

(2023) 07 BOM CK 0070
In the Bombay High Court
Case No : Writ Petition No.3883 Of 2022

Tatoba Rama Chavan

APPELLANT

Vs

Collector, Kolhapur District, Kolhapur

RESPONDENT

Date of Decision : 26-07-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Maharashtra Project Affected Persons Rehabilitation Act, 1989 — Section 10, 11, 12,
13, 14, 15, 16, 17, 17(6), 18, 19, 21, 23, 23(2), 26
Maharashtra Project Affected Persons Rehabilitation Act, 1989 — Section 28

Citation : (2023) 07 BOM CK 0070

Hon'ble Judges : G.S. Kulkarni, J;Jitendra Jain, J

Bench : Division Bench

Advocate : Pradeep D. Dalvi, M.S. Bane

Final Decision : Dismissed

Judgement

Jitendra Jain, J

1. By this petition under Article 226 of the Constitution of India, the Petitioner, has prayed for the following reliefs:-

(a) Your Lordship may be pleased to issue an appropriate writ, order or direction and direct the Respondents to allot 60R. agricultural land as a shortfall as a Project Affected Person, as per Demand Application dated 17.1.2020, Exhibit "B" to the petition filed by the Petitioner;

(b) pass such other and further order as this Hon'ble Court may deems fit and proper in the facts and circumstances of the case."

2. It is the Petitioner's case that her (late) father owned land admeasuring 1H. 0.49R. from Gat number 166 at Village Bambarde. The said land was acquired in 1983 under the Land Acquisition Act for constructing dam and, in lieu thereof, 0.60R land was allotted at Village Ekondi. As per the Maharashtra Project Affected Persons Rehabilitation Act, 1999, her late father was entitled to 1H.

0.20R. land whereas only 0.60R. land was allotted. Therefore, she is entitled to balance 0.60R. Land, which she had claimed vide application dated 17th January 2020 and, till today, she has not been allotted the shortfall land of 0.60R. nor her application dated 17th January 2020 is considered till date.

3. The Respondents have contended that this petition is not maintainable on account of gross delay and laches inasmuch as the Petitioner is seeking benefits under an award made under the Land Acquisition Act in the year 1983 and there is no explanation for making an application in the year 2020, which is after a period of 37 years of passing the award. It is further contended that even if the year 1999 is considered, the application made to Respondent No.1 is after more than 20 years and which delay has not been explained. It is, hence, contended that the petition be dismissed on account of gross delay.

4. We have heard learned Counsel for the Petitioner and the Respondents and have also perused the record.

5. The land of the Petitioner's father was acquired in the year 1983. At the relevant time, the Maharashtra Resettlement of Project Displaced Persons Act, 1976 ("1976 Act") was in force. Section 10 of the said Act provided that the State Government shall resettle as many displaced persons as possible on land in the benefited zone or in other villages or areas in accordance with the provisions of the said Act and the rules made thereunder. Section 11 provided for notification declaring that the provisions of this Act shall apply in relation to the project specified in the notification and the said declaration shall also be published in the villages or areas, which are likely to be affected. Section 12 of the said Act restricted transfer, sub-division or participation of land in the benefited zone except with the permission of the State Government. Section 13 provides for assessment of extent of land from which persons have been displaced and the extent of land available for resettlement. After the said assessment, under Section 14, the State Government is to notify the area, which is required for the project and which would be adversely affected by the project and also invite objections and suggestions to the same. Section 15 provides for final declaration of affected zone and benefited zone and power to make changes in such zones by the State Government. Section 16 provides that the State Government may enter into an agreement with any person for the purchase or exchange of any land required for carrying out the purposes of the Act. Section 16 also empowers the State Government to compulsorily acquire land under the Land Acquisition Act and the said acquisition is deemed to be a public purpose within the meaning of the Land Acquisition Act. Section 17 provides for extent of land to be granted to displaced persons. According to the provisions of Part I of Schedule B of the said Act and subject to such conditions as may be prescribed. Section 17(6) provides that in granting alternative land to a displaced person, the value of such land shall ordinarily be of the said amount, which the displaced person has received in respect of his land in the affected zone, which is acquired for the project. Section 18 provides for payment of occupancy price by the

affected persons. The occupancy price shall be payable in such manner and in lumpsum or in such installment as may be prescribed. Section 19 provides for calling upon the displaced persons in the affected zone to intimate whether they require land for resettlement on occupancy price provided under Section 18, and if so, to submit a statement containing the particulars specified therein. Section 21 of the said Act provides for publication of scheme and sanctioning of the scheme for resettlement. Section 23 of the said Act provides for grant of land to the displaced persons on payment of occupancy price. Section 23(2) provides for consequences of non-payment of occupancy price which inter alia includes the displaced person having forfeited his right to the grant of the land as provided in the sanctioned scheme.

6. Thus, on a perusal of the legislative scheme of the 1976 Act, the cause of action to claim the land by the Petitioner's father accrues when the land was acquired in 1983 and on fulfillment of various conditions specified in the Act, including the condition of payment of occupancy price. The 1976 Act is a self contained Code in itself. The statutory mechanism to provide alternate land under 1976 Act requires the Government to estimate the requirements of the project affected persons and, accordingly, take corresponding steps to make the land available as per the valid applications after considering their eligibility. It is not countenanced that a project affected person or his successors for all time to come and/or in perpetuity are entitled to stake a claim for allotment of an alternate land. It is not expected that if a belated claim is made, the Government would be obliged to reopen everything and grant such application. Such reading of the provisions of the 1976 Act would defeat the entire legislative scheme, which is not open indeed as seen from the provisions of the Act.

7. This apart we are in the year 2023; In the past 50 years, the statutory scenario has also undergone substantial change. Much water has flown under the bridge as the State legislature in the year 1989 enacted the Maharashtra Project Affected Persons Rehabilitation Act, 1989 and thereafter the Maharashtra Project Affected Persons Rehabilitation Act, 1999 came to be enacted. Thus, the 1976 Act was repealed by Section 26 of the Maharashtra Project Affected Persons Rehabilitation Act, 1989 ("1989 Act"). The 1989 Act also contained provisions for acquisition of land, rehabilitation and grant of the land to the displaced persons as that of 1976 Act. Section 16 of the 1989 Act provides that an eligible affected person desirous of getting land may make an application to the Collector in the prescribed form for grant of land and subject to the payment of occupancy price, the land would be granted. However, if the displaced persons failed to deposit the occupancy price, then an affected person forfeited his right to get the land. The 1989 Act was repealed by Section 28 of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 ("1999 Act").

8. The Petitioner in the present petition is blissfully silent on several basic requirements for her to maintain this petition. She has not made any averments as to whether any occupancy price was paid by the Petitioner's father and any

other preconditions required for grant of land were complied with. The process of acquisition is over in the year 1983 itself. In the absence of the same, coupled with the fact of no explanation for the delay, it cannot be said that the Petitioner has made out even a prima facie case. On the contrary, it appears on the face of it a dead/stale claim is sought to be revived by filing the present petition.

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 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.

11. In the case of *C. Jacob vs. Director of Geology & Mining & Anr.* AIR 2009 Supreme Court 264. the Supreme Court have observed in para 6 as under:

"6. Let us take the hypothetical case of an employee who is terminated from service in 1980. He does not challenge the termination. But nearly two decades later, say in the year 2000, he decides to challenge the termination. He is aware

that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before Tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition before the Tribunal/High Court seeking a direction to the employer to consider and dispose of his representation. The Tribunals/High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any 'decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

7. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim.

8. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of 'acknowledgment of a jural relationship' to give rise to a fresh cause of action.

9.

10. We are constrained to refer to the several facets of the issue only to emphasize the need for circumspection and care in issuing directions for 'consideration'. If the representation is on the face of it is stale, or does not contain particulars to show that it is regarding a live claim, courts should desist from directing 'consideration' of such claims."

12. In our view, the facts of the present case is similar to the facts before the Supreme Court with respect to the delay and laches and, therefore, the decision of the Supreme Court in the case of C. Jacob (supra) squarely applies to the present case.

13. The above referred decision in the case of C. Jacob (supra) has been followed by the Supreme Court in the following cases:

(i) Union of India & Ors. vs. C. Girija & Ors.. (2019) 15 SCC 633

(ii) State of Uttaranchal & Another vs. Shiv Charan Singh Bhandari & Ors. (2013) 12 SCC 179.

(iii) Union of India And Others vs. M.K. Sarkar(2010) 2 SCC 59.

14. We may also note the decision of the Supreme Court in case of The Govt. of India & Anr. vs. P. Venkatesh Civil Appeal No.2425 of 2019 (@ SLP (C) No.5810 of 2017), New Delhi, March 01, 2019 wherein with respect to delay in pursuing the remedy, the Supreme Court has refused the relief to the litigant in pursuing its remedy after huge delay from the date of cause of action.

15. The present petition is filed to claim benefit under the 1999 Act. However, the Petitioner has failed to state in the petition as to how the provisions of 1999 Act are applicable for the acquisition made in the year 1983 when the 1976 Act was prevalent and thereafter, the 1989 Act. Therefore, in our view, the present petition also does not make out any case in support of the relief as prayed for.

16. In our view, allowing the consideration of the claim made by the Petitioner before the Authority or before this Court would be reviving a claim which has already come to an end, when the whole process of acquisition of land was over. Therefore, in our view, the present petition and the representation made to the Authorities is only to revive the dead/stale claim which this Court cannot be allowed in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India after a period of more than three decades.

17. In view of above discussion, the petition is not maintainable on account of unexplained delay and failure of the Petitioner to make out a stateable case in support of the relief sought for.

18. Petition dismissed. No costs.