IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6598 OF 2023

NAMDEO APPARAO CHATE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS
WITH
906 WRIT PETITION NO.6815 OF 2023

SUMANBAI RAMDAS MAGAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS
WITH
907 WRIT PETITION NO.6879 OF 2023

SHRIRANG VITHOBA YEUL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS
WITH
908 WRIT PETITION NO.6880 OF 2023

SAKHARAM TOLAJI RATHOD DEAD THROUGH HIS LRS DEVIDAS
SAKHARAM RATHOD AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS
...
Mr. A.V. Indrale Patil h/for Mr. D. K. Thote, Advocate for the Petitioners
Mr. S.W. Munde and Mrs. S.G. Karlekar, AGPs for Respondents 1 to 4

CORAM : RAVINDRA V. GHUGE, &
Y. G. KHOBRAGADE, JJ.

DATE : 26th July, 2023

ORDER (*Per Ravindra V Ghuge*):

1. Writ Petition No. 6598 of 2023 was not on Board. By consent of the parties, taken on Board.

2. In all these petitions, the petitioners have challenged the Awards dated 17.07.2015, 24.07.2015, 10.07.2015 and 02.06.20105, respectively by filing these petitions on 02.05.2023, which is practically after eight years.

3. The learned AGP has strenuously contended that since these petitioners have not accepted the Awards delivered under the Right to Fair Compensation and Transparency in Land Acquisition (Rehabilitation and Resettlement) Act, 2013, they can take recourse to the statutory, efficacious and expeditious remedy under Section 64 of the Act. It is a settled position of law that all the grounds can be raised under the said proceedings.

4. The learned Advocate for the petitioners places reliance on the judgment dated 30.03.2023, delivered by this Court in Writ Petition No. 2547 of 2023 and an earlier judgment dated 11.01.2023, delivered in Writ Petition No. 13031 of 2021 and contends that though Section 64 is a statutory remedy available, this Court may exercise it's jurisdiction. They further contend that the petitioners are assailing the unfair performance of an inherent duty by the

respondents. It is then contended that if two coordinate benches have entertained the petitions, this bench can also entertain this petition.

5. It is trite that there is no embargo on the High Court in entertaining a petition when a statutory remedy is available. It is a self imposed restraint and discretion to entertain the Petition has to be exercised judiciously. If the statutory remedy is neither efficacious nor expeditious, this Court can entertain a petition. While doing so, in our view, the element of urgency has to be considered and also whether injustice is likely to be perpetuated, if a petition is not entertained by the High Court.

6. In the present case, these petitioners have approached this Court after eight years of the passing of the Awards, by avoiding the statutory remedy under Section 64. There is no reason set out, much less, any justification avered as to to why this Court should entertain these petitions directly. It is also not the contention of the petitioners that the statutory remedy is neither efficacious nor expeditious. No element of urgency has been made out in order to convince this Court to exercise jurisdiction.

7. As such, this Court would have been justified in relegating the petitioners to the statutory remedy available, which is efficacious and expeditious, keeping in view the law laid down by the Honourable Supreme Court in **Virudhunagar Hindu Nadargal Dharma Paribalana**

Sabai vs. Tuticorin Educational Society, (2019) 9 SCC 538 that an available Statutory remedy would be a "near total bar" for entertaining a writ petition in the supervisory jurisdiction of this Court. Similarly, in **Genpact India Pvt. Ltd. vs. Deputy Commissioner of Income Tax, 2019 (16) Scale 667 : 2019 SCC Online SC 1500,** it is held that even if a petition is admitted, the Petitioner can be relegated to the available statutory remedy.

8. In **Kanaiyalal Lalchand Sachdev and others Vs. The State of Maharashtra and others (2011) 2 SCC 782**, the Hon'ble Supreme Court concluded that the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants u/s 17 of the Act. It was further held that, ordinarily remedy under Articles 226 and 227 of the Constitution is not available if an efficacious alternate remedy is available to any aggrieved person. Reliance was placed on **Sadhana Lodh Versus National Insurance Co.Ltd., (2003) 3 SCC 524**, **Surya Dev Rai Versus Ram Chander Rai (2003) 6 SCC 675** and **SBI Versus Allied Chemical Laboratories (2006) 9 SCC 252**.

9. In **City and Industrial Development Corporation Versus Dosu Aardeshir Bhiwandiwala (2009) 1 SCC 168**, the Hon'ble Supreme Court held in paragraph No.30 as under :

> *"30. The Court while exercising its jurisdiction under Article 226 is duty bound to consider whether :-*

[a] adjudication of the writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved ;
[b] the petition reveals all material facts ;
[c] the petitioner has any alternative or effective remedy for the resolution of the dispute ;
[d] the person invoking the jurisdiction is guilty of unexplained delay and laches ;
[e] ex facie barred by any laws of limitation ;
[f] grant of relief is against public policy or barred by any valid law ; and host of other factors."

10. In **Harbanslal Sahnia and another Vs. Indian Oil Corporation Ltd., and others (2003) 2 SCC 107,** the Hon'ble Supreme Court concluded that when an alternative remedy is available, the rule of exclusion of a Writ jurisdiction is of discretion and not one of compulsion. If there are such compelling contingencies in which the High Court could exercise it's jurisdiction, inspite of availability of the alternative remedy, it can do so.

11. In **Commissioner of Income Tax and Others Vs. Chhabil Dass Agrawal (2014) 1 SCC 603,** the Hon'ble Supreme Court held in paragraph Nos.11 to 15 as under :-

"11. Before discussing the fact proposition, we would notice the principle of law as laid down by this Court. It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious

alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226. (See: State of U.P. vs. Mohammad Nooh, AIR 1958 SC 86; Titaghur Paper Mills Co. Ltd. vs. State of Orissa, (1983) 2 SCC 433; Harbanslal Sahnia vs. Indian Oil Corpn. Ltd., (2003) 2 SCC 107; State of H.P. vs. Gujarat Ambuja Cement Ltd., (2005) 6 SCC 499).

12. The Constitution Benches of this Court in K.S. Rashid and Sons vs. Income Tax Investigation Commission, AIR 1954 SC 207; Sangram Singh vs. Election Tribunal, Kotah, AIR 1955 SC 425; Union of India vs. T.R. Varma, AIR 1957 SC 882; State of U.P. vs. Mohd. Nooh, AIR 1958 SC 86 and K.S. Venkataraman and Co. (P) Ltd. vs. State of Madras, AIR 1966 SC 1089 have held that though Article 226 confers a very wide powers in the matter of issuing writs on the High Court, the remedy of writ absolutely discretionary in character. If the High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.
(See: N.T. Veluswami Thevar vs. G. Raja Nainar, AIR 1959 SC 422; Municipal Council, Khurai vs. Kamal Kumar, (1965) 2 SCR 653; Siliguri Municipality vs.

Amalendu Das, (1984) 2 SCC 436; S.T. Muthusami vs. K. Natarajan, (1988) 1 SCC 572; Rajasthan SRTC vs. Krishna Kant, (1995) 5 SCC 75; Kerala SEB vs. Kurien E. Kalathil, (2000) 6 SCC 293; A. Venkatasubbiah Naidu vs. S. Chellappan, (2000) 7 SCC 695; L.L. Sudhakar Reddy vs. State of A.P., (2001) 6 SCC 634; Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha vs. State of Maharashtra, (2001) 8 SCC 509; Pratap Singh vs. State of Haryana, (2002) 7 SCC 484 and GKN Driveshafts (India) Ltd. vs. ITO, (2003) 1 SCC 72).

13. In Nivedita Sharma vs. Cellular Operators Assn. of India, (2011) 14 SCC 337, this Court has held that where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedies before resorting to writ jurisdiction for relief and observed as follows:

> "12. In Thansingh Nathmal v. Supdt. of Taxes, AIR 1964 SC 1419 this Court adverted to the rule of self-imposed restraint that the writ petition will not be entertained if an effective remedy is available to the aggrieved person and observed: (AIR p. 1423, para 7).
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> "7. … The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."

> 13. In Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 this Court observed: (SCC pp. 440-41, para 11) "11. … It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in Wolverhampton New Waterworks Co. v. Hawkesford, 141 ER 486 in the following passage: (ER p. 495) '… There are three classes of cases in which a liability may be established founded upon a statute. … But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. … The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.'

The rule laid down in this passage was approved by the House of Lords in Neville v. London Express Newspapers Ltd., 1919 AC 368 and has been reaffirmed by the Privy Council in Attorney General of Trinidad and Tobago v. Gordon Grant and Co. Ltd., 1935 AC 532 (PC) and Secy. of State v. Mask and Co., AIR 1940 PC 105 It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine."

14. In Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536 B.P. Jeevan Reddy, J. (speaking for the majority of the larger Bench) observed: (SCC p. 607, para 77)

> "77. … So far as the jurisdiction of the High Court under Article 226—or for that matter, the jurisdiction of this Court under Article 32—is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment."(See: G. Veerappa Pillai v. Raman & Raman Ltd., AIR 1952 SC 192; CCE v. Dunlop India Ltd., (1985) 1 SCC 260; Ramendra Kishore Biswas v. State of Tripura, (1999) 1 SCC 472; Shivgonda Anna Patil v. State of Maharashtra, (1999) 3 SCC 5; C.A. Abraham v. ITO, (1961) 2 SCR 765; Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433; H.B. Gandhi v. Gopi Nath and Sons, 1992 Supp (2) SCC 312; Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1; Tin Plate Co. of India Ltd. v. State of Bihar, (1998) 8 SCC 272; Sheela Devi v. Jaspal Singh, (1999) 1 SCC 209 and Punjab National Bank v. O.C. Krishnan, (2001) 6 SCC 569)

14. In Union of India vs. Guwahati Carbon Ltd., (2012) 11 SCC 651, this Court has reiterated the aforesaid principle and observed:

> "8. Before we discuss the correctness of the impugned order, we intend to remind ourselves the observations made by this Court in Munshi Ram v. Municipal Committee, Chheharta,(1979) 3 SCC 83.

> In the said decision, this Court was pleased to observe that: (SCC p. 88, para 23).
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> "23. … when a revenue statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all the other forums and modes of seeking [remedy] are excluded."

15. Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titagarh Paper Mills case and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

12. In **Magadh Sugar and Energy Ltd., Vs. The State of Bihar and Others, [2021 SCC OnLine SC 801],** the Hon'ble Supreme Court (3 Judges Bench) held that while the High Court normally would not exercise it's writ jurisdiction under Article 226 of the Constitution if an

effective and efficacious alternate remedy is available, the existence of an alternate remedy does not by itself bar the High Court from exercising it's jurisdiction in certain contingencies.

13. In **Radha Krishan Industries Versus State of Himachal Pradesh and others, (2021) 6 SCC 771**, the Hon'ble Supreme Court summarized the principles governing exercise of writ jurisdiction by the High Court in the presence of an alternate remedy, in paragraph No.28 as under :-

> (i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;
>
> (ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;
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> (iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) **the order or proceedings are wholly without jurisdiction**; or (d) the vires of a legislation is challenged;
>
> (iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;
>
> (v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under

Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

(emphasis supplied)

The principle of alternate remedies and its exceptions was also reiterated recently in the decision in Assistant Commissioner of State Tax v. M/s Commercial Steel Limited 22. In State of HP v. Gujarat Ambuja Cement Ltd. MANU/SC/0421/2005:(2005) 6 SCC 499, this Court has held that a writ petition is maintainable before the High Court if the taxing authorities have acted beyond the scope of their jurisdiction. This Court observed:

“23. Where under a statute there is an allegation of infringement of fundamental rights or when on the undisputed facts the taxing authorities are shown to have assumed jurisdiction which they do not possess can be the grounds on which the writ petitions can be entertained. But normally, the High Court should not entertain writ petitions unless it is shown that there is something more in a case, something going to the root of the jurisdiction of the officer, something which would show that it would be a case of palpable injustice to the writ petitioner to force him to adopt the remedies provided by the statute. It was noted by this Court in L. Hirday Narain Vs. ITO [(1970) 2 SCC 355: AIR 1971 SC 33] that if the High Court had entertained a petition despite availability of alternative remedy and heard the parties on merits it would be ordinarily unjustifiable for the High Court to dismiss the same on the ground of non-exhaustion of statutory remedies; unless the High Court finds

that factual disputes are involved and it would not be desirable to deal with them in a writ petition."

14. In **State of M.P. and another Vs. Commercial Engineers and Body Building Company Limited [2022 SCC Online SC 1425]**, the Hon'ble Supreme Court held in paragraph Nos.4 and 5 as under :-

" 4. Having heard learned Counsel for the respective parties at length on the entertainability of the writ petition Under Article 226 of the Constitution of India by the High Court against the Assessment Order and the reasoning given by the High Court while entertaining the writ petition against the Assessment Order despite the statutory remedy by way of an appeal available, we are of the opinion that the High Court ought not to have entertained the writ petition Under Article 226 of the Constitution of India challenging the Assessment Order denying the Input rebate against which a statutory appeal would be available Under Section 46(1) of the MP VAT Act, 2002.

5. While entertaining the writ petition Under Article 226 of the Constitution of India challenging the Assessment Order denying the Input rebate, the High Court has observed that there are no disputed question of facts arise and it is a question to be decided on admitted facts for which no dispute or enquiry into factual aspects of the matter is called for. The aforesaid can hardly be a good/valid ground to entertain the writ petition Under Article 226 of the Constitution of India challenging the Assessment Order denying the Input rebate against which a statutory remedy of appeal was available. "

15. In **M/s Godrej Sara Lee Ltd., Vs. Excise and Taxation Officer-cum-Assessing Authority and others, [AIR 2023 SC 781]**, the Hon'ble

Supreme Court held that '*ground of availability of alternative remedy cannot mechanically be construed as a ground for dismissal of a writ petition filed under Article 226 of the Constitution of India. It is axiomatic that the High Courts have discretion whether to entertain writ petition or not. The power to issue prerogative writs under Article 226 is plenary in nature. Article 226 does not, in terms, impose any limitation or restrain on the exercise of power to issue writs. While it is true that the exercise of writ powers despite the availability of a remedy under the very statute, which has been invoked and has given rise to the action impugned in the writ petition, ought not to be made in a routine manner. The mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under Article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ petition "not maintainable". Availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of Law. The "entertainability" and "maintainability" of a writ petition are distinct concepts. The objection as to "maintainability" goes to the root of the matter and if such an objection were found to be of substance, the Courts would be rendered incapable of even receiving*

the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the High Courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a High Court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest."

16. It was, thus, settled that if an efficacious and expeditious statutory remedy is available to the appellants, the High Court will be fully justified in declining to exercise it's jurisdiction under Articles 226 and 227 of the Constitution of India.

17. Insofar as the principle of law invoked by these petitioners in these cases is concerned, there is no room for debate, inasmuch as, the learned AGP can not argue against the law. In matters wherein the acquisition proceeding has commenced under the erstwhile Land Acquisition Act, 1984 and have continued after the introduction of 2013 Act, the date of reference would be 01.01.2014 and the sale instances, ready reckoner rates as on 01.01.2014 have to be taken into account. If sale instances as on 01.01.2014 or in close proximity to the date of reference, are not available, there is no anathema in considering

the earlier sale instances, by considering the acceptable escalation element which is normally 10% per year.

18. We find from the impugned awards that despite the law being in place, the Sub Divisional Officer has failed to apply his mind to the case and has not even considered the law which has binding effect. He neither has any discretionary power, nor can he claim to have a discretion, much less to do injustice. Judiciously exercising available discretion to do justice is acceptable to law. However, exercising discretion as per the whims of the authorities could only lead to one result and that is injustice. We are, therefore, entertaining these petitions, having noted that grave injustice has been caused to the Petitioners. Relegating them to the statutory remedy would increase their hardships.

19. In view of the above, **these petitions are partly allowed**. The impugned awards are quashed and set aside.

20. The proceedings of these petitioners are restored to the file of Respondent No.3 with a direction that he would consider the effect of section 26 and the observations set out in this judgment and consider the ready reckoner rates as on 01.01.2014 and/or sale instances of 2013, availability of which is vouched by the petitioners on an affidavit before us. If these are not available, older sale instances may be considered, by applying the element of escalation @ 10% per year so as

to bring such sale instances in close proximity to the cut off date 01.01.2014. Consequentially, he would recalculate the amounts and pass an award within 60 days from today..

21. In the event the petitioners are further aggrieved by such award, they would be at liberty to avail of the remedy as is prescribed under section 64 of the 2013 Act.

(Y. G. KHOBRAGADE, J.) **(RAVINDRA V. GHUGE, J.)**

JPChavan