



VRJ

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO.60 OF 2015

1. **Govind Kondiba Tanpure,**
Age 61 years, Occu.: Agriculture
Residing at Dhangwadi,
Taluka Bhore, District Pune
2. **Jagannath Nathuram Tanpure,**
Age 62 years, Occu.: Agriculture
Residing at Dhangwadi,
Taluka Bhore, District Pune
3. **Ramdas Genba Tanpure,**
Age 60 years, Occu.: Agriculture
Residing at Dhangwadi,
Taluka Bhore, District Pune
4. **Keshav Vishnu Tanpure,**
Age 36 years, Occu.: Agriculture
Residing at Dhangwadi,
Taluka Bhore, District Pune
5. **Rashid Usman Saikh,**
Age 45 years, Occu.: Agriculture
Residing at Dhangwadi,
Taluka Bhore, District Pune

... Petitioners

V/s.

1. **The State of Maharashtra,**
(through the Secretary, Revenue and
Forest Department),
Mantralaya, Mumbai – 400 032
2. **The District Collector,**
Collector Office Campus,
Pune 411 001
3. **The Tehasildar,**
Taluka Bhore, District Pune.

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4. **Anantrao N. Thopate,**
Age Adult, Occu.: Agriculture &
Ex Minister and Chairman
Rajgad Dnyanpeeth, Bhor,
Taluka Bhor, District Pune.

5. **Rajgad Dnyanpeeth,**
A Public Trust having registered
under the Bombay Public Trust
Act, 1950 having its registered
office at Bhor, Taluka Bhor,
District Pune

... Respondents

Ms. Smita R. Gaidhani for the petitioners.

Mr. P. P. Kakade, Government Pleader with Mr. O. A. Chandurkar, Additional Government Pleader and Ms. G. R. Raghuwanshi, AGP for respondent Nos.1 to 3 (State).

Mr. Prasad Dhakephalkar, Senior Advocate (through V.C.) with Ms. Revati A. Tatkare, Mr. Pradeep M. Patil and Mr. Pravin B. Gole for respondent Nos.4 and 5.

CORAM : DEVENDRA KUMAR UPADHYAYA, CJ & AMIT BORKAR, J.

RESERVED ON : JULY 2, 2024

PRONOUNCED ON AUGUST 7, 2024

ORAL JUDGMENT: (PER AMIT BORKAR, J.)

1. This public interest litigation, filed under Article 226 of the Constitution of India, is instituted by the petitioners, who claim to be residents of village Dhangawadi, Taluka Bhor, District Pune. The petitioners seek redress for grievances related to the allotment of land to respondent No. 5, requesting the cancellation of the allotment, an inquiry into the alleged illegalities in the land allotment process, and the

transfer of the land to individuals belonging to Scheduled Castes, Scheduled Tribes, and Economically Backward Classes.

2. The subject matter of this public interest litigation concerns land located in Gat No. 237 in village Dhangawadi, Taluka Bhor, District Pune, measuring 14 hectares and 35 ares, as described in paragraph 6 of the petition. The petitioners stated that on 2 March 1993, the District Collector, Pune, reserved a portion of this land measuring 0.04 hectares for a Muslim community burial ground (Kabristan). Subsequently, on 26 September 1994, an area of 0.40 hectares was allotted to the Divisional Engineer, Telephones. On 23 December 1994, the District Collector, Pune, approved a scheme for impoverished individuals belonging to the Scheduled Castes and Scheduled Tribes under the Village Extension Scheme, reserving 2 hectares and 92 ares of land from Gat No. 237 for the implementation of this scheme.

3. According to Petitioners, On 1 March 1995, respondent No. 3 appointed the Taluka Inspector of Land Records, Bhor, to measure the land and demarcate 110 plots for allotment to poor individuals from the Scheduled Castes and Scheduled Tribes under the Village Extension Scheme. The Inspector of Land Records conducted the measurement on 20 June 1995, demarcating 110 plots. On 22 March 1995, an amount of Rs. 4,700/- was sanctioned for implementing the Village Extension Scheme and was disbursed by the Tahsildar, Bhor. However, the 110 plots were not handed over to the Scheduled Castes and Scheduled Tribes community members.

On 30 November 1996, the Collector, Pune, communicated to respondent No. 5 that the land could not be allotted for an educational institution as it was designated for national highway boundary widening and was classified as an industrial zone.

4. The petitioners stated that on 18 May 1994, respondent No. 4 applied for the allotment of Gat No. 237 for educational purposes. On 31 December 1996, the Collector communicated to the Commissioner, Pune, indicating that the land could be allotted to respondent No. 5 for educational purposes if converted into an agricultural and non-development zone, with the condition that 20% of the total area be developed. The Commissioner, Pune Region, after considering relevant departmental suggestions and opinions, rejected the demand of respondent No. 5 on 29 July 1997. Consequently, the District Collector informed respondent No. 5 that their request for land allotment was denied. Nevertheless, on 27 March 1998, the District Collector recommended to the Principal Secretary (Revenue) the allotment of 10 hectares and 18 ares from Gat No. 237 to respondent No. 5, contingent upon the construction of buildings covering 20% of the land area to a height of up to the first floor, following the Regional Zonal Scheme's implementation. The Commissioner communicated approval for the allotment on 29 July 1997. The petitioners allege that respondent No. 4 misused his position as an ex-MLA to facilitate the transfer of the land. Consequently, the State of Maharashtra, by order dated 19 June 1999, allotted 2 hectares and 90 ares for educational purposes and 1 hectare for a playground for 15 years, at a nominal rent of Rs. 1/- per

year. This allotment was conditioned on the land being used for a Junior College, Dairy Technology, Agricultural and Science studies, and Boys' and Girls' Hostels, with construction requiring permission from the competent authority. On 24 July 1999, the District Collector, Pune, informed respondent No. 5 that his application dated 18 May 1994 for educational land had been granted, with directions issued to the Tahsildar and relevant departments for implementation.

5. The petitioners contended that the allotment was made without adhering to the proper procedures as stipulated under the disposal rules. Consequently, respondent No. 5's name was recorded in the revenue records via Mutation Entry No. 778 dated 11 April 2000.

6. According to Petitioners on 21 February 2008, respondent No. 4, as Chairman of respondent No. 5, submitted another application to modify the land's intended use to include educational purposes such as Engineering and Management studies. The District Collector, Pune, on 19 March 2008, sanctioned the inclusion of Engineering and Management studies.

7. Accordingly, the revenue records were updated to reflect that Gat No. 237, measuring 4 hectares and 50 ares, was allotted for these purposes. Subsequently, on 25 November 2008, the State Government allotted the remaining land measuring 5 hectares and 40 ares to respondent No. 5. On 22 January 2009, the Collector, Pune, directed the Taluka

Inspector of Land Records to measure Gat No. 237, and accordingly survey maps were prepared.

8. The petitioners assert that they were unaware of the land allotments to respondent No. 5. Upon learning of the allotments, they filed an application under the Right to Information Act, 2005, which revealed the approval of the Village Extension Scheme and the alleged illegal acquisition of land by respondents Nos. 4 and 5. Consequently, the petitioners filed this public interest litigation on 5 August 2013.

9. In response to the Court's notice, respondent No. 4 filed a reply contending that the petition should be dismissed due to delay/laches, as the land was allotted to respondent No. 5 on 19 June 1999 and 25 November 2008. The public interest litigation was filed on 5 August 2013, registered on 24 March 2015, and first circulated before the Court on 9 January 2018. Respondent No. 4 also contended that the petition was politically motivated, alleging that petitioner No. 1 is accused of possessing disproportionate assets and faces charges under the Prevention of Corruption Act. Petitioner No. 1 is also the founder of various educational institutions. Respondent No. 4 claimed that the Village Extension Scheme for village Dhangawadi was never implemented and that the application for land allotment submitted on 18 May 1994 was not prioritized by the State Government, as evidenced by its consideration only on 19 July 1999.

10. Respondent No. 3 filed an affidavit-in-reply, stating that the Revenue Department allotted 60 ares of land from Gat No. 237 to respondents Nos. 4 and 5 by notification dated 19 June 1999. The District Collector, Pune, subsequently ordered the allotment of land to respondent No. 5 on 28 March 2000, in accordance with the State Government's order. The land was handed over to respondent No. 5 on 30 October 1999. The purpose of the land allotment was later modified to specify that it was solely for educational use. On 25 August 2008, the Revenue Minister allotted an additional 5 hectares and 40 ares from Gat No. 237 to respondent No. 4.

11. In their rejoinder-affidavit, the petitioners maintained that the Village Extension Scheme remains in effect, Respondent No. 5 has breached conditions of lease by mortgaging subject land to financial institution, and subject land is impacted by the proposed Pune-Bangalore national highway widening plan and is classified as an industrial zone.

12. Respondent No. 4 filed a sur-rejoinder, asserting that respondent No. 5 has not breached any conditions related to the land's use. Furthermore, the Collector, by order dated 19 March 2008, authorized the modification of the land's use for educational purposes, including Engineering and Management studies. The development of respondent No. 5 has been funded through loans from financial institutions, and the mortgaging of the land to these institutions cannot be deemed illegal.

13. The learned advocate for petitioners argued that the land allotment to respondent No. 5, conducted without a transparent auction process, should be annulled. Additionally, respondent No. 5 allegedly breached conditions by mortgaging the subject land to a nationalized bank without authorization.

14. The land was initially reserved for the Village Extension Scheme, rendering its allotment to respondent No. 5 illegal. Moreover, local gram panchayat permission is required before allotting such land to an educational institution. Since the land is located in an industrial zone, it cannot be utilized for educational purposes. The learned advocate for the petitioners cited the following judgments in support of these submissions:

- (a) **Bombay Environmental Action Group & Anr. vs. State of Maharashtra & Ors.** reported on 1999 (2) Mh.L.J 747.
- (b) **Chetan Kamble and Another vs. State of Maharashtra and Others** reported in 2010 (4) Mh.L.J. 844.
- (c) **Institute of Law, Chandigarh and Others. vs. Neeraj Sharma and Others** reported in (2015) 1 SCC 720.
- (d) **Vyalikaval Housebuilding Coop. Society By Its Secretary vs. V. Chandrappa and Others** reported in (2007) 9 SCC 304.
- (e) **Common Cause, A Registered Society vs. Union of India and Others** reported in (1996) 6 SCC 530.
- (f) **V. Purushotham Rao vs. Union of India and Others** reported in (2001) 10 SCC 305.
- (g) **Humanity & Another vs. State of West Bengal & Ors.** reported in AIR 2011 SC 2308.

- (h) **Akhil Bhartiya Upbhokta Congress vs. State of Madhya Pradesh & Others** reported in (2011) 5 SCC 29.
- (i) **Saroj Screens Pvt. Ltd. vs. Ghanshyam and Ors.** reported in AIR 2012 SC 1649.
- (j) **Centre For Public Interest Litigation and Others vs. Union of India and Others** reported in (2012) 3 SCC 1.
- (k) **City Industrial Development Corporation Through Its Managing Director vs. Platinum Entertainment and Others** reported in (2015) 1 SCC 558.
- (l) **Bihar State Housing Board and Others vs. Radha Ballabh Health Care and Research Institute Private Limited** reported in (2019) 10 SCC 483.
- (m) **Institute of Law, Chandigarh and Others vs. Neeraj Sharma and Others vs.** (2015) 1 SCC 720.

15. On the other hand, Mr. Dhakephalkar, learned Senior Advocate representing respondents Nos. 4 and 5, contended that the petition is barred by significant delay and laches, noting the dates of the land allotments to respondent No. 5 as 19 June 1999 and 25 November 2008. The petitioners filed the petition on 5 August 2013, which was registered on 24 March 2015 and circulated on 9 January 2018.

16. Furthermore, Mr. Dhakephalkar asserted that the petition was politically motivated, with the evidence suggesting that due procedures were followed for the land allotment. He argued that, according to the regional plan, the land had been reclassified from an industrial zone to an agricultural zone. Specifically, Section V paragraph 2.6.1,

serial No. XVII at page 10, was amended to permit educational use of the land, allowing construction on up to 20% of the net plot area with structures limited to ground plus one story, and requiring four trees to be planted per acre.

17. Learned Senior Advocate for respondent Nos.4 and 5 relied on judgments in the case of **Printers (Mysore) Ltd.** reported in (2004) 4 SCC 460; **J. S. Luthra Academy and Another vs. State of Jammu and Kashmir and Others** reported in (2018) 18 SCC 65.

18. Upon hearing the learned counsel for the respective parties and reviewing the materials on record, the following facts emerge:

19. Respondent No. 5 expressed a desire to establish an Engineering College, Polytechnic College, Pharmacy College, Agricultural College, and hostels for boys and girls, as well as an English Medium School. Accordingly, Respondent No. 5 requested the State Government to allot a suitable portion of land at Gat No. 237, village Dhangawadi, Taluka Bhor, District Pune. The allotment of land was granted on June 19, 1999, and November 25, 2008. Subsequently, Respondent No. 5 made significant investments in the construction of the colleges and hostels. The construction commenced after obtaining the requisite building permission from the Grampanchayat and was completed well before the filing of the present PIL Petition in August 2013. Additionally, representations were made to the Collector and Tahsildar in June 2012, and no objections were raised regarding the

allotment, including by the petitioners. The present PIL Petition was filed in August 2013, registered in March 2015, and circulated on January 9, 2018. The petitioners, claiming to be residents of village Dhangawadi cannot credibly assert ignorance of the land allotment to Respondent No. 5 as stated in paragraph 66 of the PIL Petition. Respondent No. 5 had constructed the educational buildings after taking possession of the land in 2000 and 2009, respectively. Moreover, the pleadings in paragraph 66 indicate that the petitioners were at least aware of the allotment on May 23, 2011, when they submitted their statement to the Collector.

20. Individuals seeking relief under Article 226 of the Constitution of India, whether citizens or otherwise, must fully satisfy the Court that the facts and circumstances of the case justify any delay or laches in approaching the Court for such discretionary relief.

21. The principle of denial of relief on the grounds of laches is equally applicable to public interest litigation. If there is no proper explanation for the delay or laches, even public interest litigations are liable to dismissal due to unexplained delay or laches. In the absence of any explanation, this Court is not obligated to consider whether the petitioners' explanation is sufficient to condone the delay and laches in filing the present PIL Petition.

22. It is well established that the writ jurisdiction under Article 226 of the Constitution of India is discretionary. Thus, if a petitioner approaches the High Court under Article 226

after an unexplained delay, this Court may dismiss the petition without considering the merits of the case

23. In the case of ***Raja Jagdambika Pratap Narain Singh vs. Central Board of Direct Taxes & Ors.***, reported in AIR 1975 SC 1816, the Supreme Court observed in paragraph 13:

"Even so, the journey of the appellant is beset with insurmountable hurdles. Article 226 is not a blanket power, regardless of temporal and discretionary restraints. If a party is inexplicably insouciant and unduly belated due to laches, the court may ordinarily deny redress. And if the High Court has exercised its discretion to refuse, this Court declines to disturb such exercise unless the ground is too untenable. To awaken this Court's special power, gross injustice and grievous departure from well-established criteria in this jurisdiction have to be made out. In the present case, long years have elapsed not only after the impugned orders but even after the High Court held the taxed income agricultural. The reason for the inaction is stated to be an illusory expectation of suo motu modification of assessment orders on representation by the party. The High Court has examined and dismissed the plea and consequentially refused relief. We do not think that in so refusing relief on ground of laches the High Court exercised its discretion arbitrarily or improperly. And the sorry story must thus close."

24. In the case of ***Maharashtra State Road Transport Corporation vs. Balwant Regular Motor Service, Amravati & Ors.***, reported in AIR 1969 SC 329, the Supreme Court observed:

*"It is well settled that the writ of certiorari will not be granted in a case where there is such negligence or omission on the part of the applicant to assert his right, which, taken in conjunction with the lapse of time and other circumstances, causes prejudice to the adverse party. The principle is to a great extent similar to, though not identical with, the exercise of discretion in the Court of Chancery. The principle has been clearly stated by Sir Barnes Peacock in **Lindsay Petroleum Co. v. Prosper Armstrong Hurd, Abram Farewell, and John Kemp** (1874) 5 PC 221 at p. 239 as follows:*

'Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterward to be asserted, in either of these cases, lapses of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay, of course, not amounting to a bar by any statute of limitations, the validity of that defense must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.'"

25. In the present case, the principles outlined in the decision of the Privy Council in *Lindsay Petroleum Company (supra)* apply. The record indicates that the fact of the land allotment was published on the board of the Grampanchayat before the certification of the mutation entry on April 11, 2000. The mutation record was updated in 2000 for the first allotment and on February 5, 2009, for the second allotment. Thus, it appears that the petitioners approached this Court in August 2013 with the PIL Petition after an unexplained inordinate delay. By doing so, the petitioners have placed Respondents Nos. 4 and 5 in a situation where it would be unreasonable, inequitable, and unjust to revert them to their original position before the construction of the buildings for educational purpose. Even assuming the petitioners had a strong case on merits, intervening at this stage would now be inequitable and unjust. The petitioners are solely responsible for this delay.

26. However, the petitioners' submission regarding the alleged breach of lease conditions by mortgaging the land to financial institution requires adjudication. Moreover, it appears prima facie that the period of land allotment was 15 years from the date of allotment. No evidence has been produced by the parties to the petition to indicate that this lease period has been extended. If that is the case, the Collector must adjudicate the issue of the expiration of lease and issue appropriate orders in accordance with the law if the lease was not renewed.

27. Accordingly, we pass the following order:

The PIL Petition is dismissed.

28. However, respondent No.2 shall conduct an inquiry into the issue of mortgaging of land Gat No.237, described in paragraph 6 of the PIL Petition, as to whether respondent No.5 had breached conditions of lease by mortgaging said land in favour of a bank and whether the term of lease is still in force. Such inquiry shall be held after giving both parties opportunity of hearing and providing them opportunity to produce material available with them. On conclusion of inquiry under this order, if any action is warranted under law, the same shall also be ensured by the respondent No.2 in a time bound manner.

29. The respondent No.2-Collector shall complete the inquiry and take action on the decision in accordance with law within four months from today.

30. The amount of Rs.1,00,000/- deposited by the petitioners pursuant to the order dated 9 January 2018 shall be refunded to the petitioners within four weeks' from today.

31. There shall be no order as to costs.

32. Interim application(s), if any, shall stand disposed of.

(AMIT BORKAR, J.)

(CHIEF JUSTICE)