

+ W.P.(C) 1839/2008

versus

UOI & ORS Respondents
 Through : Mr. Sanjay Poddar, Adv. for LAC
 Mr. Gaurav Sarin, Adv. for DDA

CORAM:
HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MS. JUSTICE ARUNA SURESH

1. Whether reporters of local papers may be allowed to see the judgment? Not Necessary
2. To be referred to the Reporter or not? Not Necessary
3. Whether the judgment should be reported in the Digest? Not Necessary

% 07.03.2008

Per Thakur, J (Oral):

More than 40 years after a certain piece of land was allegedly occupied by the respondent MCD for construction of a drain, the petitioners, most of whom happen to be the LRs of the original owners have approached this Court by way of the present writ petition for a mandamus directing the MCD to vacate the illegal occupation or in the alternative to acquire the land and pay compensation to them. Mr. Shali, learned counsel appearing for the petitioners, argued that although there is considerable delay in the filing of the petition, yet this court ought to ignore the same and grant relief because it is a case of illegal deprivation of the property owned by a citizen on account of an arbitrary act of the State. He submitted that the State could not justify its action of occupying the citizen's property, building a drain on the same and denying compensation to the land owners.

On behalf of the respondents, Messrs Poddar and Sarin on the other hand, argued that the writ petition was liable to be dismissed on the ground of inordinate and unexplained delay and laches. They submitted that even if the allegations made by the petitioners were taken to be true on their face value and the occupation of the land held to be unauthorized, yet the petitioners ought to have pursued their remedies against such illegal/unauthorized occupation diligently. Having failed to do so, the petitioners cannot at this belated point of time seek the intervention of this Court in its extra ordinary writ jurisdiction. Reliance in support was placed by Mr. Poddar upon a decision of the Supreme Court in *State of Maharashtra v. Digambar* AIR 1995 SC 1991.

There is, in our opinion, considerable merit in the submission made by Mr.Poddar. The writ petition does appear to us to be barred by inordinate delay and unexplained laches. The alleged unauthorized occupation of the petitioners' land measuring three bighas in Survey No. 1256/1 and 1257/2 had taken place long before the making of an award in respect of the adjacent land by the Collector for the public purpose of planned development of Delhi. Award No. 1415 dated 16th November, 1962, a copy whereof was produced by Mr. Shali before us, makes a mention about the utilization of a certain portion of land in the above mentioned two khasra numbers by the MCD for purposes of construction of a municipal drain. This implies that the drain stood constructed much earlier than the date of the award. For nearly 45 years since the making of the award the petitioners and their predecessors in interest remained content with the said position and did not move their little finger to either get the unauthorized occupation removed or claim compensation for the land. Such being the position, it is not permissible in our view at this stage for the petitioners to seek intervention of this court in the exercise of its extraordinary writ jurisdiction either for vacation of the

unauthorized occupation or for a direction to the respondents to acquire the same. That is especially so when there is no explanation much less a cogent and acceptable one forthcoming from the petitioners for their inaction over a period of more than four decades. The legal position as to whether unauthorized and illegal deprivation of property would by itself be a sufficient action for a writ court to interfere regardless of the conduct of the person so deprived, stands settled by the decision of the Supreme Court in **Digambar's case** (supra) relied upon by Mr. Poddar. The Supreme Court has, in the said decision, authoritatively declared that in order that a citizen may seek and obtain equitable relief under the provisions of Article 226 of the Constitution, his conduct must not be blameworthy either on account of laches or undue delay or acquiescence, waiver and the like. In the application of that principle, it does not matter that the infringement of the right of the citizen relates to the property owned by him. The following passage from the above decision sets the controversy at rest:

“12. How a person who alleges against the State of deprivation of his legal right, can get relief of compensation from the State by invoking writ jurisdiction of the High Court under Article 226 of the Constitution even though, he is guilty of laches or undue delay is difficult to comprehend, when it is well settled by decision of this Court that no person, be he a citizen or otherwise, is entitled to obtain the equitable relief under Article 226 of the Constitution if his conduct is blame-worthy because of laches, undue delay, acquiescence, waiver and the like. Moreover, how a citizen claiming discretionary relief under Article 226 of the Constitution against a State, could be relieved of his obligation to establish his unblameworthy conduct for getting such relief, where the State against which relief is sought is a welfare State, is also difficult to comprehend. Where the relief sought under Article 226 of the Constitution by a person against the welfare State is founded on its alleged illegal or wrongful executive action, the need to explain laches or undue delay on his part to obtain such relief, should, if anything, be more stringent than in other cases, for the reason that the State due to laches or undue delay on the part of the person seeking relief, may not be able to show that the executive action complained of was legal or correct for want of records

pertaining to the action or for the officers who were responsible for such action not being available later on. Further, where granting of relief is claimed against the State on alleged unwarranted executive action, is bound to result in loss to the public exchequer of the State or in damage to other public interest, the High Court before granting such relief is required to satisfy itself that the delay or laches on the part of a citizen or any other person in approaching for relief under Article 226 of the Constitution on the alleged violation of his legal right, was wholly justified in the facts and circumstances, instead of ignoring the same or leniently considering it. Thus, in our view, persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot get discretionary relief obtainable thereunder unless they fully satisfy the High Court that the facts and circumstances of the case clearly justified the laches or undue delay on their part in approaching the Court for grant of such discretionary relief. Therefore, where a High Court grants relief to a citizen or any other person under Article 226 of the Constitution against any person including the State without considering his blame-worthy conduct, such as laches or undue delay, acquiescence or waiver, the relief so granted becomes unsustainable even if the relief was granted in respect of alleged deprivation of his legal right by the State.”

In the light of the above, we have no hesitation in holding that this writ petition is liable to be dismissed. The same is accordingly dismissed but in the circumstances without any order as to costs.

T.S. THAKUR,J

ARUNA SURESH, J

MARCH 07, 2008

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