IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (LODGING) NO. 19414 OF 2024

Jyoti Baliram Thorat and others … Petitioners

vs.

Mumbai Metropolitan Region Development Authority and others … Respondents

WITH
INTERIM APPLICATION (LODGING) NO. 25234 OF 2024
IN
WRIT PETITION (LODGING) NO. 19414 OF 2024

Mumbai Metropolitan Region Development Authority … Applicant/Resp. No.1

In the matter between:

Jyoti Baliram Thorat and others … Petitioners

vs.

Mumbai Metropolitan Region Development Authority and others … Respondents

Ms. Neeta Karnik, Senior Advocate, a/w. Mr. Sagar Kursija for petitioners.

Mr. G. S. Hegde, Senior Advocate, a/w. Ms. Pinky M. Bhansali for respondent No.1-MMRDA.

Ms. Jyoti Chavan, Addl. GP a/w. Ms. Gaurangi Patil, AGP for respondent Nos.2 and 3-State.

CORAM : MANISH PITALE &
SHREERAM V. SHIRSAT, JJ
RESERVED ON: 23rd JANUARY, 2026
PRONOUNCED ON: 30th JANUARY, 2026

ORDER: *(Per Justice Manish Pitale):*

. The question that arises for consideration in this petition is as to whether respondent No.3-competent authority constituted under

the Mumbai Metropolitan Region Development Authority Act, 1974 (hereinafter referred to as the said Act), was justified in specifying compensation payable to the petitioners for acquisition of their land, by means of Transferrable Development Rights (hereinafter referred to as TDR), instead of monetary compensation. According to the petitioners, as per the provisions of the said Act, the compensation had to be in monetary terms and that too, firstly by exploring as to whether an agreement could be reached between the land owners and the State and only thereupon, by determination of monetary compensation, as per sections 33 to 35 of the said Act.

2. Before considering the rival submissions and the aforementioned question, it would be appropriate to briefly refer to the chronology of events.

3. The petitioners are the legal heirs of the joint land owners of land bearing CTS Nos.57, 57/1 to 57/10, CTS Road, Mouje Kurla-4, Taluka Kurla, Mumbai Suburban District. The respondent No.1-Mumbai Metropolitan Region Development Authority (hereinafter referred to as MMRDA) implemented road widening project for Santacruz-Chembur Link Road, for which purpose the subject land of the petitioners and their predecessors, was required.

4. Respondent No.1-MMRDA sent a proposal in that regard on 12.05.2010 to the respondent No.2-Urban Development Department of the State of Maharashtra. In that context, necessary notifications were issued under Section 32 of the said Act, with final notification being issued on 18.03.2011. In pursuance thereof, on 19.05.2011, possession of the subject land, admeasuring 629.37 sq.mtrs., was taken by respondent No.1-MMRDA. As per operation of law,

particularly Section 32(3) of the said Act, on the date of publication of the final notification, the subject land vested absolutely in the State Government.

5. In this context, as per Section 35 of the said Act, the respondent No.3-competent authority was expected to determine the amount of compensation payable for acquisition of the aforesaid land. It is the case of the petitioners that respondent No.3-competent authority, instead of proceeding as per step-wise procedure contemplated under Section 35 of the said Act, unilaterally proceeded to determine the compensation by providing TDR, in lieu of monetary compensation. According to the petitioners, this led to the impugned award dated 15.12.2012 being unilaterally passed by respondent No.3-competent authority.

6. It was submitted that the said act of respondent No.3-competent authority was in the teeth of the statutory provisions and it also deprived the petitioners and their predecessors from taking recourse to remedy available under Section 35(6) of the said Act. A person aggrieved by determination of monetary compensation could prefer an appeal before the tribunal under the said provision. But since monetary compensation was not even determined under the award, the petitioners were deprived of an avenue of challenge also.

7. It is the case of the petitioners that they approached respondent No.1-MMRDA immediately after the award was passed, claiming monetary compensation. But, there was no positive response from the said respondent. It was also the case of the petitioners that other than the said area of 629.37 sq.mtrs. utilized for the project, the remaining area of 1031.9 sq.mtrs. was also not

left of any use to the petitioners, for which they were entitled to appropriate compensation.

8. According to the petitioners, they continued to raise their grievance, but to no avail. Eventually, respondent No.1-MMRDA sent a communication dated 01.04.2024, informing the petitioners that the award could not be modified in any manner for granting monetary compensation as demanded by the petitioners. They were further informed that since the tribunal was not constituted under Section 41 of the said Act, the petitioners could raise their grievance before the Court. It is in this backdrop that the petitioners have filed the present petition.

9. The respondent No.1-MMRDA filed a short reply affidavit, refuting the claims of the petitioners, reiterating that alternative remedy of approaching the tribunal was available and hence, the writ petition is not maintainable. Reliance was placed on the contents of the impugned award to state that TDR had been already offered as just and fair compensation.

10. Ms. Neeta Karnik, learned senior counsel appearing for the petitioners submitted that in the present case, the respondent No.3-competent authority failed to follow the step-wise process as per Section 35 of the said Act. The said respondent failed to explore the possibility of reaching an agreement with the petitioners for determining monetary compensation, as per Section 35(2) of the said Act. If such a step had been taken and there was disagreement between the paries, further steps under Sections 35(3) and (4) of the said Act could have been undertaken for determination of monetary compensation. If the petitioners were dissatisfied with the monetary

compensation so determined, they could then have taken recourse under Section 35(6) of the said Act, to approach the tribunal by filing an appeal.

11. It was submitted that since respondent No.3-competent authority failed to follow the statutory mandate, the award was clearly rendered illegal, arbitrary and hence, unsustainable. Attention of this Court was invited to the contents of the award to assert that the said respondent unilaterally reached a conclusion of determining compensation by offering TDR and that it failed to even explore the possibility of agreement between the parties for determination of monetary compensation. It was submitted that in any case, the said respondent could not have unilaterally foisted compensation by way of TDR on the petitioners. In this context, reliance was placed on a Full Bench judgment of this Court in the case of *Shree Vinayak Builders and Developers, Nagpur vs. State of Maharashtra and others* [**2022 (4) Mh.L.J. 739**]. This aspect, according to the learned senior counsel appearing for the petitioners, was fully covered by the Full Bench judgment in favour of the petitioners.

12. Apart from this, it was submitted that the respondents cannot deny the prayers made in the present petition on the ground of delay and laches, as the petitioners were suffering a continuous wrong and that they had repeatedly approached respondent No.1-MMRDA for relief. It was emphasized that the said respondent emphatically refused relief to the petitioners by communication dated 01.04.2024, due to which the petitioners were constrained to file the present petition and hence, there was no question of delay and laches.

13. In this context, reliance was placed on the judgments of the Supreme Court in the cases of *Sukh Dutt Ratra and another vs. State of Himachal Pradesh and others* [**(2022) 7 SCC 508**] and *Kolkata Municipal Corporation and another vs. Bimal Kumar Shah and others* [**(2024) 10 SCC 533**]' as also judgments of this Court in the cases of *Rajeev Kumar Damodarprasad Bhadani and others vs. Executive Engineer, Maharashtra State Electricity Distribution Company Limited (MSEDCL) and others* (**2024 SCC OnLine Bom 35**) and *Sumitra Shridhar Khane vs. Deputy Collector and others* (**2025 SCC Online Bom 1747**). Much emphasis was placed on the constitutional right to property of the petitioners under Article 300A of the Constitution of India.

14. On this basis, it was submitted that the writ petition deserved to be allowed, the impugned award and the impugned communication deserved to be set aside and that the respondents ought to determine the monetary compensation payable to the petitioners, as per the procedure prescribed under Section 35 of the said Act.

15. On the other hand, Mr. G. S. Hegde, learned senior counsel appearing for the respondent No.1-MMRDA submitted that the writ petition clearly suffered from delay and laches. The award was passed as far back as on 15.12.2012, about which the petitioners were aware. Even the possession of land was taken as far back as on 19.05.2011. The petition was filed in the year 2024, thereby demonstrating that the same suffered from delay and laches. It was submitted that even in the judgments relied upon by the petitioners, it was laid down that the aggrieved party ought to approach the Court for relief in reasonable period of time and in the facts of the

present case, the said position of law operated against the petitioners.

16. It was further submitted that Section 35(6) of the said Act clearly provides alternative remedy of filing an appeal before the tribunal in case any person is aggrieved by determination of compensation. It was submitted that if the petitioners and their predecessors were dissatisfied with the compensation determined in the aforesaid award, they should have filed appeal under the said provision, but having acquiesced to accepting compensation in the form of TDR, the petitioners cannot be allowed to turn around and challenge the award by filing this writ petition.

17. By referring to the documents placed on record, it was submitted that the petitioners and their predecessors had asked for the monetized value of the TDR, thereby showing that they had not refused acceptance of TDR. They could have accepted the same and monetized the TDR. In such a situation, it was submitted that the petitioners cannot pursue the present petition. On this basis, it was submitted that the petition deserved to be dismissed.

18. Ms. Jyoti Chavan, the learned Additional Government Pleader (AGP) appearing for respondent Nos.2 and 3 i.e. Urban Development Department of the State of Maharashtra and the competent authority respectively, opposed the writ petition and invited attention of this Court to the contents of the impugned award. It was submitted that in the award, it was specifically recorded that the predecessors of the petitioners had not even demanded any compensation and in that context, the compensation was determined in terms of TDR. It was submitted that in such a situation, after more than a decade had

gone by, the petitioners cannot be allowed to claim that the impugned award is bad in law and that the compensation ought to be determined in monetary terms. It was submitted that now it was too late in the day for the petitioners to maintain this petition and to seek the aforesaid relief. It was open for the petitioners to accept the TDR offered in the impugned award, as compensation for acquisition of the subject land. On this basis, it was submitted that the petition deserved to be dismissed.

19. This Court has considered the rival submissions in the light of the pleadings and documents on record, as also the provisions of the said Act. Before specifically considering the rival contentions, it would be appropriate to refer to the relevant provisions of the said Act. A perusal of the same shows that under the said Act, the acquisition of land is covered in Chapter VIII. This consists of Sections 32 to 43 of the said Act.

20. Section 32 thereof specifically provides for the power of the State Government to acquire land on a representation made by MMRDA, for carrying out its projects/schemes/development programmes. Under Section 32(1) of the said Act, when the State Government is satisfied with such representation, it can issue a notification to that effect for acquiring land. Under Section 32(2) of the said Act, when such a notification is issued, it is deemed that the acquisition of land is for public purpose. Under Section 32(3) of the said Act, from the date of notification so published in the official gazette, the subject land vests absolutely in the State Government, free from all encumbrances.

21. As per Section 33 of the said Act, the State Government can then exercise power requiring a person in possession of such land, to deliver possession thereof.

22. Section 34 of the said Act provides for the right of every person having interest in such acquired land, to receive an amount, as provided in the aforesaid chapter of the said Act.

23. Section 35 of the said Act is crucial because it provides for the basis of determination of amount for acquisition of land in municipal areas. The same reads as follows:

> '**35. Basis for determination of amount for acquisition of lands in municipal areas.**
>
> (1) Where any land (including any building thereon) is acquired and vested in the State Government under this Chapter and it is situated in 1[Brihan Mumbai] or any area within the jurisdiction of any municipal council in the Metropolitan Region, the State Government shall pay for such acquisition an amount, which shall be determined in accordance with the provisions of this section.
>
> (2) Where the amount has been determined with the concurrence of the Authority, by agreement between the State Government and the person to whom it is payable, it shall be determined and paid in accordance with such agreement.
>
> (3) Where no such agreement can be reached, the amount payable in respect of any land acquired shall be an amount equal to one hundred times, the net average monthly income actually derived from such land, during the period of five consecutive years immediately preceding the date of publication of the notification referred to in section 32, as may be determined by the Competent Authority.

(4) The net average monthly income referred to in sub-section (3) shall be calculated in the manner and in accordance with the principles set out in Schedule III.

(5) The Competent Authority shall after holding an inquiry in the prescribed manner determine in accordance with the provisions of sub-section (4) the net average monthly income actually derived from the land. The Competent Authority shall then publish a notice in a conspicuous place on the land and serve it in the prescribed manner and calling upon the owner of the land and every person interested therein to intimate to it before a date specified in the notice whether such owner or person agrees to the net average monthly income actually derived from the land as determined by the Competent Authority. If such owner or person does not agree, he may intimate to the Competent Authority before the specified date what amount he claims to be such net average monthly income.

(6) Any person who does not agree to the net average monthly income as determined by the Competent Authority under sub-section (5) and the amount for acquisition to be paid on that basis and claims a sum in excess of that amount may prefer an appeal to the Tribunal, within thirty days from the date specified in the notice referred to in sub-section (5).

(7) On appeal, the Tribunal shall, after hearing the appellant, determine the net average income and the amount to be paid on that basis and its determination shall be final and shall not be questioned in any Court.'

24. In the present case, it is undisputed that the acquisition of the subject land was from a municipal area. A perusal of the above-quoted provision shows that Section 35(2) of the said Act provides that compensation amount can be determined by agreement between the State Government and the person to whom it is payable and it shall be paid in accordance with such agreement.

25. Section 35(3) of the said Act provides that when no such agreement is reached, the amount payable in respect of any acquired land shall be amount equal to 100 times the net average monthly income actually derived from such land during five consecutive years, immediately preceding the date of publication of notification under Section 32 of the said Act. Thus, the compensation payable under the said provision is in the form of an 'amount', the formula of which is prescribed, as noted hereinabove.

26. Section 35(4) of the said Act gives the manner in which the net average monthly income is to be determined and Section 35(5) thereof provides that after determining the net average monthly income, the competent authority shall publish a notice in a conspicuous place on the land and also, serve it in the prescribed manner on the owner of the land, calling upon such owner to intimate as to whether he/she agrees with the net average monthly income actually determined by the competent authority. If the owner disagrees with the same, he/she is required to intimate to the competent authority, before a specified date, about the amount he/she claims to be such net average monthly income.

27. Section 35(6) of the said Act provides for remedy to such person/land owner disagreeing with the determination of the net average monthly income by the competent authority, to file an appeal before the tribunal constituted under Section 41 of the the said Act, within 30 days of the date specified in the notice issued under Section 35(5) of the said Act. Section 35(7) of the said Act provides that the order of the tribunal shall be final and that it cannot be questioned in any Court.

28. Thus, Section 35 of the said Act is a self-contained code for determination of compensation amount payable to the land owner, whose land is acquired. The language used in the said provision clearly shows that the compensation payable statutorily under the said Act, is monetary compensation in terms of the formula specified in the said provision. An avenue of appeal is also provided to an aggrieved land owner, who claims the amount in excess of the amount determined by the competent authority. There is nothing in the language of the aforesaid provision that the compensation can be in any form other than monetary compensation.

29. Even in sub-section (2) of Section 35 of the said Act, which pertains to agreement between the State Government and the land owner, reference is made to 'amount' as may be agreed between the parties. Thus, there is substance in the contention raised on behalf of the petitioners that determination of compensation in the form of TDR, is beyond the step-wise procedure specified in Section 35 of the said Act. We find that offering TDR as compensation, while acquiring land under the provisions of the said Act, is beyond the four corners of the basis for determination of compensation specified under Section 35 of the said Act. If the State Government and the land owner mutually agree that compensation could be given in the form of TDR, by stretching the provision under Section 35(2) of the said Act, such a situation could perhaps be contemplated. But, it is absolutely clear that compensation in the form of TDR can never be unilaterally foisted by the State Government on the land owner, whose land is acquired.

30. We also find substance in the contention raised on behalf of the petitioners that the act on the part of the respondents of forcing

compensation in the form of TDR on the petitioners, is against the position of law laid down by the Full Bench of this Court in the case of **Shree Vinayak Builders and Developers, Nagpur vs. State of Maharashtra and others** (*supra*). In the said case, the Full Bench of this Court was considering the question of TDR being offered as compensation, in the context of the provisions of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as the MRTP Act). The position of law discussed and determined in the said Full Bench judgment is relevant even for the present case.

31. A perusal of the said judgment shows that three questions were framed for determination. The said questions read as follows:

> '(i) Whether the modes of acquisition provided under section 126(1)(a) and (b) of the Maharashtra Regional and Town Planning Act, 1966 are at the choice of either of the parties or only of the acquiring authority?
>
> (ii) If the planning authority has approved the request of the land owner for grant of monetary compensation or grant of TDR/FSI in lieu of compensation, can the land owner withdraw his request and thereby refuse or decline to surrender the land?
>
> (iii) Can the grant of approval or passing of resolution by the authorities concerned for grant of TDR in lieu of monetary compensation be treated as a step for acquisition of land and thereby commencing the proceedings for acquisition of the land?'

32. Question (i) is relevant for the present case. After discussing the rival submissions, the Full Bench of this Court, in the said judgment, answered question (i) as follows:

> 'This Court holds that the acquisition under section 126(1)(a) and (b) of the Maharashtra Regional and Town Planning Act, 1966 has to be by consensus between both the parties and not only at the option of the Acquiring Authority.'

33. It is relevant to note that the aforesaid conclusion and answer to question (i) was rendered by the Full Bench of this Court, in the context of Section 126 of the MRTP Act, which specifically provides for compensation in the form of TDR, in lieu of monetary compensation. Thus, when the statutory provisions envisage compensation in the form of TDR in lieu of monetary compensation, the law laid down by the Full Bench of this Court in the aforesaid judgment requires consensus between the State Government and the land owner and it cannot be only at the option of the acquiring body i.e. the State Government.

34. Applying the said position of law to the facts of the present case, we find that the petitioners are on a better footing because under the provisions of the said Act, particularly in the above-quoted Section 35 thereof, there is no option of giving compensation in the form of TDR in lieu of monetary compensation. The entire provision, which specifies step-wise procedure of determining the compensation, throughout talks of determination of 'amount' payable to the land owner for compensation of land. Even if it is to be read in Section 35(2) of the said Act that by agreement, the State Government and the land owner could choose the option of compensation in the form of TDR, it necessarily has to be by agreement and not otherwise.

35. This being the position, a perusal of the impugned order award dated 15.12.2012 shows that the respondent No.3-competent authority recorded that the predecessors of the petitioners did not make any demand for compensation. Thereupon, the said respondent unilaterally determined that the compensation shall be paid in the form of TDR for acquiring 629.37 sq.mtrs. of land. The said respondent referred to Section 34 of the said Act and proceeded to unilaterally hold that the compensation shall now be paid by way of TDR. It is relevant to note that even Section 34 of the said Act specifically stipulates that a person having interest in the acquired land, shall be entitled to receive an 'amount' from the State Government, as provided in Chapter VIII. Hence, we find substance in the contention of the petitioners that such an award, unilaterally determining the compensation in the form of TDR, is wholly arbitrary, illegal and hence, unsustainable. On this ground alone, the impugned award deserves to be set aside.

36. The respondents have also claimed that the present petition is not maintainable, as alternative remedy of approaching the tribunal, was available under Section 35(6) of the said Act. We find that the respondents are not justified in raising such an objection, for the reason that the language of the said section itself determines the jurisdiction of the tribunal constituted under Section 41 of the said Act. It specifically provides that when a person/land owner is aggrieved by determination of 'net average monthly income' by the competent authority under sub-section 5 and claims a 'sum in excess', he/she may prefer an appeal to the tribunal. Thus, the tribunal has jurisdiction to entertain an appeal only to consider whether the competent authority has determined the net average monthly income, for determining the compensation amount payable,

in a correct manner or not and whether the excess amount claimed by the aggrieved person/land owner, is justified or not. The jurisdiction available to the tribunal under Section 35(6) of the said Act, by its very language, limits it to determining the compensation amount and not the question as to whether TDR could be offered, in place of monetary compensation. Hence, there is no question of recourse to the tribunal under Section 35(6) of the said Act, being an alternative remedy available to the petitioners, leave alone it being an efficacious alternative remedy. The said objection raised on behalf of the petitioners is rejected.

37. In any case, it is a settled position of law that existence of an alternative remedy and refusal to entertain a writ petition in that context, is a rule of prudence and not a rule of law. In a given case, the writ Court can entertain a petition, despite existence of alternative remedy. Therefore, we find no substance in the said objection raised on behalf of the respondents.

38. Another objection raised on behalf of the respondents pertains to delay and laches on the part of the petitioners in approaching this Court. The documents on record show that the impugned award was rendered on 15.12.2012 and that the possession of the subject land was taken from the petitioners on 19.05.2011 itself. When the notification under Section 32 was issued, the subject land vested in the State Government free from all encumbrances. The present petition was filed in the year 2024.

39. In the case of **Sukh Dutt Ratra and another vs. State of Himachal Pradesh and others** (*supra*), the Supreme Court held that the State cannot shield itself behind the ground of delay and laches

in a situation, where the petitioners have made out a case about their constitutional right under Article 300A of the Constitution of India, being violated. It was held that there cannot be a limitation for doing justice. In the said judgment, reference was made to an earlier judgment in the case of *Vidya Devi vs. State of Himachal Pradesh* [**(2020) 2 SCC 569**], wherein it was held that the objection of delay and laches cannot be raised in a case of continuing cause of action and that no period of limitation is prescribed for the Courts to exercise their constitutional jurisdiction to do substantial justice. It was held in the said case that forcible dispossession of a person from private property, without following due process of law, was violation of both a constitutional right and a human right under Article 300A of the Constitution of India.

40. In the case of **Kolkata Municipal Corporation and another vs. Bimal Kumar Shah and others** (*supra*), the Supreme Court reiterated the said position of law and held as follows:

> '28. While it is true that after the 44th Constitutional Amendment [the Constitution (44th Amendment) Act, 1978], the right to property drifted from Part III to Part XII of the Constitution, there continues to be a potent safety net against arbitrary acquisitions, hasty decision-making and unfair redressal mechanisms. Despite its spatial placement, Article 300-A which declares that "no person shall be deprived of his property save by authority of law" has been characterised both as a constitutional and also a human right. To assume that constitutional protection gets constricted to the mandate of a fair compensation would be a disingenuous reading of the text and, shall we say, offensive to the egalitarian spirit of the Constitution.
>
> 29. The constitutional discourse on compulsory acquisitions, has hitherto, rooted itself within the

> "power of eminent domain". Even within that articulation, the twin conditions of the acquisition being for a public purpose and subjecting the divestiture to the payment of compensation in lieu of acquisition were mandated. Although not explicitly contained in Article 300-A, these twin requirements have been read in and inferred as necessary conditions for compulsory deprivation to afford protection to the individuals who are being divested of property. A post-colonial reading of the Constitution cannot limit itself to these components alone. The binary reading of the constitutional right to property must give way to more meaningful renditions, where the larger right to property is seen as comprising intersecting sub-rights, each with a distinct character but interconnected to constitute the whole. These sub-rights weave themselves into each other, and as a consequence, State action or the legislation that results in the deprivation of private property must be measured against this constitutional net as a whole, and not just one or many of its strands.'

41. Thereafter, the Supreme Court identified various strands of the Constitutional fabric, constituting the right to property under Article 300A of the Constitution of India. It was recognized that the right of restitution or fair compensation was an important right, amongst the cluster of said strands of the right. In that context, the Supreme Court in the said judgment further observed as follows:

> '33.5. The Right of restitution or fair compensation
>
> 33.5.1. A person's right to hold and enjoy property is an integral part to the constitutional right under Article 300-A. Deprivation or extinguishment of that right is permissible only upon restitution, be it in the form of monetary compensation, rehabilitation or other similar means. Compensation has always been considered to be an integral part of the process of acquisition.

33.5.2. Section 11 of the Land Acquisition Act, 1894, Sections 8 and 9 of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 23 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and Sections 3-G and 3-H of the National Highways Act, 1956 are the statutory incorporations of the right to restitute a person whose land has been compulsorily acquired.

33.5.3. Our courts have not only considered that compensation is necessary, but have also held that a fair and reasonable compensation is the *sine qua non* for any acquisition process.'

42. The said position of law has been followed consistently by this Court, including in the judgments in the cases of **Sumitra Shridhar Khane vs. Deputy Collector and others** (*supra*) and in the case of **Rajeev Kumar Damodarprasad Bhadani and others vs. Executive Engineer, Maharashtra State Electricity Distribution Company Limited (MSEDCL) and others** (*supra*). Paragraph Nos.34 to 36 of the judgment in the case of **Rajeev Kumar Damodarprasad Bhadani and others vs. Executive Engineer, Maharashtra State Electricity Distribution Company Limited (MSEDCL) and others** (*supra*), read as follows:

'34. The State cannot, on the ground of delay and laches, evade its responsibility towards those from whom private property has been expropriated. In any case, what principles a court must apply when assessing whether a writ petition is so hopelessly barred by delays and laches that a remedy is not worthy of consideration, is well articulated in Maharashtra SRTC v. Balwant Regular Motor Service ("Maharashtra SRTC"). These principles are extracted and endorsed in Sukh Dutt case. When one analyses Digambar case[2], it is noteworthy that these are in fact the principles on which the land-

donor farmers claiming compensation decades later, were denied consideration by the Supreme Court.

35. In a nutshell, principles of equity must inform how a court deals with a defence of delays and laches. In the words of the Supreme Court in Maharashtra SRTC case: (SCC OnLine SC para 11)

"11. ... 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.

(emphasis supplied)"

36. We have considered these principles and applied them to the situation at hand. Apart from the length of the delay, whether the nature of the acts done during the interval has affected either party in a manner that causes an imbalance in delivering justice, is what this Court must consider. We find that denying the petitioners an opportunity of their writ petition even being considered, merely on the ground of delay, to our mind, would be unjust to the petitioners. On the other hand, considering the writ petition on merits would not tilt the scale against MSEDCL and the State'

43. In the case of **Sumitra Shridhar Khane vs. Deputy Collector and others** (*supra*), this Court further reiterated the significance of right to property as a constitutional right under Section 300A of the Constitution of India. It was specifically held that if the land of a person is taken away by way of acquisition, such a person is required to be compensated in the manner known to law and that this applies even in cases where the land has been voluntarily surrendered. It was further held that any act on the part of the State Government to acquire land, in violation of the right guaranteed under Section 300A of the Constitution of India, gives rise to a continuing cause of action

and therefore, the State Government cannot claim that an aggrieved person, in such cases, cannot be heard by the Writ Court on the ground of delay and laches.

44. Applying the said position of law to the facts of the present case, we find that the petitioners cannot be deprived of their right to challenge the arbitrary and unreasonable act of the respondents, to unilaterally foist TDR, as a form of compensation, in violation of the statutory mechanism and procedure prescribed under the said Act. The petitioners cannot be deprived of challenging such action and they cannot be thrown out at the threshold on the ground of delay and laches. We find that failure on the part of the respondents to determine monetary compensation under Section 35 of the said Act and unilaterally offering TDR, rendered the entire action of taking possession of the subject land without authority of law. This clearly violated the right of the petitioners under Article 300A of the Constitution of India.

45. It would be a travesty to deprive relief to the petitioners on the ground of delay and laches, when the petitioners had everything to lose by delaying approaching the Court and in any case, the scale cannot tilt in favour of the respondents, when all that has happened by entertaining the present petition is that they have been called upon to respond on merits to the contentions raised on behalf of the petitioners.

46. We also find that the petitioners have placed on record communications addressed to respondent No.1-MMRDA from time to time raising their grievances. We also do not find any substance in the contention raised on behalf of the respondents that in the

communication dated 10.04.2012, the predecessors of the petitioners had acquiesced to accepting compensation in the form of TDR, for the reason that the said communication pertained to 1031.9 sq.mtrs. of land, which was other than the said 629.37 sq.mtrs. that was specifically acquired by the respondents by recourse to Sections 32 to 35 of the said Act. Even the subsequent communication dated 11.11.2016 sent to respondent No.1-MMRDA, as regards demand of alternative accommodation, was in respect of the said 1031.9 sq.mtrs. of land and not the acquired piece of land.

47. In any case, in respect of the acquired piece of land, the respondent No.1-MMRDA continued to engage with the petitioners and only on 01.04.2024, the said respondent sent a specific letter to the petitioners, stating that the impugned award cannot be modified in any manner and that the demand of monetary compensation is rejected. This letter further stated that since the tribunal under Section 41 of the said Act, had not been constituted, the petitioners could approach the Court for relief. This demonstrates the attitude adopted by the said respondent as regards grievance raised by the petitioners. This also puts paid to the contention raised on behalf of the respondents that the petitioners had alternative remedy of approaching the tribunal for hearing their grievance.

48. Thus, viewed from any angle, it is clear that the objections raised on behalf of the respondents in this petition, cannot be sustained. Hence, all the objections are rejected.

49. We also find that the petitioners have made out a case for setting aside the impugned award dated 15.12.2012 as also the impugned communication dated 01.04.2024, for the reasons

recorded hereinabove. The petitioners have also made out a case for a direction to the respondents to pay just and fair compensation to them in the form of monetary compensation.

50. In view of the above, the writ petition is allowed in terms of prayer clauses (B), (C) and (D). Accordingly, the impugned award dated 15.12.2012 and the impugned communication dated 01.04.2024, are quashed and set aside. The respondents are directed to determine the monetary compensation in terms of Section 35 of the said Act. Consequently, the step-wise procedure contemplated under Section 35(2) to 35(5) of the said Act, shall be complied with by the respondents. In doing so, the respondent No.1-MMRDA shall abide by the latest directions and Government resolutions issued by the respondent-State from time to time, so that the petitioners are paid just, fair and reasonable compensation for acquisition of their subject land.

51. The aforesaid exercise shall be completed by the respondents within a period of 6 months from today.

52. Pending applications are also disposed of, in the light of disposal of the writ petition.

(SHREERAM V. SHIRSAT, J.) (MANISH PITALE, J.)

Priya Kambli