Shah & Anr ...Applicants

In the matter between

Satish Poptlal Shah & Anr ...Petitioners

Versus

The State of Maharashtra & Ors ...Respondents

WITH

WRIT PETITION NO. 676 OF 2023

Satish Poptlal Shah & Anr ...Petitioners

Versus

The State of Maharashtra & Ors ...Respondents

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**Mr Gaurav Potnis, i/b, Ms P H Potnis, for the
Petitioners/Applicant.**

**Mr A I Patel, Addl GP, with Ms M S Bane, AGP, for the
Respondent-State**

Mr R P Ojha, with Mr Rakesh Dubey, for the Respondent No.5.

**CORAM M.S. Sonak &
 Jitendra Jain, JJ.**

DATED: 21 February 2025

PC:- Per MS Sonak J

1. Heard learned Counsel for the parties.
2. This Petition is an abuse of the judicial process, and we are satisfied that it must be dismissed with exemplary costs. We record our reasons for our conclusion at the end of a substantially lengthy hearing hereafter.
3. The Petitioners claim to be businessmen/in service who have purchased property surveyed under Gut No. 152

admeasuring about H-R 00-29 at village Valvan, Taluka Maval, District Pune, from Kashibai Deshpande (said property) vide a sale deed dated 16 January 1993. This sale deed suggests that the vendor Kashibai was 93 years old and apparently had no one to succeed her at the time of the sale. The record now suggests that the said property was already acquired for railway purposes in 1947-48.

4. Based upon utterly contradictory pleadings regarding the status of acquisition and possession and showing scant regard to the Court, Court procedures and the truth, this petition has been filed to see if some profits could be made or at least the litigation pot is kept boiling for ulterior commercial purposes. There is no explanation worth the name for the extraordinary delay of 77 years in instituting this petition. Several averments are made without any proper verification or affidavits. The entire attempt is to indulge in speculation and see if some advantage is to be gained from the inordinate delay of 77 years and the possibility of old records not being readily available with the Government and the railways. We are satisfied that such kind of speculative litigation launched without any sense of responsibility and with the firm faith that perjury laws are seldom enforced, ought not to be encouraged. Instead such speculative litigation must be nipped in the bud.

5. The Petitioners, in the Petition as initially filed, sought several reliefs regarding mutations in survey records. However, by amending it vide Interim Application No. 13171 of 2024, which we are now allowing, the Petitioners virtually seek to challenge the land acquisition proceedings of 1947 for railways.

6. In the Writ Petition before its amendment, the Petitioners had applied for the following substantive reliefs: -

“a. That this Hon'ble Court be pleased to issue a Writ of Certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India calling for the record and proceeding relating to the Impugned Order No. HANO/KAVI/926/22 dated 7.6.2022 passed by the Respondent No.2 herein (Exhibit " "hereto) and after examining legality, propriety and validity thereof to quash, cancel and set aside the same to the extent of the Petitioner's Land Survey No./Gut no. 152, admeasuring at about H-R 00-29 situated at Village: Valvan, Taluka: Maval, District Pune;

b. That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India directing the Respondent No. 2 & 3 to remove the name of "Govt of India Central Railway" as "Pending Ferfar No. 3890" from the 7/12 and other land revenue records of the Petitioner's Land Survey No./Gut no. 152, admeasuring at about H-R 00-29 situated at Village Valvan, Taluka: Maval, District Pune,

c. That it be declared that the Order passed by the Respondent No. 2 on 13.10.2020 in respect of the Petitioners Land Survey No./Gut no. 152, admeasuring at about H-R 00-29 situated at Village: Valvan, Taluka Maval, District Pune, is valid, binding and subsisting

d. That this Hon'ble Court be pleased to cancel the Award Notification No. 3589/45 dated 21.7.1947 and Award Notification No. 3885/45 dated 31.3.1948, to the extent of the Petitioners land Survey No./Gut no. 152, admeasuring at about H-R 00-29 situated at Village Valvan, Taluka: Maval, District Pune, as mentioned in Ferfar No. 3890.

e. In the alternative thereto, that this Hon'ble Court be pleased to direct the Respondent No. 5 to return the Petitioners land Survey No./Gut no. 152, admeasuring at about H-R 00-29 situated at Village Valvan, Taluka: Maval, District Pune, back to them;”

7. As seen above, the reliefs relate mainly to 7/12 extract and the mutations therein. Prayer clause (d) however seeks

cancellation of Award Notification No. 3589/45 dated 21 July 1947 and Award Notification No. 3885/45 dated 31 March 1948 to the extent it concerns the said property, which the Petitioners claim to have purchased in 1993. The foundational relief in the Petition is the challenge to 1947-48 awards. The petition was so drafted as to make it appear that the disputes were live and not stale by several references to mutation proceedings and changes in survey record.

8. Still, this Petition, instituted on 14 December 2022, does not explain the extraordinary delay of 77 years. Mr Potnis, however, confidently submitted that the Petitioners were unaware of the acquisition proceedings since they were peacefully in possession of the lands they purchased in 1993. While the confidence is to be appreciated, the submission cannot be appreciated in the facts of the present case. The submission is belied by the averments in the petition and the documents accompanying the petition. The 1947-48 notifications about which no dispute is raised were published in gazettes and local papers. The petitioners who came to the scene only in 1993 cannot complain about lack of knowledge and institute and file a petition based upon such alleged lack of knowledge in 2024. Apart from the falsity, unexplained and inordinate delay and laches are sufficient reasons to dismiss this petition with exemplary costs.

9. On the aspect of the possession, we refer to the averments in paragraphs 9 and 12(x), 12(y), 12(z), 12(aa), 12(bb) and 12(cc) of the Petition. All these averments are verified by Satish Popatlal Shah as true *“to the best of my own knowledge and as per available records and are based on information and legal submissions, which I believe to be true”*.

10. Even by ignoring this grossly defective verification clause, it is apparent that the Petitioners have tried to take chances with the Court process and see whether anything could be done after 77 years about repossessing the land they purchased, possibly for speculative purposes or securing some additional compensation by taking undue advantage of their delay and banking on the loss of proper records.

11. In paragraph 9 of the Petition, there is a reference to the survey records mentioned in the awards of 21 July 1947 and 31 March 1948. In paragraph 12(x) there is a statement which begins with *“it appears that, by Award Notification No. 3589/45 dated 21 July 1947 and Award Notification No. 3885/45 dated 31.3.1948 acquired the land for constructing housing colony for the Railway staff. But the staff quarter was not constructed on the said land and the said land is acquired in excess for no rhyme or reason.”*

12. In paragraph 12(y), the Petitioners have boldly stated that since 1947, the 4th Respondent *“has not even fenced their land”*. In paragraph 12(z) the Petitioners have boldly pleaded that the 5th Respondent *“ought to have returned the said land of the Petitioners back to them, if it is in access and it is not used since acquisition of the land in 1947”*.

13. In paragraph 12(bb), the Petitioners, who were possibly not even born in 1947, have pleaded that *“the compensation was neither paid to the original owner of the said land nor other owners too, whose survey numbers are mentioned in Ferfar 3890.”* Even this averment is verified as true to the Petitioner’s own knowledge.

14. In paragraph 12(cc), the Petitioners have pleaded that without prejudice to the above, *“the Petitioners have become owners by the law of adverse possession, as the Petitioners are owners of the land for more than 12 years”*.

15. In the schedule to the Interim Application by which additional paragraphs were sought to be introduced by way of amendment and which we have allowed, a completely different case is sought to be pleaded, again, with scant regard to Court procedures and the truth.

16. Now, the Petitioners, in paragraph 11(A) of the Interim Application, admit about Section 4 notifications of 21 January 1947 and Section 6 notification dated 23 January 1947. They also referred to a corrigendum dated 28 March 1947. They also referred to the invocation of the urgency clause under Section 17 of the Old Land Acquisition Act of 1894. Still, surprisingly, a bold averment is made: *“Symbolic possession came was taken under Section 17 of the said Act. Section 9 was published on 16/04/1947. The Petitioners state that there was no final Award declared in respect of the said Land.”*

17. The Petitioners have incidentally annexed the award along with the interim application. But it is now claimed that this award was not signed, and therefore, Mr Potnis argued that this was only a draft award. After 77 years the Petitioners based on so-called personal knowledge alleged that no final award was ever declared and therefore, this land was never acquired or in any event, because the railways have not used this land for the purpose for which it was acquired, the acquisition has lapsed. Even regards with later contention, there is absolutely no material, and this Petition is nothing but

a dishonest attempt to take chances and see whether something can be derived from this property which, in all probabilities, was purchased for speculative purpose.

18. In paragraph 11(E) a bold statement has been made that the acquisition proceedings “*have never been completed till today*” or that “*the land has never been acquired*”. Finally, this paragraph states “*the possession of the land continues to be with the Petitioners*”.

19. As noted earlier, the Petitioners, without any regard for the truth have been making mutually inconsistent and contradictory averments on the aspect of the acquisition and possession. On one hand, they admit that the property is with the railways though according to them the railways may not have fenced this property. On the other hand, there is an assertion of they being in possession of the property.

20. In the original Petition, there are prayers for restoration of possession. At another place, there is a claim of adverse possession. Thus, the Petitioners claim ownership by title and by adverse possession. The Petitioners claim to be in possession and at the same time, seek restoration of possession. All this is backed by no cogent material and not even proper affidavits and verification.

21. In paragraph 11(F) there is a reference to fencing but it is alleged that this fencing is recent i.e. of 1st week of May 2024. Apart from the disputed questions of fact, it is apparent that the entire aim of instituting this Petition is to see whether something can be got out of this land by taking advantage of the fact that the acquisition was of the years 1947-48.

22. There is absolutely no explanation for this inordinate delay. The Petitioners who have come to the scene only in 1993 could possibly know nothing about what transpired between the then government/railway authorities and the owners from whom they have purchased this property. But this has not deterred the petitioners from making bold, irresponsible and unverified, inconsistent, confusing and mutually destructive pleadings, fully convinced that there was not much to loose but, lot to be gained by simply taking chances.

23. From the documents placed by the Petitioners on record, there are no serious reasons to doubt that the acquisition was completed in 1947-48. In any event, the Petitioners who came to the scene only in 1993 cannot, at this belated stage, try to point out some loopholes in the acquisition process of 1947-48. Even the averments about non-user are false and, in any event, inspire no confidence whatsoever. Writ Petitions cannot be filed by raising mutually destructive pleas without any sense of responsibility.

24. The pleadings cannot be made casually without any evidence to support them. In this case, even the disputes about survey records, etc., are raised only to keep the pot boiling. At least such frivolous and speculative litigation cannot be prolonged with the assistance of the Writ Court. Writ jurisdiction is discretionary, and the Petitioners' conduct is crucial. Delay, laches, and disputed questions of fact are all matters that we cannot ignore when it comes to exercising discretionary jurisdiction under Article 226 of the Constitution.

25. Almost two hours of valuable judicial time was taken up by this matter given the pleadings, documents and arguments. [This is excluding the time consumed on the previous dates]. To us, it was apparent that the entire objective behind the institution of this petition was to speculate or take chances with the judicial process. There was not the slightest apprehension of the consequences of making false and contradictory claims or statements. There were no qualms for consuming valuable judicial time in challenging an acquisition after an inordinate delay of 77 years. The petitioners exuded confidence that they had nothing much to lose by embarking upon such a misadventure, but there could be some chance to make profits should the venture succeed. This kind of attitude and litigations are at the cost of genuine litigation that calls for the judicial attention.

26. For all the above reasons, we are satisfied that this petition has no merit. We dismiss it even after allowing the amendment application and considering the contradictory amended pleadings. The petitioners must pay exemplary costs of Rs.2,00,000/—within four weeks from today. The Interim Application is disposed of, and the amended petition is dismissed.

27. At this stage, Mr Potnis requests eight weeks' time to pay the costs. Agreeing to this request, we direct that the cost be paid to the Sassoon Hospital and B. J. Medical College, Government Hospital at Pune. The Petitioners must file proof of payment in this Court on or before 30 April 2025. A copy of such proof must be furnished to Mr. Ojha and Mr. Patel, learned Counsel for the Respondents.

28. All concerned must act on an authenticated copy of this order.

(Jitendra Jain, J)

(M. S. Sonak, J)