IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7244 OF 2018

1. Nizamuddin Husainsaheb Pirjade
   Age : 71 Occu : Agriculture
2. Lajam Badesaheb Pirjade
   Age : 67 Occu : Agriculture
3. Molaali Badesaheb Pirjade
   Age : 63 Occu : Agriculture
4. Shahanawaj Badesaheb Pirjade
   Age : 56 Occ : Agriculture
   All R/o Fakirwadi, Tal. Shirala,
   Dist. Sangli. .... Petitioners

Versus

1. The State of Maharashtra
   Through its Revenue
   and Rehabilitation Department
2. The Divisional Commissioner,
   Pune Division, Pune
3. The Collector, Sangli,
   Dist. Sangli.
4. Special Land Acquisition Officer
   No.IX Sangli, Dist. Sangli.
5. District Resettlement Officer,
   Sangli. .... Respondents

Mr. Umesh R. Mankapuare *a/w. Mr. Sumit Khaire for Petitioner.*

Ms. P.N. Diwan, *AGP for Respondent Nos.1 to 5-State.*

CORAM : G.S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.

Reserved on : August 29, 2024

Pronounced on : October 25, 2024

JUDGEMENT (*Per, Somasekhar Sundaresan, J.*) :

1. Rule. The Respondents waive service. By consent of parties, Rule is made returnable forthwith, and the Writ Petition is taken up for final hearing and disposal.

2. This Petition, filed in 2018, is essentially a challenge to an order passed by the Respondent No. 2, Divisional Commissioner, Pune Division, in January 2006[1], rejecting a revision application filed by the Petitioners under Section 48(1) of the Land Acquisition Act, 1894 ("***the Land Acquisition Act***"). The primary prayer in this Petition was for a declaration that the acquisition had lapsed by reason of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("***2013 Act***"). However, it has been fairly stated that this prayer is not being pressed by reason of the law declared on the subject by the Supreme Court. Instead, the Petitioners seek a declaration that the acquisition was illegal owing to wrong computation of the agricultural land in their ownership.

3. The matter at hand has had a chequered history. Essentially, the matter involves land originally owned by one Mr. Babasaheb

[1] *Originally, the prayer in Paragraph 30(b) of the Petition referred to this order as being passed in June 2006, while the amended and added prayer at Paragraph 30(bb) provides a date of February, 2006. However, the order, appended before and after the Petition was amended to bring on record documents received under the Right to Information Act, 2005, shows the typed date simply as January 2006 (without a date) but it appears to have been signed on February 8, 2006.*

Khadirsaheb Pirjade, whose grandchildren are the four Petitioners in this Petition, namely, Mr. Nizamuddin Husainsaheb Pirjade, Mr. Lajam Badesaheb Pirjade, Mr. Molaali Badesaheb Pirjade and Mr. Shahanawaj Badesaheb Pirjade. According to the Petitioners, Mr. Babasaheb Khadirsaheb Pirjade's total holding of agricultural land was about 10 hectares and 99 Ares.

4. Upon the demise of Mr. Babasaheb Khadirsaheb Pirjade on September 6, 1975, one son Mr. Husainsaheb Pirjade (the father of Petitioner No.1) is said to have come into possession of agricultural land admeasuring 5 Hectares and 54 Ares, whereas the other son Mr. Badesaheb Pirjade (father of Petitioner Nos. 2 to 4) received agricultural land admeasuring 5 Hectares and 45 Ares. After such partition, the fathers of the Petitioners started cultivating the land independently and their names were recorded in the village records by virtue of mutation entry No. 500 reflecting them as owners of the land as of January 9, 1976, as legal heirs of the late Mr. Babasaheb Khadirsaheb Pirjade.

5. According to the Petitioners, the Special Land Acquisition Officer issued a notice under Section 4 of the Land Acquisition Act on March 16, 1985 declaring the intent of the Government to acquire the land bearing:

(i) Survey No. 42/5, admeasuring 83 Ares;

(ii) Survey No. 19/1, admeasuring 18 Ares; and

(iii) Survey No. 42/1, admeasuring 20 Ares.

6. On December 22, 1986, Mr. Husainsaheb Pirjade (father of Petitioner No.1) too passed away and Petitioner No.1 inherited his land. Meanwhile, the Petitioners' representations about size of the agricultural land and their related objections to the acquisition did not find favour with the State and an Award dated March 3, 1988 came to be passed, fixing the compensation for the land so acquired. The Petitioners continued to make representations even after passing of the award, but to no avail.

7. According to the Petitioners, as of the date of issuance of the aforesaid notice under Section 4 of the Land Acquisition Act, their respective fathers, namely, Mr. Husainsaheb Pirjade and Mr. Badesaheb Pirjade, the inheritors and sons of Mr. Babasaheb Khadirsaheb Pirjade, were alive. The Petitioners assert that their fathers submitted objections to the acquisition stating that almost 2 hectares of land possessed by each of them was not agricultural land since the lands were grasslands that could not be cultivated. Excluding such grassland, the Petitioners contend, the land owned by their fathers fell much below the stipulated thresholds set out in the Maharashtra Resettlement of Project Displaced Persons Act, 1976 ("***Resettlement Act***"), and therefore, their land was not

amenable to acquisition for resettlement of project affected persons. That apart, the Petitioners contend that the agricultural lands owned and possessed by their fathers were not within the benefited zone of the project in question, on which ground too, acquisition of their land was illegal.

8. Writ Petition No. 1860 of 1988 ("***WP 1860***") came to be filed before this Court, by Mr. Nizamuddin Husainsaheb Pirjade (Petitioner No. 1 in this petition, then aged 38 years), son of Mr. Husainsaheb Pirjade, along with Mr. Badesaheb Pirjade (then aged 73 years), the other son of Mr. Babasaheb Khadirsaheb Pirjade. The legal challenge in WP 1860 was to the compulsory acquisition of land for the purpose of resettlement of project affected persons in connection with the Warna irrigation project. The constitutional validity of the Resettlement Act, as amended by an amending legislation of 1985 had already been called into question in a bunch of writ petitions when WP 1860 was presented. Various forms of *ad interim* protections had come to be issued to various petitioners.

9. However, eventually, in *Dhulgonda Dada Patil and etc. Vs. Special Land Acquisition Officer No. 15, Kolhapur and others*[2], the validity of the said legislation came to be upheld. Likewise, the validity of the provision enabling persons affected by one project being resettled in land acquired under another project, too came to

[2] *1988 SCC OnLine Bombay 129*

be upheld in another Writ Petition, namely, *Shivgonda Balgonda Patil and others Vs. The Director of Resettlement and others*[3]. Consequently, by a judgement dated October 29, 1996, WP 1860 came to be dismissed by this Court.

10. Among other appeals against other decisions, the dismissal of WP 1860 too came to be challenged before the Supreme Court. The Petitioners have annexed at Exhibit B to the Petition, a copy of the order dated December 1, 1998 of the Supreme Court in Civil Appeal No. 11809 of 19998 and other clubbed appeals, titled *Babaso Bhau Balwan Vs. Director of Resettlement and Others*, remanding the cases to the Commissioner, Pune Division for fresh consideration. It is stated in this order of the Supreme Court that the principal question that arose was about excluding grasslands as also lands in respect of which oral partitions or agreements for sale had been effected from the scale of landholding, to determine if the respective landowners had land above the threshold that would render such land eligible for acquisition for purposes of resettlement. The Commissioner, Pune Division was asked to examine the cases afresh on the basis of various circulars issued by the Government of Maharashtra, and the relevant record contained in each case. The Supreme Court also directed the Commissioner, Pune Division to afford an opportunity of being heard to the respective parties. The

[3] *1991 SCC OnLine Bombay 74*

Supreme Court directed that the parties to maintain *status quo* with regard to possession of land until four weeks from the date of service of the orders passed upon remand, by the Commissioner, Pune Division.

11. It is on the strength of the said order of the Supreme Court, that the petitioners in this Writ Petition contend, the Divisional Commissioner, Pune Division considered their case. The acquisition of land now belonging to the Petitioners has been held by the Divisional Commissioner, Pune Division to be valid. The order upholding the acquisition was passed in January / February 2006, which the Petitioners claim, they remained unaware of until 2018.

12. It is after March 7, 2005 (when the Petitioners were given a personal hearing in the matter) that we find the narrative of the Petitioners problematic, confronted with an unexplained vacuum of inaction for the entire period between March 7, 2005 and June 2018, when this Petition came to be filed. In the material on record, there is not a whisper of evidence to suggest that the Petitioners' actions are consistent with actions reasonably expected from a diligent litigant who had taken the trouble of pursuing litigation all the way to the Supreme Court and even succeeded in securing a remand.

13. The Petitioners assert that they were fully comforted by the

fact that they were entitled to a *status quo* protection from the Supreme Court, passed *vide* order dated December 1, 1998, and they were secure in the belief that their interests stood protected. According to the Petitioners, on March 21, 2018, the Deputy Collector Resettlement had directed the Tahasildar, Shirala to publish a list of beneficiaries of the Warna Project at Village Chavadi calling for objections, if any, within 15 days. This is when, they claim, they pursued the State authorities to ascertain the status of the remanded proceedings, and learnt that the Divisional Commissioner, Pune Division had rejected their representation in 2006, by an order rejecting their representation for a revision under Section 48(1) of the Land Acquisition Act. It is this order that is impugned in this Petition.

14. The Petitioners claim to have filed an application under the Right to Information Act, 2005 ("***RTI Act***") and that the information was received on June 18, 2018, after which, they amended this writ petition that had originally been filed on June 4, 2018.

15. Based on the information received under the RTI Act and filed by way of amendment to this Writ Petition, it is clear that the Petitioners admittedly were given a personal hearing on March 7, 2005, and the matter had been closed for orders. The aforesaid fact is evident from the *roznama* and order of the Divisional

Commissioner, Pune Division. The Petitioners claim that there is another entry in the *roznama* on August 4, 2005, which would indicate that the matter was not concluded. However, it is also evident that such purported entry is not signed by any officer. The Petitioners claim that they remained unaware of any further development in the matter after the date of personal hearing, and that they were secure in the belief that they were protectees of the *status quo* order that had been passed by the Supreme Court on December 1, 1998. They claim to have followed up with the State but that all such follow up was verbal without any written communication to show for it.

16. Affidavits in reply dated September 17, 2018, December 1, 2018 and December 6, 2018 have been filed on behalf of the State (collectively, "***Reply Affidavit***"). The State has asserted that as of the cut-off date for the acquisition in question i.e. May 13, 1977, the entire land was in the name of Mr. Babasaheb Khadirsaheb Pirjade, the grandfather of the Petitioners. Since this was a composite piece of land, and well above the threshold stipulated for minimum holding for any landowner's land to be amenable to acquisition under the Resettlement Act, the acquisition is asserted to be legitimate. The Reply Affidavit asserts that even assuming that the partition among the legal heirs, namely, Mr. Husainsaheb Pirjade

and Mr. Badesaheb Pirjade had taken place, their respective shares were each to the tune of more than 5 hectares whereas at the relevant time, the stipulated threshold of landholding under the Resettlement Act was 3 Hectares 23 Ares. Consequently, the Reply Affidavit asserts that the holdings of each of the two sons, i.e., the fathers of the Petitioners was respectively in compliance with the applicable slabs, and therefore there was nothing illegal about the acquisition of their land. Consequently, it is asserted by the Respondent Nos. 4 and 5 that the objections of the Petitioners' fathers had been correctly dealt with by the then authorities conducing the acquisition proceedings. The Reply Affidavit has also stated that the revenue records clearly show that the size of the agricultural land held by the grandfather of the Petitioners and thereafter by the fathers of the Petitioners, clearly brought the acquisition within the parameters of compliant acquisition. The Reply Affidavit contends that a personal hearing too had evidently been granted and the remanded matter had been dealt with in compliance with due process. The Petitioners, according to the State, are hopelessly late in approaching this Court by way of this Writ Petition.

17. The Reply Affidavit states that possession had been taken on March 17, 1988 and a consequential mutation entry No. 598 came to be certified on that date. The Reply Affidavit also asserts that the compensation under the award dated March 3, 1988 has been

offered to the Petitioners and they have refused to accept the funds. Therefore, in terms of the law declared by the Supreme Court in interpreting Section 24(2) of the 2013 Act, it can never be contended, the Respondents argue, that the acquisition had lapsed. Consequently, the State would argue, there is no question of release of the land.

18. An affidavit in rejoinder dated December 7, 2018 and filed on December 18, 2018 on behalf of the Petitioners reiterates that grassland must be excluded from the computation of the size of agricultural land in order to determine if the land holding is above the stipulated threshold. The Petitioners have also argued that there had been a mortgage over some parts of the land. According to them, such land must be excluded since although the land would show as being held in the mortgagee's name, there would be no free and marketable title to such land. The rejoinder skirts the issue of the Petitioners having consciously attended the personal hearing in 2005 and gone silent thereafter.

19. Having considered the material on record, in our assessment of the contentions and submissions of Learned Counsel for the Petitioners, we are not persuaded by the aforesaid narrative of the Petitioners, to intervene in the proceedings for the reasons, we hereinafter discuss. We are not convinced that the extraordinary

equitable jurisdiction of this Court under Article 226 of the Constitution of India deserves to be exercised in favour of the Petitioners. Besides, detailed questions of fact would need to be adjudicated – including the size of the purported grassland, if any, that is counted as agricultural land, and the details of the mortgage and the facts underlying the extinguishment of the mortgage.

20. Evidently, the impugned order rejecting the Petitioner's request for a revision under Section 48(1) of the Land Acquisition Act was passed way back in January / February 2006, and that too after a personal hearing was held in March 2005, in compliance with the directions of the Supreme Court. The Petitioners claim ignorance of this rejection of 2006, right until 2018. We find it inexplicable. Any reasonable person who has secured a remand order from the Supreme Court and attends a personal hearing based on such remand order, would have some ability to demonstrate a follow up for a period of more than a decade after the personal hearing. Admittedly, there is none. We repeatedly asked Mr. Umesh Mankapure, Learned Counsel for the Petitioners to indicate at least one document to point to the effort on the part of the Petitioners in following up on the outcome of the hearing conducted in March 2005. Mr. Mankapure specifically sought instructions from the Petitioners and confirmed to us, that there is no documentary evidence to support a claim of any follow up by the Petitioners in the

matter.

21. Instead, Mr. Mankapure would submit, the Petitioners were entitled to be sanguine in their belief that they stood protected by the *status quo* order of the Supreme Court, and it is for the State to show that the order of 2006 had been served on the Petitioners. Such conduct, to our mind, is inexplicable and indefensible. While in the writ jurisdiction, one cannot expect evidence to be led and trial of facts to be conducted, one could draw a reasonable inference based on the standard of preponderance of probability about whether a plausible explanation can be discerned. It must be remembered that the conduct of the Petitioners and their fathers must conform to the conduct expected from a person who is exercised enough to litigate for protecting one's rights to land, the acquisition of which had been challenged not just before this Court in WP 1860 but also all the way to the Supreme Court immediately thereafter. After updating the record with the documents received under the RTI Act, it is also clear from the material on record that one of the Petitioners had indeed attended a personal hearing as well on March 7, 2005. It would stand to reason that the Petitioners and their fathers would have pursued the State to know the status of their case.

22. It appears to us, far more plausible and probable that the Petitioners potentially became aware of the outcome in 2006 and

made peace with the outcome. It is possible that they continued to enjoy the land in question since no one from the State interfered with such enjoyment. Thereby, the Petitioners appear to have hoped to build equities in their favour. In 2018, when it became clear that the enjoyment of the land would indeed come to an end, and the land would indeed be enjoyed by project affected persons, they filed this Writ Petition.

23. The explanation that the Petitioners were silent in following up since they were protectees of a *status quo* order too is not a reasonable one. The Supreme Court order did not protect the Petitioners' legal possession. The Supreme Court had directed the following :

> *"Accordingly, we set. Aside the impugned order passed by the High Court in each appeal and* ***remand the matter to the Commissioner, Pune Division, Pune****. He shall* ***decide all these matters afresh*** *in the light of the aforesaid observations. We further direct, that* ***the parties will maintain status quo with regard to possession of the lands till disposal of the matters by the Commissioner. The order of status-quo will continue for a period of four weeks from the date of service of the orders passed by the Commissioner on the respective land owners****. We make it clear that the Commissioner shall decide the matters afresh on merits, uninfluenced by the observations made by the High Court, in accordance with law and as per the various Circulars referred to above."*
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> *[****Emphasis Supplied****]*

24. It will be seen from the foregoing, that the *status quo* directed by the Supreme Court was with regard to the possession of the lands as obtaining on the date of the order i.e. December, 1, 1998. Such maintenance of *status quo* was for the period of four weeks from the

date of service of the orders passed by the Divisional Commissioner, Pune Division on the respective land owners. The State through its Reply Affidavit has asserted taking possession in March 17, 1988. This is the *status quo* that was to be maintained i.e. without the land being given away to resettle project affected persons.

25. At this distance of time, after a lapse of over 13 years (until the filing of this petition) and 19 years (as of now) it is impossible and unreasonable to expect the State to demonstrate service of the order passed by the Divisional Commissioner, Pune Division in 2006. This is why, it would also be reasonable to examine whether the Petitioners are able to show at least one documented follow up with the office of the Divisional Commissioner, Pune Division. Had the material on record contained any indication that the Petitioners followed up and sought to ascertain the status of the proceedings before the Divisional Commissioner, Pune Division, there would be some basis to ask the State to prove that the order had been served on the Petitioners. In the absence of any such indication, the narrative that the Petitioners did not have any need to follow up, rings hollow, and suggests that what has become dead wood is sought to be given new life through this Petition.

26. After a lapse of 13-19 years, and that too in a writ jurisdiction, where the Court is not expected to conduct trial of facts and

appreciate evidence as it were a suit to answer questions of fact, it would not be reasonable to presume that the order had not been served on the Petitioners. What appears more likely is that after 2006, the Petitioners' families potentially made peace with the outcome and 2013 Act came to be passed, with significantly higher compensation thresholds getting stipulated, a serious incentive arose to take a chance with the filing of this writ petition. Under Section 24(2) of the 2013 Act, where an award had been made under the Land Acquisition Act, five years or more prior to the commencement of the 2013 Act, but physical possession had not been taken or the compensation has not been paid, the said proceedings shall be deemed to have lapsed. The provision came in for varying interpretation in multiple proceedings, some of which ruled that if either compensation had not been paid or possession had not been taken, the acquisition would have lapsed. Significantly, the primary prayer in this Writ Petition, when filed in 2018 was for a declaration that the acquisition covered by the award had lapsed.

27. However, eventually on March 6, 2020, in *Indore Development Authority Vs. Manoharlal and Ors.*[4] ("***Indore Development Authority***") it was ruled by a five-judge Constitutional Bench of the Supreme Court that both conditions ought to have not been met for an acquisition to lapse – compensation ought to have

[4] *(2018) 3 SCC 412*

not been paid, and possession ought to have not been taken. If either of these had been effected, there would be no lapse of the award. Besides, it was also ruled that once the land vests in the State, possession is deemed to have been taken, and the occupiers of the land after such vesting would be trespassers.

28. Mr. Mankapure fairly stated that the Petitioners were no longer pressing for the prayer seeking declaration that the acquisition had lapsed in view of the declared law. The Petitioners are instead pressing for the prayer declaring the acquisition as being illegal owing to wrong computation of the agricultural land in their ownership, for their land to become amenable to acquisition.

29. Strangely, even between 2013 and 2018, there is not a whisper of demonstrable effort from the Petitioners, asking the State to communicate the outcome of the remanded proceedings. It is trite law that the law does not protect the tardy, the indolent, the acquiescent and the lethargic[5]. The relief that can be granted in the extraordinary and equitable jurisdiction under Article 226 of the Constitution of India may be denied by the writ court and the doctrine of delay and laches cannot be lightly brushed aside[6]. When faced with a situation of delay and laches, the court must weigh the explanation offered and the acceptability of the same. It has been

[5] *State of MP vs. Nandlal Jaiswal – (1986) 4 SCC 566*

[6] *Chennai Metropolitan Water Supply & Sewerage Board and Ors. Vs. TT Murali Babu – (2014) 4 SCC 108*

held that permitting a belated resort to the extraordinary remedy could cause confusion, public inconvenience and bring about new injustices in its wake[7]. Even where a fundamental right is involved, intervention by a writ court is a matter of discretion[8]. The High Court may refuse to exercise its extraordinary jurisdiction if there is negligence or omission on the part of the petitioner to assert his rights[9].

30. A Division Bench of this Court (of which one of us, namely, G.S. Kulkarni, J. was a member), applying the same principle and that too in a case involving land acquisition and resettlement of project affected persons, has ruled as under in the case of *Nana Narayan Bhalerao (D) LRs. Vs. District Resettlement Officer & Ors*[10]:

> *6. We may observe that this Court was dealing with a similar situation of a stale claim being asserted for allotment of alternate land as a project affected person, in the case of Tatoba Rama Chavan v. Collector, Kolhapur District, Kolhapur[1], wherein land was acquired in the year 1983, this Court referring to the decisions of the Supreme Court in C. Jacob v. Director of Geology & Mining[2], as also the decisions in Union of India v. C. Girija[3], State of Uttaranchal v. Shiv Charan Singh Bhandari[4], Union of India v. M.K. Sarkar[5] and Govt. of India v. P. Venkatesh[6], had dismissed the petition. The situation in the present petition is not different from the said case. We may note the observations as made by this Court in the said decision, which, in our opinion, are aptly applicable in the facts of the present case:*
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> > *"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*

[7] *State of MP vs. Nandlal Jaiswal – (1986) 4 SCC 566*
[8] *Durga Prasad v. Chief Controller of Imports and Exports (1969) 1 SCC 185*
[9] *Karnataka Power Corportion Ltd. And Anr. vs. K. Thangappan and Anr. – (2006) 4 SCC 322*
[10] *2023 SCC OnLine Bom 2019*

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 as 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 v. Director of Geology & Mining[7], 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.*
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> *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.***
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> *****
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> *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."*

> *7.* ***We are, thus, of the clear opinion that the writ jurisdiction of this Court cannot be invoked and called upon to be exercised to reopen such claim, which, in our opinion, is a deadwood.***
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> *[**Emphasis Supplied**]*

31. The explanation for the silence for over 13 years offered by the Petitioners does not carry a ring of plausibility and does not inspire confidence. Significantly, the primary prayer in this Writ Petition, which has been abandoned, was for a declaration that the acquisition in question had lapsed by virtue of Section 24(2) of the 2013 Act. The pursuit of such a prayer could lead to a moulded relief of saving the acquisition but rendering a higher compensation amount under the 2013 Act as being payable. However, since Section 24(2) of the 2013 Act has been firmly and clearly interpreted in ***Indore Development Authority***, the only recourse is to seek a declaration

that the acquisition was illegal due to the jurisdictional fact of the size of the land being wrongly determined. Besides, the argument that possession is yet to be taken is untenable owing to the following extracts from ***Indore Development Authority***, which puts the issue beyond all doubt:

> *246. Section 16 of the 1894 Act provided that possession of land may be taken by the State Government after passing of an award and thereupon land vest free from all encumbrances in the State Government. Similar are the provisions made in the case of urgency in Section 17(1). The word "possession" has been used in the 1894 Act, whereas in Section 24(2) of the 2013 Act, the expression "physical possession" is used. It is submitted that drawing of panchnama for taking over the possession is not enough when the actual physical possession remained with the landowner and Section 24(2) requires actual physical possession to be taken, not the possession in any other form. When the State has acquired the land and award has been passed, land vests in the State Government free from all encumbrances. The act of vesting of the land in the State is with possession, any person retaining the possession, thereafter, has to be treated as trespasser and has no right to possess the land which vests in the State free from all encumbrances.*
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> *247. The question which arises whether there is any difference between taking possession under the 1894 Act and the expression "physical possession" used in Section 24(2). As a matter of fact, what was contemplated under the 1894 Act, by taking the possession meant only physical possession of the land. Taking over the possession under the 2013 Act always amounted to taking over physical possession of the land. When the State Government acquires land and draws up a memorandum of taking possession, that amounts to taking the physical possession of the land. On the large chunk of property or otherwise which is acquired, the Government is not supposed to put some other person or the police force in possession to retain it and start cultivating it till the land is used by it for the purpose for which it has been acquired. The Government is not supposed to start residing or to physically occupy it once possession has been taken by drawing the inquest proceedings for obtaining possession thereof. Thereafter, if any further retaining of land or any re-entry is made on the land or someone starts cultivation on the open land or starts residing in the outhouse, etc. is deemed to be the trespasser on land which is in possession of the State. The possession of trespasser always inures for the benefit of the real*

owner that is the State Government in the case.

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249. *The concept of possession is complex one. It comprises the right to possess and to exclude others, essential is animus possidendi. Possession depends upon the character of the thing which is possessed.* ***If the land is not capable of any use, mere non-user of it does not lead to the inference that the owner is not in possession. The established principle is that the possession follows title. Possession comprises of the control over the property. The element of possession is the physical control or the power over the object and intention or will to exercise the power. Corpus and animus are both necessary and have to co-exist. Possession of the acquired land is taken under the 1894 Act under Section 16 or 17, as the case may be. The Government has a right to acquire the property for public purpose. The stage under Section 16 comes for taking possession after issuance of notification under Section 4(1) and stage of Section 9(1). Under Section 16, vesting is after passing of the award on taking possession and under Section 17 before passing of the award****.*

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253. ***A person with title is considered to be in actual possession. The other person is a trespasser****. The possession in law follows the right to possess as held in Kynoch Ltd. v. Rowlands .* ***Ordinarily, the owner of the property is presumed to be in possession and presumption as to possession is in his favour****. In Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja, this Court observed that possession implies a right and a fact; the right to enjoy annexed to the right of property and the fact of the real intention. It involves the power of control and intent to control. Possession is annexed to right of property : (SCC p. 278, paras 13-15)*

*[****Emphasis Supplied****]*

32. In view of the foregoing declaration of the law, it would not be possible to hold that the Petitioners are validly in possession of the land in question. The Petitioners' ability to pursue rights under Section 48(1) of the Land Acquisition Act would also be untenable because by virtue of the ruling in ***Indore Development Authority*** it cannot be said that possession had not been taken at all. Besides, possession had been taken by the State even before the *status quo* order was passed by the Supreme Court. The *status quo* was to be

maintained by way of continued possession of the land in the hands of the State. It would stand to reason that if the State had not maintained such *status quo* of its possession on the said land, and had gone on to allocate such land to various project affected persons, the remanded proceedings would have been frustrated and would have been infructuous, even if a new view had been taken by the Divisional Commissioner, Pune Division. The *status quo* to be maintained was the *status quo* as was obtaining on December 1, 1988.

33. It is nobody's case that such *status quo* was disturbed. It is why, in our opinion, whether or not the Petitioners had followed up to ascertain the outcome of the proceedings becomes relevant. When parties have diligently and zealously pursued legal proceedings all the way to the Supreme Court, it would be inexplicable that the existence of a *status quo* order would have given the Petitioners such deep comfort as to go into the slumber for a period of 13 years, without even a semblance of a follow up on the outcome of the remanded proceedings. This is why the narrative of the Petitioners does not inspire confidence.

34. Having given up the argument on lapse of acquisition, the Petitioners now seek to cross the even higher hurdle of a direction to quash and set aside the order passed by the Divisional

Commissioner, Pune Division in 2006, on merits and in computing the size of the land. Obviously, it is too late in the day to grant such a relief when there is no explanation whatsoever for the complete silence in connection with the conduct of the parties between 2005 and 2018.

35. To summarize:

(a) We find that the Petitioners have not explained their silence in the proceedings between 2005 and 2018;

(b) It appears that the Writ Petition was potentially motivated by the possible interpretation of the 2013 Act that was partly in vogue at the time of filing of this proceedings, namely, that the acquisition had lapsed, despite the award having been passed. However, the declaration of law in ***Indore Development Authority*** has rendered such a reading of the Petitioners' facts untenable; and

(c) The only remaining scope for the Petitioners is to adjudicate facts on merits, but considering the inordinate delay in pursuit of the proceedings (the order impugned was passed in 2006 while the petition was filed in 2018), we do not think it appropriate or desirable to exercise our extraordinary and equitable jurisdiction under Article 226 of the Constitution of India to interfere with the acquisition.

36. We, however, clarify that except for what has been observed above, we have not delved into any other entitlement that may be available to the Petitioners. In the event of any other rights of the Petitioners in relation to any other issue exist or survive in law, the Petitioners shall be entitled to pursue such rights in accordance with law.

37. In these circumstances, we are not inclined to grant any relief, and we believe this Writ Petition deserves to be dismissed. Rule is discharged in the aforesaid terms and the Writ Petition is ***finally disposed of***. In the circumstances of the case, there shall be no order as to costs.

[SOMASEKHAR SUNDARESAN, J.] **[G.S. KULKARNI, J.]**