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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 25th February, 2011

+ **LETTERS PATENT APPEAL NO. 192/2011**

AMRITSAR SUGAR MILLS CO. LTD. Appellant
Through Mr. Vinay Kumar Garg & Mr.
Fazal Ahmad, Advocates.

versus

UNION OF INDIA Respondent
Through Mr. Sachin Datta, CGSC & Ms.
Gayatri Verma, Advocate for UOI.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

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

DIPAK MISRA, CJ

Calling in question the legal validity of the order dated 24th January, 2011 passed by the learned single Judge in Writ Petition (Civil) No. 3880/2010, the present intra-Court appeal has been preferred.

2. The brief resume of facts are that Amritsar Oil Works (Acquisition and transfer of Undertakings) Act, 1982 (for brevity, 'the Act'), was brought into force for acquiring the undertaking of the appellant. By notification dated 6th September, 1984, the

Commissioner of Payments was appointed under the Act for disbursing the amount payable. Under Section 7(1) of the Act a sum of Rs. 64,48,944.65 was to be paid by the Central Government to the appellant-company for transfer and vesting of the undertaking in the Central Government. Section 17 enables the person having a claim against the appellant company to file claims before the Commissioner of Payments within thirty days from the specified date. Section 19 of the Act stipulates that after meeting of the claims of the secured and unsecured creditors in terms of the priority set out in Section 16(2) of the Act, the balance amount shall be paid to the company in question.

3. As set forth, the final notice was published on 5th October, 1987 seeking claims from the appellant company under Section 19 of the Act by the Commissioner. No claim was received in pursuance of the said notice and accordingly, the Office of the Commissioner of Payments was wound up on 2nd January, 1989.

4. As manifest, the appellant moved the competent authority of the Central Government under the provisions of the Right to Information Act, 2005 to know why the amount which was due to

it was not paid and to the said query it was replied that as on 1st April, 1994 a sum of Rs.53,40,500/- was available in the Pay and Accounts Office as determined under the Act after settling the claims of the secured creditors.

5. A writ petition was filed in the Punjab and Haryana High Court forming the subject matter being W.P. (C) No. 12811/2009, which was withdrawn with liberty to file a fresh petition with more particulars. Thereafter, the petitioner invoked the jurisdiction of this Court and the learned single Judge rejected the contention that the Central Government was under an obligation to tender the amount and held that the writ petition was hit by doctrine of delay and laches. Being of this view, the learned single Judge dismissed the writ petition.

6. Assailing the order, it is submitted by Mr. Vinay Garg, learned counsel for the appellant that the learned single Judge has fallen into error by applying the principle of delay and laches to a case of this nature inasmuch as the undertaking was taken over in the year 1982 and the notice was published in 1987 and after determination of the amount payable to the creditors and others, the amount was available with the Commissioner which was due to the appellant. It is urged by him that the Central

Government could not have kept the appellant's money in the absence of any statutory prohibition to get back the money solely on the ground that the appellant approached in a belated manner. Learned counsel would further submit that there is no warrant or justification on the part of the respondents to deny the amount which is the amount that is due to him after making good of all claims. It is further contended by him that the said act tantamounts to confiscation of property and defeats the very purpose enshrined under Article 300 A of the Constitution of India.

7. Mr. Sachin Datta, learned counsel for Union of India has submitted that it was obligatory on the part of the appellant to give its response when the notice was published in the year 1987 and after the Office of the Commissioner was wound up, he had no right to claim the amount. He has invited our attention to Sections 19 and 20 of the Act to bolster the contention that there is a statutory bar to grant the compensation after a particular period and, therefore, the view expressed by the learned single Judge is absolutely flawless.

8. At the very outset, we may refer to the communication made to the petitioner when he applied under the Right to

Information Act, 2005. The same reads as follows:-

“ Kindly refer to your letter No. Nill dated 23.07.2009 on the subject noted above. As desired by you, it is informed that claim of the Company being time barred has been rejected vide letter of even number of this office dated 16.06.2009.

2. As on 01.04.1994, an amount of Rs.53,40,500/- was available in the Pay and Accounts Office.

3. Interest on the amount would be calculated by Pay and Accounts Office, for which you request under RTI Act is being forwarded to the Controller of Accounts, whose address is as follows:

Controller of Accounts, Ministry of Consumer Affairs, Food & Public Distribution Department of Food & Public Distribution, 1688 Kasturba Gandhi Marg, Barracks, New Delhi-110001.”

9. On a careful perusal of the same, it is perceptible that a sum of Rs.53,40,500/- was available in the Pay and Accounts Office. The said communication was made on 5th August, 2009. We have reproduced the said communication in entirety only to highlight that there is no factual dispute with regard to the quantum vis-à-vis the compensation which is payable to the appellant. In view of the aforesaid background, two questions

that emerge for consideration are whether there is a statutory bar or by virtue of the notice published on 18th September, 1987, the right of the appellant company is totally smothered or scuttled to get back the sum and whether the relief claimed is hit by the doctrine of delay and laches.

10. First we would like to scan the statutory scheme. Section 7 of the Act occurs in Chapter III and deals with payment of amount. The said Section, as is relevant for the present purpose, reads as follows:-

“7. (1) For the transfer to any vesting in the Central Government, under Section 3 of the Amritsar Oil Works and the right, title and interest of the Amritsar Sugar Mills company in relation that works, there shall be given by the Central Government to the Amritsar Sugar Mills Company, in cash and in the manner specified in Chapter VI, an amount equal to a sum of sixty four lakhs, forty eight thousand nine hundred and forty four rupees and sixty five paisa.

(2) In addition to the amount specified in sub-section (1), there shall also be given to the Amritsar Sugar Mills Company by the Central Government an amount calculated at the rate of ten thousand rupees per annum for the deprivation of the Amritsar Sugar Mills Company of the management of its Amritsar Oil Works for the period commencing on the date of taking over

and ending with the appointed day.

(3) The amount specified in sub-section (2) and the amount calculated in accordance with the provisions of sub-section (2) shall carry simple interest at the rate of four per cent, per annum for the period commencing on the appointed day and ending on the date on which payment of such amount is made by the Central Government to the Commissioner.”

11. On a scrutiny of the said provision, it is clear to us that a specified sum as compensation was payable with interest for taking over the undertaking of the appellant company and the modes of computation of payment towards interest are also given. Section 14, which occurs in Chapter IV, deals with Commissioner of Payments and the role of the Commissioner in various fields. Section 17 of the Act deals with claimant who had a claim over the undertaking owned by the appellant company. The said provision is as follows:-

“17. Every person having a claim against the Amritsar Sugar Mills Company in relation to the Amritsar Oil Works shall prefer to such claim before the Commissioner within thirty days from the specified date:

Provided that if the Commissioner is satisfied that the proof claimant was prevented by sufficient cause from

preferring the claim within the said period of thirty days, he may entertain the claim within a further period of thirty days, but not thereafter.”

12. Section 18 deals with the procedural aspect which are required to be adopted by the Commissioner for dealing and disbursing of the claim. Section 19 provides how the payments have to be made to the secured and unsecured creditors and what should be done to the said amount qua the company. As Mr. Sachin Datta has laid immense emphasis on the said provision, it is seemly to reproduce the same:

“19. Where, after meeting the claims admitted by him of secured creditors, and unsecured creditors having priority under sub-section (2) of section 16, the total amount of the claims of other unsecured creditors admitted by the Commissioner does not exceed the balance of the amount left after assisting the liabilities referred to in sub-section (1) and (2) of section 16, every admitted claim of such other unsecured creditors, shall rank equally among themselves and be paid in full, and the balance, if any, shall be paid to the Amritsar Sugar Mills Company, but where such amount is insufficient to meet in full the total amount of such admitted claims, all such claims shall abate in equal proportions and be paid accordingly.”(emphasis added)

13. On a studied scrutiny of the said provision, it is

demonstrable that after meeting the dues of the secured creditors and the unsecured creditors having priority under subsection 2 of Section 16, and the admitted claim of such other unsecured creditors shall be made good and thereafter the balance amount has to be paid to the appellant and in case there is insufficient amount to meet the full and the total amount of admitted claims, all such claims shall abate in equal proportions and be paid accordingly. Thus, in case of surplus, the same would be payable to the appellant company. This is the obligation and statutory duty of the respondents.

14. Section 20 has a different contour. It provides how the amount is to be dealt with in case of unclaimed and undisbursed amounts payable to the third parties, who had claims against the appellant. Mr. Datta, learned Standing Counsel for Union of India would contend that the interest of the company is totally destroyed if the language of Section 20 is purposefully read. To appreciate the said submission of Mr. Datta, we reproduce Section 20 hereinbelow:

“20. Any money paid to the Commissioner which remains undisbursed or unclaimed on the date immediately preceding the date on which the office of the Commissioner is finally wound up, shall be paid by the

Commissioner before his office is finally wound up to the general revenue account of the Central Government; but a claim to any money so transferred may be preferred to the Central Government by the person entitled to such payment and shall be dealt with as if such transfer had not been made, and the order, if any, for payment of the claim being treated as an order for the refund of the revenue.”

15. On an x-ray of the aforesaid provision, it is quite vivid that before the Office of the Commissioner is finally wound up, the Commissioner has to transfer the unclaimed amount to general revenue account of the Central Government and a claim to the money transferred should be preferred to the Central Government by the person entitled to such payment and the said claim shall be dealt with as if such transfer has not been made and an order for payment of the claim being treated as an order for the refund of the revenue. The learned Standing Counsel for the Union of India would submit that after the money has been transferred to the general revenue account of the Central Government, the claim of the appellant company becomes extinct as the statutory provision refers to the person. The word ‘person’ definitely does not refer to the appellant company but refers to a third party claimant. The very purpose

of the legislature was to keep the third party claims alive despite the winding up of the Office of the Commissioner. It had a laudable purpose but by no stretch of imagination it can be denounced that what has been stated in Section 19 of the Act stands abrogated by the language employed in Section 20 to destroy the right of the appellant over the balance compensation. It becomes obligatory on the part of the Central Government to pay it back to the appellant company because that is the compensation.

16. The notice that was published on 18th September, 1987 in the newspaper reads as follows:-

“ Now after settling almost all the claims of the creditors taking under various categories, it is expected that some balance amount would be available with the Commissioner for payment to the Amritsar Sugar Mills Co. Ltd. The company is, therefore, required to place a claim before the Commissioner of Payments for the balance amount within 30 days from the issue of this notification. The person claiming the amount on behalf of the Amritsar Sugar Mills Co. Ltd. should be duly authorized by the Company to make such a claim.

It is noteworthy that at the time when this office invited applications under Section 17 of the Amritsar Oil Works (Acquisition & Transfer of

Undertakings) Act, 1982 from persons having claims against Amritsar Sugar Mills Co. Ltd., in relation to Amritsar Oil Works, some shareholders of the Company had also preferred their claims for disbursement. While acknowledging such applications each shareholder was informed individually that the claims of the shareholders do not fall under Section 17 of the Act because it was held that they could not be the persons having claims against the company being members of the company. Now when the balance of the compensation amount is being paid to the company by virtue of Section 19 of the Act, the shareholders can take necessary steps to recover their dues from the Company as per the provision of Company Law.

Take notice that in default of receipt of any such claims from the authorized person of the company within the stipulated time, the available amount shall be deposited with the Central Government under Section 20 of the Act.”

17. On a perusal of the said publication, it only becomes further clear that in case the claims are not made, the amount shall be deposited with the Central Government under Section 20 of the Act. From the aforesaid statutory provisions and the paper publication, it is clear as crystal that there is a distinction between a third party claimant qua undertaking of the company

that had been taken over, and the company. That apart, the company cannot be equated with a claimant neither under the statute nor under the notice published. In fact, the publication clearly postulates that when the balance of compensation amount was being paid to the company by virtue of Section 19 of the Act, the shareholders can take necessary steps to recover their dues from the company under the provisions of the company law but further clarified that the shareholders have been given a different status apart from the said third party. In any case, the claim of the company by virtue of any kind of statutory provision has not been smothered. Thus, the doctrine of delay and laches would not defeat the amount due and payable to the company. Mr. Garg, learned counsel for the appellant has invited our attention to a two-Judge Bench decision in ***State of U.P. and Others versus Manohar***, (2005) 2 SCC 126. In the said case, there was acquisition of land in the year 1955. A writ petition was filed before the Allahabad High Court in the year 1991 that no compensation was paid. The High Court repelled the plea and the stand that the claim was absolutely belated, and came to hold that the State should gracefully accept its mistake and promptly pay the

compensation. In that context their Lordships further opined thus:

“7. Ours is a constitutional democracy and the rights available to the citizens are declared by the Constitution. Although Article 19(l)(f) was deleted by the Forty-fourth Amendment to the Constitution, Article 300-A has been placed in the Constitution, which reads as follows:

“300-A. Persons not to be deprived of property save by authority of law- No person shall be deprived of his property save by authority of law.”

8. This is a case where we find utter lack of legal authority for deprivation of the respondent's property by the appellants who are State authorities. In our view, this case was an eminently fit one for exercising the writ jurisdiction of the High Court under Article 226 of the Constitution. In our view, the High Court was somewhat liberal in not imposing exemplary costs on the appellants. We would have perhaps followed suit, but for the intransigence displayed before us.”

18. In ***Vimalben Ajitbhai Patel versus Vatslabeen Ashokbhai Patel and Others***, (2008) 4 SCC 694, the Apex Court has held thus:

“42. The right to property is no longer a fundamental right. But still it is a constitutional right. Apart from

constitutional right it is also a human right. The procedures laid down for deprivation thereof must be scrupulously complied with (See *Devinder Singh and Ors. v. State of Punjab and Ors.* (2008) 1 SCC 728).”

19. In ***Karnataka State Financial Corporation versus N. Narasimahaiah and Others***, (2008) 5 SCC 176, their Lordships have expressed as follows:

“40. Right of property, although no longer a fundamental right, is still a constitutional right. It is also human right. In absence of any provision either expressly or by necessary implication, depriving a person therefrom, the court shall not construe a provision leaning in favour of such deprivation.....”

20. In ***P.T. Munichikkanna Reddy versus Revamma and Others***, AIR 2007 SC 1753, it has been ruled as under:

“15. There is another aspect of the matter, which cannot be lost sight of. The right of property is now considered to be not only a constitutional or statutory right but also a human right.

16. Declaration of the Rights of Man and of the Citizen, 1789 enunciates right to property under Article 17:

“Since the right to property is inviolable and sacred, no-one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it and just and prior indemnity has been paid.”

17. Moreover, Universal Declaration of Human rights, 1948 under Section 17(i) and 17(ii) also recognizes right to property:

“17(i) Everyone has the right to own property alone as well as in association with others. (ii) No-one shall be arbitrarily deprived of his property.”

18. Human rights have been historically considered in the realm of individual rights such as, right to health, right to livelihood, right to shelter and employment etc. but now human rights are gaining a multifaceted dimension. Right to property is also considered very much a part of the new dimension. Therefore, even claim of adverse possession has to be read in that context. The activist approach of the English Courts is quite visible from the Judgment of *Beaulane Properties Ltd. v. Palmer* 2005 (3) WLR 554: 2005 EWHC 817 (Ch.) and *JA Pye (Oxford) Ltd v. United Kingdom* [2005] ECHR 921: [2005] 49 ERG 90, [2005] ECHR 921, the court herein tried to read the Human Rights position in the context of adverse possession. But what is commendable is that the dimensions of human rights has widened so much that now property dispute issues are also being raised within the contours of human rights.”

21. At this juncture, we may reproduce a passage from ***State of Kerala and Another versus Peoples Union for Civil Liberties Kerala State Unit and Others***, (2009) 8 SCC 46

wherein it has been held:-

“88. When a person acquires an indefeasible right, he can be deprived therefrom only by taking recourse to the doctrine of imminent domain. If a person is sought to be deprived of an indefeasible right acquired by him, he should be paid an amount of compensation. In a case of this nature, therefore, where an amount of compensation has not actually been tendered, the vendees of the land could not be deprived of their right to be dispossessed. In that view of the matter, a distinction must be made between a case where an amount of compensation has been paid and in a case where it has not been.”

22. In this context, we may usefully refer to the decision in ***Ram Chand and Others versus Union of India and Others***, (1994) 1 SCC 44 wherein a three-Judge Bench of the Apex Court, after referring to the decision in ***Ramjas Foundation and Others versus Union of India and Others***, AIR 1993 SC 852, has opined that the question of delay in invoking the jurisdiction under Article 226 of the Constitution of India has to be considered along with the communication on the part of the authority who are to perform their statutory duty. When the statutory authorities fail to take action within a reasonable time, they cannot take defence of the plea of laches. In the said case,

again the question of compensation arose and their Lordships posed the question whether the respondents, viz., Union of India and its functionaries be not directed to compensate the petitioner who were small cultivators holding land within and around Delhi for the injury caused to them not by the provisions of the Act but because of the non-exercise of the power of the authorities under the Act within a reasonable time and eventually the writ petition and the civil appeals were allowed and the compensation was granted.

23. We have referred to the aforesaid decisions only to highlight that getting compensation qua one's own property is sacrosanct.

24. Keeping in view the aforesaid enunciation of law and the scheme of the Act, we are inclined to think that when the amount has been kept in the central revenue fund and intimation was sent to the petitioner in 2009, the right of the appellant company to get the compensation of the balance amount should not be denied. As is manifest, a sum of Rs.53,40,500/- was available in the Pay and Accounts Office as on 1st April, 1994 and again by communication dated 26th/28th April, 2010 the authorities informed him that there has been no reconciliation of the

balance amount along with interest. Regard being had to the said communication, the cumulative effect of the statutory provisions and the pronouncements in the field, we are unable to concur with the view of the learned single Judge that the claim put forth by the appellant-petitioner was hit by delay and laches.

25. In view of the aforesaid analysis, we allow the appeal and set aside the order passed by the learned single Judge and direct the respondents to refund the balance amount due to the company within a period of three months. There shall be no order as to costs.

CHIEF JUSTICE

SANJIV KHANNA, J.

**FEBRUARY 25, 2011
VKR**