IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12503 OF 2015
WITH
CIVIL APPLICATION NO. 13592 OF 2022
AND
CIVIL APPLICATION NO.3767 OF 2025

1. **Mohammad Abdul Moeed**
s/o Mohammad Abdul Karim,
Age : 73 years, Occu.:Retired,
R/o.Mehboob Nagar, Arif Colony,
Plot No. 25, Aurangabad,
Tq. and Dist. Aurangabad.

2. **Syed Faizunissa Begum w/o**
Syed Navazish Ali (Died Through Legal Heirs)

2-A. **Syed Mustafa Ali s/o Syed Navazish Ali,**
Age : 71 years, Occu.: Retired,
R/o. Ganesh Nagar, Rashidpura, Aurangabad,
Tq. and Dist. Aurangabad.

2-B. **Abed Ali s/o Syed Navazish Ali,**
Age : 70 years, Occu.: Business,
R/o. Alamgir Colony, Aurangabad,
Tq. and Dist. Aurangabad.

2-C. **Syed Ahmed Ali Ali s/o Syed Navazish Ali,**
Age : 67 years, Occu.: Nil,
R/o. Alamgir Colony, Aurangabad,
Tq. and Dist. Aurangabad.

2-D. Syed Javed Ali Ali s/o Syed Navazish Ali,
Age : 53 years, Occu.: Business,
R/o. Alamgir Colony, Aurangabad,
Tq. and Dist. Aurangabad.

2-E. Syed Asef Ali s/o Syed Navazish Ali,
Age : 55 years, Occu.: Service,
R/o. Bri Baug, Harsul, Aurangabad,
Tq. and Dist. Aurangabad.

2-F. Syed Junid Ali s/o Syed Navazish Ali,
Age : 50 years, Occu.: Service,
R/o. Ganesh Nagar, Rashidpura, Aurangabad,
Tq. and Dist. Aurangabad.

2-G Parveen Sultana w/o Yusufddin,
Age : 59 years, Occu.: Household,
R/o.Khultabad, Tq. Khultabad, Dist. Aurangabad.

2-H. Shamimunissa Begum Ali w/o late Samruddin,
Age : 61 years, Occu.: Household,
R/o. Sohel Park, Aurangabad,
Tq. and Dist. Aurangabad.

2-I. Ahmedunissa Begum Ali w/o Zafar Khan,
Age : 57 years, Occu.: Household,
R/o Alamgeer Colony, Aurangabad,
Tq. and Dist. Aurangabad.

3] Mohammad Abdul Rashid
(Died Through Legal heirs)

3-A. Birjees Jahan w/o Mohammad Abdul Rashid,
Age : 65 years, Occu. : Household,

R/o. Chous Colony, Aurangabad.
Tq. and Dist. Aurangabad.

3-B. Mohammad Abdul Sajeed
s/o Mohammad Abdul Rashid,
Age : 45 years, Occu. : Service,
R/o. Chous Colony, Aurangabad.
Tq. and Dist. Aurangabad.

3-C. Nuzhad Rashid w/o Fawad Ahmed,
Age : 40 years, Occu. : Household,
R/o. Chous Colony, Aurangabad.
Tq. and Dist. Aurangabad.

3-D. Rahat Rashid d/o Mohammad Abdul Rashid,
Age : 35 years, Occu. : Household,
R/o. Delhi Gate, Aurangabad.
Tq. and Dist. Aurangabad.

4] Mohammad Abdul Wahid
(Died Through Legal heirs)

4-A. Nafisabanu w/o Mohammad Abdul Wahid,
Age : 72 years, Occu. : Household,
R/o. House No. 1-9-95, Jaisingpura,
Behid Monu Hotel, Near University Gate,
Aurangabad.

4-B. Rashid s/o Mohammad Abdul Wahid,
Age : 42 years, Occu. : Service,
R/o. House No. 1-9-95, Jaisingpura,
Behid Monu Hotel, Near University Gate,
Aurangabad.
At Present : Oslo, Norway, Represented
Through application No. 4-A.

4-C. **Mohammad Abdul Phahad s/o Mohammad Abdul Wahid,**
Age : 39 years, Occu. : Service,
R/o. House No. 1-9-95, Jaisingpura,
Behid Monu Hotel, Near University Gate,
Aurangabad.
At Present : Dubai, U.A.E., Represented
Through application No. 4-A.

4-D. **Mohammad Irshad s/o Mohammad Abdul Wahid,**
Age : 36 years, Occu. : Service,
R/o. House No. 1-9-95, Jaisingpura,
Behid Monu Hotel, Near University Gate,
Aurangabad.

4-E. **Sana d/o Mohammad Abdul Wahid,**
Age : 34 years, Occu. : Household,
R/o. House No. 1-9-95, Jaisingpura,
Behid Monu Hotel, Near University Gate, Aurangabad.

5. **Triveni w/o Sharadrao Gavane,**
Age : 72 years, Occu. : Household,
R/o. Ajabnagar, Aurangabad.
Tq. and Dist. Aurangabad. **...PETITIONERS**

VERSUS

1. **The Municipal Corporation,**
Through its Municipal Commissioner,
Aurangabad.

2. **The State of Maharashtra,**
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai. **...RESPONDENTS**

Mr. Chandrakant R. Thorat a/w. O. D. Totawad, Y. D. Joshi, Satyam Kumar, Advocates for the petitioners.
Mr. Ameet R. Vaidya, Advocate for the Respondent No.1.
Mr. P. S. Patil, Advocate for the Respondent/State.

CORAM : KISHORE C. SANT,
JITENDRA S. JAIN, JJ
RESERVED ON : 10th AUGUST, 2026
PRONOUNCED ON : 27th OCTOBER 2026.

JUDGMENT :- [PER:- KISHORE C. SANT J.]

1] Heard, learned Advocate Mr. Thorat for the petitioners, learned Advocate Mr. Vaidya for the Respondent-Corporation and learned AGP Mr. Patil for the respondent-State. Rule was granted by this Court vide order dated 08/01/2020.

2] This writ petition is filed by the owners of the land from CTS No. 16030, situated at Osmanpura, Aurangabad, seeking directions to the Municipal Corporation, Aurangabad to pay compensation in lieu of the land acquired to the extent of 1350 sq.mtrs. used for Development Plan Road (for short “DP Road”) and area used for open space out of the said CTS to the extent of 1090 sq.mrts.

3] Respondent No.1 is the Municipal Corporation, Aurangabad, Respondent No.2 is the State of Maharashtra through Secretary Urban Development Department.

4] The facts as stated in the petition are that the present petitioners have purchased the property CTS No. 16030, situated at Osmanpura, Aurangabad from the original owner namely Mustaq Ali Baig s/o. Mohammad Ali Baig. A total land purchased was 4 acres as mentioned in the sale-deed. The original petitioner and his two brothers were having 10 annas share jointly and one Smt. Faiyazuddin w/o. Sayyed Nawajish Ali and Smt. Trivenibai w/o. Sharad Gavane were jointly having 6 Annas share. It is the case that the petitioners had applied for sanction of layout plan in Survey No.49 a Part of CTS No.16030 in the year 1984. By order dated 18.10.1984, the layout plan came to be sanctioned. The condition was however put on the owners that they have to relinquish part of the road and the open space in the layout in favour of the Corporation. In view of above condition, the owner executed deed of relinquishing their rights in respect of open space and the land used for internal road in favour of respondent No.1.

An agreement came to be executed to that effect. In the agreement however, it was agreed that the respondent No.1 would pay compensation of the area affected by DP road or any other road which would be constructed by the Corporation.

5] It is alleged that around 20-25 years back, respondent No.1 without following due process of law, constructed DP road to the extent of 1350 squre meter. No compensation was paid even to the extent of open space land. The petitioners thus have approached this Court stating that they have right over the property of CTS No.16030, situated at Osmanpura, Aurangabad. The land is taken for construction of development of DP road from their lands. The petitioners would be entitled to get the compensation towards the said land. It is their case that even for the open space in the layout, the petitioners would be entitled to receive the compensation. Since the Corporation has not paid the compensation, the petitioners have approached this Court.

6] Mr. Thorat, learned Advocate for the petitioners vehemently argued that there is a right vested in the petitioners under Article 300-A

of the Constitution of India to have the property. The right is a statutory right and non one can be deprived of the land without payment of compensation. He relies on the following judgment and orders passed by the Hon'ble Apex Court and by this Court:

(i) *Tukaram Kana Joshi and Ors. Thr. Power of Attorney Holder Vs. M.I.D.C. and Ors.*[1]
(ii) *Vidya Devi Vs. State of Himachal Pradesh*[2]
(iii) *Avtarsingh s/o. Indersingh Sodhi Vs. The State of Maharashtra and Anr. and connected matter*[3]*;*
(iv) *Hari Krishna Mandir Trust Vs. State of Maharashtra and Ors.*[4]

7] Mr. Vaidya, the learned Advocate for respondent No.1-Corporation, vehemently argued that the petitioners have no right to claim any compensation. The original petitioners executed agreement in favour of the Corporation long back and have surrendered their rights in the property. Even as per the petitioners, the land is taken in possession prior to 20-25 years. There is no averment as regards the delay and laches. After lapse of so many years, the petitioners cannot

1 AIR 2013 SC 565
2 AIR 2020 SC 4709
3 WP/5179/2003
4 2021 (4) Mh.L.J. 662

claim compensation. The petitioners have not shown their right in the property. There are no documents showing ownership of the petitioners. He relied upon the judgment in the case ***State of Maharashtra Vs. Digambar***[5].

8] This Court has considered rival submissions. So far as factual aspects are concerned, there is no dispute. To the reply, there is additional rejoinder filed. This Court thus only has to consider as to whether the petitioners are entitled to get any relief as prayed for by the petitioners. Though it is argued by the Corporation that petitioners have not placed on record documents of ownership, it is not seriously disputed.

9] This Court in various matters which are referred to above have taken a view based on the judgments of the Hon'ble Supreme Court that even if a person has relinquished his rights over the property at the time of obtaining sanction layout from the Municipal Corporation still would be entitled to get compensation. In the said land when the

5 AIR 1995 SC 1991 (1)

land is affected because of the DP road, the owner is also entitled to get compensation for the open space as he has surrendered the said land in favour of Corporation.

10] This Court in the case of ***Avtarsingh s/o. Indersingh Sodhi*** (supra) has elaborately discussed the law on this point and the provisions of Maharashtra Regional Town Planning Act. It is held in the said case that though there is relinquishment deed executed by the petitioners therein in respect of the land including road, open space, DP road etc., still the owner would be entitled to receive the compensation for such land. In the said case it was directed to pay a compensation to the petitioners by considering the rate as per the ready reckoner prevailing on the date on which the Court directed the Corporation to deposit the compensation in the Court. It was further directed to pay interest at the rate of 12% per annum till the date of actual payment. The payment was directed to be made within a period of six months. The Hon'ble Apex Court in SLP (C) No. 17389/2015 has confirmed the order passed in the case of Avtarsingh s/o. Indersing Sodhi.

11] The respondent/Corporation relied upon the judgment in the case of ***State of Maharashtra Vs. Digambar*** (supra). In the said case, the petition was rejected by the High Court on the ground of delay and laches. The Hon'ble Apex Court had allowed the Appeal and set aside order of the High Court. There was undue delay of 20 years on the part of the petitioners in approaching the High Court. It was held that when the writ petitioner is guilty of laches or undue delay in approaching the High Court, it dis-entitles the writ petitioner to get discretionary relief. One of the argument that was advanced in the said case by respondent/original petitioners was that in similar matters the High Courts directed to pay the compensation. SLPs were preferred however those SLPs were dismissed and therefore in some matters no SLP's were filed by the State. The Hon'ble Apex Court held in para Nos.14 and 15 reads as under:

> *"14. We are unable to appreciate the objection raised against the prosecution of this appeal by the appellant or other S.L.P's filed in similar matters. Sometimes, as it was stated on behalf of the State, the State Government may not choose to file appeals against certain judgments of the High Court rendered in Writ petitions when they are considered as stray cases and not worthwhile invoking the*

discretionary jurisdiction of this Court under Article 136 of the Constitution, for seeking redressal therefor. At other times, it is also possible for the State, not to file appeals before this Court in some matters on account of improper advice or negligence or improper conduct of officers concerned. It is further possible, that even where S.L.P's are filed by the State against judgments of High Court, such S.L.P's may not be entertained by this Court in exercise of its discretionary jurisdiction under Article 136 of the Constitution either because they are considered as individual cases or because they are considered as cases not involving stakes which may adversely affect the interest of the State. Therefore, the circumstance of the non-filing of the appeals by the State in some similar matters or the rejection of some S.L.P's in limine by this Court in some other similar matters by itself, in our view, cannot be held as a bar against the State in filing an S.L.P. or S.L.P's in other similar matter/s where it is considered on behalf of the State that non-filing of such S.L.P. or S.L.P's and pursuing them is likely to seriously jeopardaise the interest of the State or public interest.

15. In any event, in our considered view, the non-filing of appeals before this Court by the State in similar matters or rejection of S.L.P's by this Court in limine or otherwise in similar matters, by themselves cannot operate as a bar or a fetter for this Court in entertaining S.L.P's subsequently filed even if they are considered to relate to similar matters where it finds, as in this case, that the High Court was wholly wrong in granting relief of compensation to a writ petitioner by the judgment under appeal by not considering his entitlement for such relief under Article 226 of the Constitution on account of laches or undue delay on his part or where such wrong judgment is followed for granting similar relief by rendering 191 judgments, which are the subject of S.L.P's in this Court and where there is every possibility of the High Court granting similar relief at the instance of persons who may go before it with similar complaints, which ultimately may result in the estimated loss of Rs. 400 crores to the State, as stated on behalf of the State, and cause grave injustice to the interests of the State. Hence, non-filing of appeals before this Court against certain

judgments of the High Court or rejection of appeals filed before this Court against certain judgments of the High Court, cannot be held to come in the way of exercise of this Court's wide discretionary power, with which it is especially invested under Article 136 of the Constitution of entertaining an appeal or appeals against a similar judgment or judgments at the instance of an aggrieved party including the State when it is found necessary to remedy manifest injustice. Therefore, the fact that the State has failed to file appeals in similar matters or this Court has rejected S.L.P's in similar matters, cannot be held to be a total bar or a fetter for this Court to entertain appeals under Article 136 of the Constitution against similar judgments of High Court where need to entertain such appeals is found necessary to meet the ends of justice, in that, the ambit of power invested in this Court under Article 136 allows its exercise, where-ever and whenever, justice of the matter demands it for redressal of manifest injustice. When by an order, already adverted to by us, a two-Judge Bench of this Court, has got referred the S.L.P out of which the present appeal has arisen for being entertained and decided on merits by a three-Judge Bench of this Court, notwithstanding the rejection of S.L.P's by another two-Judge Bench of this Court in similar matters, it has desired the exercise of this Court's wide power under Article 136 of the Constitution to meet the ends of justice and remedy the manifest injustice caused to the State by the judgment of the High Court under Appeal, cannot be overlooked."

12] Thus, it was held that non-filing of the appeals by the State or rejection of the SLP's in limine will not operate as a bar to file SLP by the State. The Hon'ble Apex Court can still entertain the appeals by granting leave under Article 136 of the Constitution of India against similar judgments of the High Court in case it was found necessary.

13] In the present case, the writ petition is filed in the year 2015. In the petition, no date of acquisition of the land is shown. It is only stated that prior to 20-25 years the road was constructed and the compensation is sought. The question therefore in the present writ petition is about whether a writ can be entertained after delay and laches on the part of the petitioners. In the petition, it is stated that the petitioner was out of country for most of the time for his employment, and therefore, he could not approach earlier. Alongwith the petition, the petitioner has annexed copy of representation dated 17.06.2015. In the said representation also it is shown that the land of the petitioner of 1350 sq.mtrs. is taken in possession by the respondent-Corporation for construction DP road. However, no consideration is paid though there is a clause (6) in the letter of sanction of the layout. There is nothing to show that petitioner had at any time before the said date has approached the authorities. In the petition one more reason given in delay and laches, since the road was used for public at large, no objection was raised. This Court finds that such reason can hardly be accepted for approaching the Court after delay of more than 25 years.

14] This Court in ***Parvati Sahakari Gruhnirman Sanstha Through GPA holder Vs. The State of Maharashtra and Ors.***[6] the Court considered the judgment in the case of ***State of Maharashtra Vs. Digambar*** (supra), however, still granted compensation holding that mere delay is no reason to deny a person their right to receive compensation.

15] The respondent-Corporation also relied upon the judgment in the case of ***Pt. Chet Ram Vashist (Dead) By Lrs. Vs. Municipal Corporation of Delhi***[7]. The Hon'ble Apex Court held that even if in layout open space is reserved for public purpose i.e. park, school etc., the condition to sanction that the said land reserved shall vest in the Corporation free of cost is held to be illegal and invalid.

16] The petitioner relied upon the judgment in the case of ***Vidya Devi*** (supra), wherein the Hon'ble Apex Court upheld the right under Article 300-A of the Constitution of India. In that case also land owner, whose land was forcibly taken in possession, approached the Court after much delay. The Court considered the judgment in the case of

6 WP/8195/2023
7 (1995) 1 SCC 47

Tukaram Kana Joshi and Ors. (supra), and considering all the aspects still directed the State to pay compensation on the same terms as awarded by the Reference Court in case of adjoining land.

17] This Court even in the case of *Avtarsingh s/o. Indersingh Sodhi* (supra) where the petitioner had approached after more than 10 years directed to pay the compensation at the rate as prevailing in the market as on the date of taking over the possession. In the said case, the respondent-Corporation was directed to pay compensation alongwith interest at the rate of Rs.12% per annum. However, considering the bank rate now, this Court finds it appropriate to direct to pay at the rate of Rs.6% per annum.

18] This Court thus finds that it would be a proper course to direct the Corporation to deposit the amount of the compensation at the rate as on the date of vesting of the land in Corporation. The said exercise be done within six (6) months from today. The amount to carry interest at the rate of 6% per annum till the date of payment.

19] Considering all these, this Court finds even in the present case that a case is made out to allow the writ petition. Writ petition

stands allowed.

20] The respondent/corporation shall pay the compensation to the petitioners in the land to the extent of 1350 sq.mtr. affected by D.P. Road and open space as per rate prevailing in the market on the date of taking possession on the land.

21] So far as land in open space is concerned, parties to get the land first measured, the Corporation thereafter to pay the compensation as per market value prevailing on the date of passing of the sanction lay out with 6% interest per annum.

22] The amount be deposited within a period of six (6) months in the office of this Court.

23] Rule made absolute in above terms.

24] In view of disposal of writ petition, pending civil applications if any, also stand disposed off.

[JITENDRA S. JAIN, J.] **[KISHORE C. SANT, J.]**

D.A.ETHAPE (P.A.)