

GAHC010116432015



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2904/2015

ON THE DEATH OF HEMANTA KUMAR MANDAL, HIS LEGAL HEIRS REP.
S/O LT. GANESH MANDAL, R/O KALAHABHANGA, BARPETA ROAD TOWN,
P.O. and P.S. BARPETA ROAD, DIST- BARPETA, ASSAM

1.1: SRI AMAR CHAND MANDAL (SON)
R/O. KALAHABHANGA
BARPETA ROAD TOWN
P.O. AND P.S. BARPETA ROAD
DIST. BARPETA ASSAM.

1.2: SRI UTTAM KUMAR MANDAL (SON)
R/O. KALAHABHANGA
BARPETA ROAD TOWN
P.O. AND P.S. BARPETA ROAD
DIST. BARPETA ASSAM.

1.3: SRI GAUTAM KUMAR MANDAL (SON)
R/O. KALAHABHANGA
BARPETA ROAD TOWN
P.O. AND P.S. BARPETA ROAD
DIST. BARPETA ASSAM.

1.4: SRI NATHURAM MANDAL (SON)
R/O. KALAHABHANGA
BARPETA ROAD TOWN
P.O. AND P.S. BARPETA ROAD
DIST. BARPETA ASSAM.

2: ANANTA KUMAR MANDAL
S/O LT. GIRISH CHANDRA MANDAL
R/O KALAHABHANGA
BARPETA ROAD TOWN
P.O. and P.S. BARPETA ROAD
DIST- BARPETA ASSAM

3: SHYAM SUNDAR KSHATRIYA
S/O LT. BHARATI KSHATRIYA
R/O KALAHBHANGA
BARPETA ROAD TOWN
P.O. and P.S. BARPETA ROAD
DIST- BARPETA ASSAM

4: SUNIL RAJBONGSHI
S/O LT. KHOKA RAJBONGSHI
R/O KALAHBHANGA
BARPETA ROAD TOWN
P.O. and P.S. BARPETA ROAD
DIST- BARPETA
ASSAM

5: DHIRENDRA DAS
S/O LT. GOBINDA TILAK DAS
R/O KALAHBHANGA
BARPETA ROAD TOWN
P.O. and P.S. BARPETA ROAD
DIST- BARPETA
ASSAM

5.1: SMTI. SHYAMALA DAS (WIDOW)
R/O. KALAHBHANGA
BARPETA ROAD TOWN
P.O. AND P.S. BARPETA ROAD
DIST. BARPETA
ASSAM.

5.2: SRI AJIT DAS (SON)
R/O. KALAHBHANGA
BARPETA ROAD TOWN
P.O. AND P.S. BARPETA ROAD
DIST. BARPETA
ASSAM.

6: GOBINDA MANDAL
S/O GOUR MANDAL @ GOURA MANDAL
R/O KALAHBHANGA
BARPETA ROAD TOWN
P.O. and P.S. BARPETA ROAD
DIST- BARPETA
ASSA

VERSUS

THE UNION OF INDIA and 11 ORS

2:THE NATIONAL HIGHWAY AUTHORITIES OF INDIA
MINISTRY OF ROAD TRANSPORT AND HIGHWAYW
GR.5and6
DWARKA
NEW DELHI-75

3:THE CHIEF GENERAL MANAGER
NHA
4TH FLOOR
NEDFI HOUSE
G.S. ROAD
DISPUR
GHY-6

4:THE SECY. TO THE GOVT. OF INDIA
REVENUE AND DISASTER MANAGEMENT DEPTT.
DISPUR
GHY-6

5:THE STATE OF ASSAM
REP. BY THE CHIEF SECY. TO THE GOVT. OF ASSAM
DISPUR
GHY-6

6:THE ADDL. CHIEF SECY. TO THE GOVT. OF ASSAM
REVENUE AND D.M. DEPTT.
DISPUR
GHY-6

7:THE SECY. TO THE GOVT. OF ASSAM
PWD DEPTT.
DISPUR
GHY-6

8:THE DY. COMMISSIONER
BARPETA
ASSAM

9:THE CIRCLE OFFICER
BARNAGAR REVENUE CIRCLE
P.O. SHORBHOG
DIST- BARPETA
ASSAM

10:THE PROJECT DIRECTOR OF BARPETA AND BONGAIGAON

BONGAIGAON
ASSAM

11:THE CHIEF ENGINEER
PWD R
ASSAM
CHANDMARI
GHY-3

12:THE EXECUTIVE ENGINEER
PWD
NH DIVISION
RANGIA
P.O. RANGIA
DIST- KAMRUP
ASSAM

Advocate for the Petitioner : MR.S HOQUE

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT

Date : 13-06-2023

The writ petition under Article 226 of the Constitution of India, has been instituted seeking inter alia setting aside and quashing of an order bearing no. RLA.134/2003/Pt.-I/282 dated 10.03.2015 [Annexure-18 to the writ petition] passed by the Additional Chief Secretary to the Government of Assam, Revenue & Disaster Management Department. A direction is also sought to the respondent authorities to pay the petitioners a sum of Rs. 5,97,75,000/- by taking into account the fact that the Deputy Commissioner, Barpeta vide a Notification dated 28.03.2014, had notified the zonal value of land in respect of Barpeta Road Town @ Rs. 75,00,000/- per Bigha. A further direction is sought for to pay interest @ 9% per annum till the date of actual payment on the premise that a parcel of land measuring 7 Bighass 4 Kathas 17 Lessas [07B-04K-17L], purportedly belonging to the petitioners previously, had been illegally acquired by the State respondents, more particularly, the Public Works Department [PWD] in the year 1962-1964 for the purpose of construction of 31 no. National Highway, without paying any compensation against such acquisition.

2. The original writ petitioners were :- [i] Hemanta Kumar Mandal; [ii] Ananta Kumar Mandal; [iii] Shyam Sunder Kshatriya; [iv] Sunil Ranbongshi; [v] Dhirendra Das; and [vi] Gobinda Mandal. During the pendency of the writ petition, the original writ petitioner no. 1 viz. Hemanta Kumar Mandal died on 13.05.2017 leaving behind four sons as his legal representatives viz. [i] Sri Amar Chand Mandal; [ii] Sri Uttam Kumar Mandal; [iii] Sri Gautam Kumar Mandal; and [iv] Sri Nathuram Mandal, who have been substituted as the petitioner no. 1.1, the petitioner no. 1.2, the petitioner no. 1.3, and the petitioner no. 1.4 respectively in place of the original writ petitioner no. 1, pursuant to an order dated 11.02.2019 passed in an interlocutory application, I.A.[C] no. 4297/2018, filed for such substitution. The original writ petitioner no. 5 viz. Dhirendra Das also expired during the pendency of the writ petition, on 11.04.2017, leaving behind his wife viz. Smti. Shyamala Das and one son viz. Sri Ajit Das as his legal representatives, who have been substituted as the petitioner no. 5.1 and the petitioner no. 5.2 by the an order dated 11.02.2019 passed in an interlocutory application, I.A.[C] no. 4297/2018, filed for such substitution.

3. It is projected that the petitioners were the owners of a parcel of land measuring 7 Bighas 4 Kathas 17 Lessas [07B-04K-17L] and the same was a part of a total area of land measuring 11 Bighas 4 Kathas 2 Lesass [11B-04K-02L]. Though in the body of the writ petition, no further details of the said parcel of land are mentioned, it is canvassed that the parcel of land located in Revenue Village – Barpeta Kalahabhanga Road, Barnagar Revenue Circle, District - Barpeta, Assam, came to be acquired during the period : 1962-1964 for the purpose of construction of 31 no. National Highway with an assurance that the petitioners would be paid adequate compensation for such acquisition. According to the petitioners, when the compensation amounts were not paid to them, they had to approach the respondent authorities from time to time but no fruitful results were found forthcoming from such approaches. It is claimed that the petitioners had approached the office of the Deputy Commissioner, Barpeta through one entity, Barpeta District Four Lane Effected Co-Ordination Committee in the year 1990 by way of a Representation [Annexure-2 to the writ petition].

4. From the case papers, it can be noticed that the matter regarding alleged non-

payment of compensation started being examined by the respondent authorities only from the year 2010 onwards when the petitioners submitted a Representation before the Minister, Revenue, Assam in and around December, 2010 vide Annexure-3. On the Annexure-3, an endorsement dated 14.12.2010 of the Minister, Revenue, Assam could be seen and the endorsement was seemed to have been marked to the Deputy Commissioner, Barpeta to verify and release as per eligibility. Reference is made to a letter dated 23.12.2010 of the Circle Officer, Barnagar Revenue Circle, Sorbhog addressed to the Deputy Commissioner, Barpeta wherein a mention was made to a letter dated 18.12.2010 of the Deputy Commissioner, Barpeta. In response to the said letter dated 18.12.2010 of the Deputy Commissioner, Barpeta, the Circle Officer, Barnagar Revenue Circle, Sorbhog vide his letter dated 23.12.2010 had informed the Deputy Commissioner, Barpeta to the effect that the lands were converted to Government land pursuant to an Order no. RQ-6008-29/69 dated 21.05.1969 of the Deputy Commissioner, Barpeta and an Order no. RX.11/2169/5 dated 30.05.1969 of the Sub-Divisional Officer [Civil], Barpeta. The Circle Officer, Barnagar Revenue Circle, Sorbhog also informed that the Representationists had claimed that they did not receive compensation against the lands acquired for the purpose of construction of 31 no. National Highway. Correspondences were exchanged thereafter amongst different authorities in the Public Works Department [PWD], Assam; the National Highway Authorities of India [NHAI], Ministry of Road Transport & Highway [MoRT&H], Government of India [GoI]; the Deputy Commissioner, Barpeta; and other authorities in the subsequent period with regard to the matter of acquisition of land for the purpose of construction of 31 no. National Highway during the year 1962 and release or non-release of compensation amounts against such acquisition.

4.1. By a letter dated 20.07.2011, the Executive Engineer, PWD, Rangia [NH] Division, Rangia informed the Deputy Commissioner, PWD [NH Works], Assam to the effect that there was no record available in his office regarding acquisition of land for the purpose of construction of 31 no. National Highway during the year 1962. A photo copy of a statement of pending land acquisition cases of Rangia [NH] Division, Kamrup, Nalbari, Barpeta districts was forwarded to the office of the Chief Engineer, PWD [NH Works], Assam vide the letter dated 20.07.2011. On 23.09.2011, the Chief Engineer, PWD [NH Works], Assam informed the

Government in the Public Works [Highway] Department that his office could not trace out any record as regards acquisition and release of compensation vis-à-vis construction of 31 no. National Highway during the year 1962. By a Communication dated 15.10.2011, the Under Secretary to the Government of Assam, Public Works [Highway] Department wrote to the Chief Engineer, PWD [NH Works], Assam to take up the matter with the Deputy Commissioner, Barpeta to examine the matter regarding acquisition of land and alleged non-payment of compensation for acquisition of land in Barpeta Road Town. Accordingly, the Chief Engineer, PWD [NH Works], Assam communicated with the Deputy Commissioner, Barpeta on the subject-matter vide a letter dated 31.10.2011.

4.2. When the matter of acquisition, etc. was forwarded by the office of the Deputy Commissioner, Barpeta to the NHAI by a letter dated 12.07.2012, the NHAI authorities wrote to the Chief Secretary, Government of Assam by a letter dated 27.09.2013 by stating that the then existing 2-Lane 31 no. National Highway from Kilometre 983 to Kilometre 1121 was constructed by the Public Works Department [PWD], Government of Assam in the year 1962 and the then existing 2-Lane National Highway was handed over to the NHAI only in the year 2005. By a letter dated 09.07.2013, the NHAI informed the Deputy Commissioner, Barpeta to the effect that it was the Public Works [Roads] Department, Government of Assam who might have dealt with the matters in relation to land acquisition in the year 1962.

4.3. On 29.11.2013, the Deputy Commissioner, Barpeta informed the Additional Chief Secretary to the Government of Assam, Revenue & Disaster Management Department to the effect that there were no records available in the office of the Deputy Commissioner, Barpeta as regards release of any payment to the land owners in respect of the lands acquired for construction of 31 no. National Highway during 1962. It appears that an enquiry was caused by the Additional Deputy Commissioner, Barpeta in his capacity as the Competent Authority, NHAI, Barpeta under the National Highways Act, 1956 whereafter an Enquiry Report was submitted by the said Competent Authority indicating that a number of plots of land were acquired during 1962 from the land owners including few of the petitioners. It was further reported that the land records in respect of the acquired land records were corrected in the name of 31 no. National Highway by converting those acquired lands into Government Khas

lands as per an Order bearing memo no. RQ-6008-29/69 dated 21.05.1969 of the then Deputy Commissioner, Kamrup and as per an Order bearing memo no. RX-II/2/6915 dated 30.05.1969 of the Sub-Divisional Officer [Civil], Barpeta. The present Barpeta District was then a part of the Kamrup District. Pursuant to the said Orders, the land records were corrected in the name of 31 no. National Highway by converting the periodic patta lands into Government Khas lands. It was reported that no records were available in the office of the said Competent Authority regarding the acquisition process.

4.4. When the matter of acquisition and release of compensation reached the Revenue & Disaster Management [LR] Department, Government of Assam, the Additional Chief Secretary to the Government of Assam Revenue & Disaster Management Department after considering the Report of the Deputy Commissioner, Barpeta submitted on 04.12.2013 and non-traceability of any records as regards any acquisition process in question, undertaken in the year 1962, had passed the impugned Order dated 10.03.2015 rejecting the claim of the petitioners for compensation against their acquired land. Aggrieved thereby, the petitioners have instituted the instant writ petition seeking the reliefs, mentioned above.

5. I have heard Mr. M.U. Mahmud, learned counsel for the petitioners; Mr. C. Baruah, learned Standing Counsel, National Highway Authorities of India [NHAI], Ministry of Road Transport & Highways [MoRT&H], Government of India [GoI], for the respondent nos. 1 – 3 & 10; Ms. N. Bordoloi, learned Standing Counsel, Revenue & Disaster Management Department for the respondent nos. 4 & 6; Ms. M. Barman, learned Junior Government Advocate, Assam for the respondent nos. 5, 8 & 9; and Mr. B. Choudhury, learned Standing Counsel, Public Works Department [PWD] for the respondent nos. 7, 11 & 12.

6. Mr. Mahmud, learned counsel for the petitioners has contended that the parcel of land measuring 7 Bighas 4 Kathas 17 Lessas [07B-04K-17L], belonging to the petitioners, were acquired for the purpose of construction of 31 no. National Highway in violation of the constitutional provision contained in Article 300A of the Constitution of India. He has canvassed that the right to property, apart from a constitutional right, is also a human right and such right cannot be taken away except in accordance with law. He has contended that

since it is an admitted position that the afore-mentioned parcel of land, belonging to the petitioners, was taken away by a process of acquisition, the petitioners were entitled to compensation in the year 1962 itself but the respondent authorities had blatantly violated the right to property of the petitioners by not paying due compensation for all these years. He has contended that from the correspondences exchanged between the respondent authorities, annexed to the writ petition, it is clearly discernible that the respondent authorities did not pay any compensation at the time of acquisition of the parcel of land taken from the petitioners as far back as in 1960s. When the matter of non-release of compensation amounts were represented to the respondent authorities, the respondent authorities adopting a dilly-dallying approach, had delayed the matter of assessment of the compensation amounts and consequent release of the compensation amounts. It is not open for the respondent authorities to take the plea on non-availability of records of acquisition to deny the compensation amounts to the petitioners as the petitioners have the right to receive compensation amounts and were being deprived of from receiving such compensation amounts in violation of their right to property for about five decades. He has contended that the Order dated 10.03.2015 is bad, arbitrary and unjust and the same is liable to be set aside and quashed. To buttress his contentions, Mr. Mahmud has referred to a number of authorities of the Hon'ble Supreme Court of India, reference of which would be made at the subsequent part of this order. It is his submission that when the element of delay is pitted against unjust denial of justice, it is substantial justice which should prevail.

7. The contentions advanced on behalf of the respondent authorities are more or less in similar lines. The learned counsel for the respondents have canvassed that the petitioners themselves are guilty of delay and laches. It is not the plea of the petitioners that they had approached the respondent authorities at any point of time prior to 2010 ventilating their grievance as regards non-release of compensation against purported acquisition of the parcel of land. It is further contended that there is neither a plea of forcible dispossession of the petitioners from the parcel of land in question nor there is any claim that the respondent authorities are in forcible possession of the parcel of land since 1960s. It is not open for the petitioners now to claim compensation on the ground of violation of their rights under Article 300A of the Constitution of India after about five decades. It is further contended on behalf

of the respondent authorities that the land records in respect of the parcel of land were corrected as far back as in the year 1969, after taking over the possession of the same and the construction of 31 no. National Highway stood completed in 1960s. Since the claim of the petitioners has suffered from delay and laches attributable only to them, there cannot be any question of compensation to the petitioners and as such, no question arises for payment of compensation at the market rate on the basis of the authorities cited by the petitioners. To buttress their submissions on the aspect of delay and laches, authorities are cited by the learned counsel for the respondent authorities.

8. I have duly considered the submissions of the learned counsel for the parties and have also perused the materials brought on record by the parties through their pleadings. I have also gone through the decisions cited at the Bar on behalf of the learned counsel for the parties.

9. It has emerged from the materials on record that the construction of 31 no. National Highway in the stretch from Kilometre 983 to Kilometre 1121 was undertaken by the Public Works Department [PWD], Government of Assam in the year 1962. At that point of time, the construction of the National Highway was for a 2-Lane National Highway. It has further emerged that plots of land located at Barpeta Road Town, Barnagar Revenue Circle, District – Barpeta were utilized for the purpose of construction of the then 2-Lane 31 no. National Highway. It was the PWD, Government of Assam who had utilized those parcels of land for the construction of the National Highway. Neither the petitioners' side nor the respondents' side have produced any material relating to the matter of acquisition of lands for the purpose of construction of 31 no. National Highway undertaken during 1960s. The records produced by the parties pertain to the year 2010 and thereafter. The records produced by the Deputy Commissioner, Barpeta has, however, contains copies of Jamabandi [Records of Right] of few plots of land located at Barpeta Road Town. From the said Jamabandi [Records of Right], it is discernible that few of the plots of land in Barpeta Road Town stood converted from Periodic Patta lands to Government [Khas] lands in the year 1969 in the name of 31 no. National Highway pursuant to an Order bearing memo no. RQ-6008-29/69 dated 21.05.1969 of the then Deputy Commissioner, Kamrup and as per an Order bearing Memo no. RX-II/2/6915

dated 30.05.1969 of the then Sub-Divisional Officer [Civil], Barpeta.

10. The petitioners have referred to a Communication dated 08.08.2011 of the Circle Officer, Barnagar Revenue Circle, Sorbhog addressed to the Chief Engineer, PWD [NH], Assam on the subject of land acquisition wherein he provided the details of the land owners [pattadars], Dag nos., Patta nos. and areas of a number of plots of land of those land owners [pattadars] whose lands were acquired for the purpose of construction of 31 no. National Highway in Barpeta Road Town, Kalahabhangra during the land acquisition process in 1962. In the affidavit-in-opposition filed on behalf of the respondent no. 8, the said deponent has not admitted the authenticity of the copy of the Communication dated 08.08.2011 of the Circle Officer, Barnagar Revenue Circle. It is stated that the parcels of land mentioned in the said Communication dated 08.08.2011 were converted into Government Khas land in the land revenue records pursuant to the Order dated 21.05.1969 of the Deputy Commissioner, Kamrup and the Order dated 30.05.1969 of the Sub-Divisional Officer [Civil], Barpeta. It is noticed that the records of L.A. Case no. 18/68/70 mentioned in the Communication dated 08.08.2011 of the Circle Officer, Barnagar Revenue Circle and L.A. Case no. 10/60/70 mentioned in the Report of the Additional Deputy Commissioner, Barpeta –cum- Competent Authority for Land Acquisition pertaining to 31 no. National Highway in the year 1962 could not be traced out after rigorous search in those offices and it has, thus, become difficult to accept the claim of the petitioners which is based only on the Communication dated 08.08.2011 of the Circle Officer, Barnagar Revenue Circle, Sorbhog which Communication was conspicuously not on any official letter pad. The Additional Deputy Commissioner, Barpeta in the Letter dated 03.06.2023 [Annexure-A to the affidavit-in-opposition of the respondent no. 8] had mentioned that no records of any land acquisition and also of the Letter dated 08.08.2011 could be traced out and he could not prove the authority of the Letter dated 08.08.2011.

11. At this stage, a survey of the decisions cited on behalf of the petitioners appears necessary.

12. The decision in **Ningoyomi Breeze Doye and others vs. State of Arunachal Pradesh** and

others, reported in 2004 [Suppl] GLT 46, pertains to a service dispute wherein the Court has observed that when there is delay on the part of the writ petitioner in approaching the Court, exercise of discretion to grant relief by the Writ Court depends upon the facts and circumstances of the given case. Where the circumstances justifying belated approach to Court exists, the illegality, when it is manifest, cannot be sustained on the sole ground of delay or laches, particularly when no parallel right is found to have been created in favour of those, who are likely to be affected as a result of granting of relief to the petitioners.

13. In the decision in **Prem Chand and others vs. Union of India**, reported in [2010] 4 SCC 551, the Hon'ble Supreme Court of India had granted the benefits under Section 23[1-A] of the Land Acquisition Act, 1894 to the claimants reversing the decision of the High Court who had denied such benefits of additional compensation to the claimants under Section 23[1-A] without giving any reason. In that case, the Award under Section 11 of the Land Acquisition Act, 1894 was passed by the Collector on 30.04.1982 and the proceedings were found to be pending.

14. In **Keramuddin Sheikh [Md.] vs. State of Assam**, reported in 2015 [3] GLT 62, the Court has observed that as per the provisions of Section 23 of the Land Acquisition Act, 1894, the market value should be the first principle to determine the amount of compensation and the relevant date of ascertainment of market value should be as per clause [1] of Section 23, that is, the market value prevailing at the date of issuance of the notification under Section 4.

15. The decision in **State [NCT of Delhi] vs. Ahmed Jaan**, reported in [2008] 14 SCC 582, has been placed on behalf of the petitioners. In the said decision, the Hon'ble Supreme Court of India has discussed the aspect of delay and condonation of delay in filing/re-filing of revision petition in reference to Section 473 and Section 401 of the Criminal Procedure Code, 1973. It is observed therein to the effect that proof of sufficient cause is a condition precedent for exercise of the extra-ordinary discretion vested in the court to condone delay. What counts is not the length of delay, but the sufficiency of the cause and shortness of the delay is of the circumstances to be taken into account in using the discretion. Section 5 of the Limitation Act, 1963 is to be construed liberally so as to do substantial justice to the parties. The provision

contemplates that the court has to go in the position of the person concerned and to find out if the delay can be said to have resulted from the cause which he had adduced and whether the cause can be recorded in the peculiar circumstances of the case as sufficient. What constitutes sufficient cause cannot be laid down by hard-and-fast rules and the expression 'sufficient cause' should receive a liberal construction. Whether or not there is sufficient cause for condonation of delay is a question of fact dependent upon the facts and circumstance of the particular case. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides.

16. The decision of the Division Bench of this Court in **Athena Demwe Power Limited vs. Sh. Laideo Tayang and others**, reported in 2016 [1] GLT 602, is in reference to applicability of the provisions contained in Section 24[1], Section 24[2] and the proviso thereto of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

17. In **Hindustan Petroleum Corporation Limited and another vs. Dolly Das**, reported in [1999] 4 SCC 450, which is a decision as regards renewal of lease, it is observed that the aspect of delay, by itself, in filing a writ petition may not defeat the claim for relief unless the position of the one side had been so altered which cannot be retracted on account of lapse of time or inaction of the other side. The said aspect is dependent upon the examination of the facts of the case.

18. The decision in **Periyar and Pareekanni Rubbers Lilimited vs. State of Kerala**, reported in [1991] 4 SCC 195, has expounded as to how the market value of the land is to be determined and the factors to be considered while determining the market value of the land which are acquired under the provisions of the Land Acquisition Act, 1894.

19. It is highlighted in the case of **Commissioner of Central Excise vs. M.P.V. & Engg. Industries**,

reported in [2003] 5 SCC 333, that bureaucratic delay and red tapism cannot be grounds to deny the benefit to an applicant found eligible to the benefits of an exemption notification dated 01.03.1986 under the Central Excise Rules, 1944, etc.

20. The decision in **Prem Singh and others vs. Birbal and others**, reported in [2006] 5 SCC 353, is for the legal proposition that limitation is a statute of repose and it ordinarily bars remedy but, does not extinguish a right. It is held that the only exception to the said rule is to be found in Section 27 of the Limitation Act, 1963 which provides that at the determination of the period prescribed thereby, limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished. An extinction of right as contemplated by the provisions of the Limitation Act, *prima facie*, would be attracted in all types of suits. The Schedule appended to the Limitation Act, as prescribed by the Articles, provides that upon lapse of the prescribed period, the institution of a suit would be barred. Section 3 of the Limitation Act provides that irrespective of the fact as to whether any defence is set out or is raised by the defendant or not, in the event a suit is found to be barred by limitation, every suit instituted, appeal preferred and every application made after the prescribed period shall be dismissed.

21. The decision in **Indore Development Authority vs. Manoharlal and others**, reported in [2020] 8 SCC 129, more particularly paragraph 119, is for the proposition that if possession of the land is taken, the compensation must be paid for it and claim for compensation would not elapse.

22. In **Tukaram Kana Joshi and others vs. Maharashtra Industrial Development Corporation and others**, reported in [2013] 1 SCC 353, the Hon'ble Supreme Court of India after observing the factual matrix obtaining in the case and the delay caused in approaching the court by the claimants therein, had observed that there are authorities that laid down that delay and laches extinguish the right to put forth a claim and delay and laches debar a citizen from seeking remedy, even if his fundamental right has been violated, under Article 32 or under Article 226 of the Constitution of India. The Hon'ble Supreme Court of India had observed that the case herein dealt with a different scenario altogether. The functionaries of the State

took over possession of the land belonging to the appellants without any sanction of law. The appellants had asked repeatedly for grant of the benefit of compensation. In such scenario, the State must either comply with the procedure laid down for acquisition or requisition or any other permissible statutory mode. There is a distinction between the principle of 'eminent domain' and 'police power' of the State. Under certain circumstances, the police power of the State may be used temporarily, to take possession of property but in the case therein, clearly showed that neither of the said powers had been exercised. The question then arose with respect to the authority or power under which the State entered upon the land of the appellants. The Hon'ble Supreme Court of India found that the act of the State amounted to encroachment, in exercise of 'absolute power' which in common parlance could be termed as abuse of power or use of muscle power. A welfare State which is governed by the rule of law, cannot arrogate itself to a status beyond one that is provided by the Constitution. The Constitution is an organic and flexible one. Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. The Court is required to exercise judicial discretion and the said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third party interest is involved. It has been emphasized that the question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226, nor is it that there can never be a case where the Courts cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such discretion, must be exercised fairly and justly so as to promote justice and not to defeat it.

23. In **Vidya Devi vs. State of Himachal Pradesh and others**, reported in [2020] 2 SCC 569, it is held that the right to property ceased to be a fundamental right and it continues to be a

human right in a welfare State and a constitutional right under Article 300-A of the Constitution. Article 300-A provides that no person shall be deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation, though not expressly included in Article 300-A, can be inferred in the Article. To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under Article 300-A of the Constitution. In the facts and circumstances of the said case, the continuous possession of the land of the appellant for over 42 years by the State was held to be possessed adversely and the State being a welfare State, cannot be permitted to take the plea of adverse possession. It is held that the State cannot be permitted to perfect its title over the land by invoking the doctrine of adverse possession to grab the property of its own citizens, as had been done in the said case. Observing that the appellant therein had been divested of her right to property without being paid any compensation whatsoever for over half a century, it was observed that the delay and laches cannot be raised in a case of continuing cause of action, or if the circumstances shock the judicial conscience of the Court. The appellant therein was an illiterate widow coming from a rural background and was wholly unaware of her rights and entitlement in law.

24. In **Sukh Dutt Ratra and another vs. State of Himachal Pradesh and others**, reported in [2022] 7 SCC 508, the Hon'ble Supreme Court has reiterated that the right to property is no longer a fundamental right. The right against deprivation of property unless in accordance with procedure established by law, continues to be a constitutional right under Article 300-A of the Constitution of India. It is a cardinal principle of the rule of law that nobody can be deprived of liberty or property without due process, or authorization of law. The State has a higher responsibility in demonstrating that it has acted within the confines of legality. The State merely on the ground of delay and laches, cannot evade its legal responsibility towards a citizen from whom private property has been expropriated. In the factual matrix obtaining in that case, the Court had held that the State cannot shield itself behind the ground of delay and laches and there cannot be a limitation for doing justice.

25. From all the decisions, referred to by the learned counsel for the petitioners, it is discernible that whether there is delay and laches or not is a question of fact and whether a writ petition would suffer on that count is dependent upon the facts and circumstances of the particular case. At this juncture, a few other decisions rendered by the Hon'ble Supreme Court of India on the aspect of delay and laches cited from the sides of the respondents, can be referred to.

26. In **City and Industrial Development Corporation vs. Dosu Aardeshir Bhiwandiwalla and others**, reported in [2009] 1 SCC 168, the first respondent therein filed a writ petition on the premise that the impugned action of the State respondents in using his land without acquisition is unconstitutional and contrary to the provisions of Article 300-A of the Constitution of India. It was contended that no State or an authority of the State is no entitled to deprive any citizen of India of his property without following due process of law and without acquiring such property in accordance with law. The Hon'ble Supreme Court has, in that case, observed that it is well settled and needs re-statement that under Article 226 of the Constitution of India, the jurisdiction of a High Court to issue appropriate writs particularly a writ of mandamus is highly discretionary. The relief cannot be claimed as of right. One of the grounds for refusing relief is that the person approaching the High Court is guilty of unexplained delay and the laches. Inordinate delay in moving the court for a writ is an adequate ground for refusing a writ. The principle is that courts exercising public law jurisdiction do not encourage agitation of stale claims and exhuming matters where the rights of third parties may have accrued in the interregnum. The Hon'ble Supreme Court in that case, found that the writ petitioner therein had kept silence for more than 35 years and filed a belated writ petition. In such background factual matrix, the Hon'ble Supreme Court has observed as under :-

29. In our opinion, the High Court while exercising its extraordinary jurisdiction under Article 226 of the Constitution is duty-bound to take all the relevant facts and circumstances into consideration and decide for itself even in the absence of proper affidavits from the State and its instrumentalities as to whether any case at all is made out requiring its interference on the basis of the material made

available on record. There is nothing like issuing an ex parte writ of mandamus, order or direction in a public law remedy. Further, while considering validity of impugned action or inaction the Court will not consider itself restricted to the pleadings of the State but would be free to satisfy itself whether any case as such is made out by a person invoking its extra ordinary jurisdiction under Article 226 of the Constitution.

27. In **Syed Maqbool Ali vs. State of Uttar Pradesh and another**, reported in [2011] 15 SCC 383, certain lands were acquired for construction a 6-kilometre road in the year 1982. The appellant therein submitted a complaint in the year 1996 alleging that his plots of land were included in the said acquisition and the authorities in the State had illegally and unauthorizedly used the same for construction of the road. The said complaint was closed on 07.09.1999 in view of the delay of 12 years in seeking the relief. Thereafter, the appellant approached the High court in the year 2000 seeking a direction to the respondents to pay compensation in regard to the extra land used and occupied by the respondents for construction of the road. It was contended on behalf of the State that there was unwarranted delay in approaching the High Court and the disputes/questions relating to identity of the land, boundaries, etc. were not maintainable and liable to be dismissed. It is in such context, the Hon'ble Supreme Court of India has observed that the remedy of a land holder whose land is taken without acquisition is either to file a civil suit for recovery of possession and/or for compensation, or approach the High Court by filing a writ petition if the action can be shown to be arbitrary, irrational, unreasonable, biased, malafide or without the authority of law, and seek a direction that the land should be acquired in a manner known to law. In such matters, the person aggrieved should approach the High Court diligently. It is further held that if the writ petition is belated, unless there is good and satisfactory explanation for the delay, the writ petition is liable to be rejected on the ground of delay and laches. The High Court should be satisfied that the case warrants the exercise of the extra-ordinary jurisdiction under Article 226 of the Constitution of the India. In that context, the Hon'ble Supreme Court has further held that the High Courts should also be cautious in entertaining writ petitions filed decades after the dispossession, seeking directions for acquisition and payment of compensation. It is not uncommon for villagers to offer/donate some part of their lands

voluntarily for a public purpose which would benefit them or the community as for example, construction of an access road to the village or their property, or construction of a village tank or a bund to prevent flooding/erosion. When they offer their land for such public purpose, the land would be of little or negligible value. But decades later, when land values increase, either on account of passage of time or on account of developments or improvements carried out by the State, the land holders come up with belated claims alleging that their lands were taken without acquisition and without their consent. When such claims are made after several decades, the State would be at a disadvantage to contest the claim, as it may not have the records to show in what circumstances the lands were given/donated and whether the land was given voluntarily. Therefore, belated writ petitions, without proper explanation for the delay, are to be dismissed.

28. In *State of Maharashtra vs. Digambar*, reported in [1995] 4 SCC 683 the respondent was an agriculturist from Maharashtra, who filed a writ petition before the High Court in the year 1991 for a direction to the State Government to grant him compensation for his land allegedly utilised by the Government without his consent in the course of execution of scarcity relief works undertaken by the State Government in the year 1971-1972. Rejecting the plea of the Government to dismiss the writ petition on the ground of laches and delay of 20 years and allowing the writ petition, the High Court held that in a welfare State, the State Government could not take such attitude when citizens come before the Courts and complain that they have been deprived of their property without following due process of law and without paying the compensation. Before the Hon'ble Supreme Court, the State of Maharashtra urged that the respondent was, on the count of laches and delay on his part, disentitled to relief from the High Court. Allowing the appeal, the Hon'ble Supreme Court has inter alia observed as under :-

14. 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 decisions 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 blameworthy 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 blameworthy 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.

29. In **Vidya Devi** [supra], the appellant was an illiterate widow staying in the rural area and was found to be wholly unaware of her rights and entitlement in law and did not file any proceedings for compensation of the land compulsorily taken over by the State for construction of a road. It was found that as per the directions of the High Court when some similarly situated persons approached claiming compensation, the respondent State acquired a land of the similarly situated persons and paid compensation to them. The appellant, Vidya Devi being an illiterate widow staying in the rural area, could not take up timely measures to approach the Court. Thus, considering the factual backdrop of the case, with an intention to do substantial justice to the parties, the Hon'ble Supreme Court of India exercising its extra-ordinary jurisdiction under Article 136 and Article 142 of the Constitution of India, granted the relief to the appellant therein.

30. In **Sukh Dutt Ratra** [supra], it was admitted by the State that the plots of land were utilized for construction of road without paying compensation. The owners were found to be in possession of the plot of land in question without any dispute as regards the identity of the land. The Hon'ble Supreme Court in view of the facts and circumstances of the said case, invoked its extra-ordinary discretionary jurisdiction under Article 136 and Article 142 of the Constitution of India for doing substantial justice and granted relief to the appellants therein. It was found that the appellants were continuously pursuing the matter before the authorities seeking compensation for their lands.

31. The directions given by the Hon'ble Supreme Court of India in **Vidya Devi** [supra] and **Sukh Dutt Ratra** [supra] were directions invoking its extra-ordinary discretionary jurisdiction under Article 136 and under Article 142 of the Constitution of India for the purpose of doing substantial justice. The extra-ordinary jurisdiction under Article 226 of the High Court is not akin to the extra-ordinary jurisdiction under Article 142 of the Constitution. That apart, the said two decisions are found not applicable to the present case for other reasons also.

32. The aspects of delay and laches in making assailment to a land acquisition proceedings came to be also considered in the case of **Tamil Nadu Housing Board, Chennai vs. M. Meiyappan and others**, reported in [2010] 14 SCC 309, wherein an award of the Collector was challenged

after 16 years without any satisfactory explanation and it was held that the same was not maintainable and the High Court erred in entertaining the writ petition, with the following observations :-

13. At the outset, we must state that on the facts of this case, the High Court was not justified in entertaining the writ petition. In our opinion, the writ petition must fail on the short ground that the writ petition had been filed 16 years after the award was announced by the Collector. It is trite law that delay and laches is one of the important factors which the High Court must bear in mind while exercising discretionary power under Article 226 of the Constitution. If there is such negligence or omission on the part of the petitioner to assert his right which, taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party, the High Court must refuse to invoke its extraordinary jurisdiction and grant relief to the writ petitioner.

33. In **Durga Prashad vs. Chief Controller of Imports and Exports**, reported in [1969] 1 SCC 185, the Hon'ble Supreme Court of India has held that the power of the High Court under Article 226 of the Constitution of India to issue an appropriate writ is discretionary. If the petitioner is guilty of laches, it may be inappropriate for the High Court to exercise its high prerogative jurisdiction in favour of the petitioner and ends of justice may require that the High Court should refuse to issue a writ. In paragraph 4 of **Durga Prashad [supra]**, the observations made by the Constitutional Bench in **Smt. Narayani Debi Khaitan vs. State of Bihar**, was referred to in the following manner :-

4. Gajendragadkar, C.J., speaking for the Constitution Bench, in **Smt. Narayani Debi Khaitan v. The State of Bihar**, observed :

"It is well-settled that under Article 226, the power of the High Court to issue an appropriate writ is discretionary. There can be no doubt that if a citizen moves the High Court under Article 226 and contends that his fundamental rights have been contravened by any executive action, the High Court would naturally like to give relief to him; but even in such a case, if the petitioner has been guilty of laches, and there are other relevant circumstances which indicate that it would be inappropriate for the High Court to exercise its high prerogative jurisdiction in favour of the petitioner, ends of justice may require that the High Court should refuse to issue a writ. There can be little doubt that if it is shown that a party moving the High Court under Article 226 for a writ is, in substance, claiming a relief which under the law of limitation was barred at the time when the writ petition was filed, the High Court would refuse to grant any relief in its

writ jurisdiction. No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. That is a matter which must be left to the discretion of the High Court and like all matters left to the discretion of the Court, in this matter too discretion must be exercised judiciously and reasonably."

Relying on the judgment of this Court in *Maharashtra State Road Transport Corporation v. Shri Balwant Regular Motor service, Amravati*, the learned counsel for the appellant contends that the delay should not debar him from seeking relief because the respondents have not suffered in any manner because of the delay. In this case Ramaswami, J., speaking for the Court, referred to an earlier decision in *Moon Mills v. Industrial Court*. In that case Ramaswami, J., speaking for the Court, observed :

"It is true that the issue of a writ of certiorari is largely a matter of sound discretion. It is also true that the writ will not be granted if there is such negligence or omission on the part of the applicant to assert his right as, taken in conjunction with the lapse of time and other circumstances, causes prejudice to the adverse party. The principle is to a great extent, though not identical with, similar to the exercise of discretion in the Court of Chancery."

34. There is another aspect in the matter, which is the matter of submission of representation after considerable delay. In **C. Jacob vs. Director of Geology and Mining and another**, reported in [2008] 10 SCC 115, the Hon'ble Supreme Court has reiterated that there is always a need for circumspection if the representation is, on the face of it, stale. In such case, the Court should desist from directing consideration of such stale claims. A note of caution is made to the effect that before directing consideration of a claim or representation, the Court should examine whether the representation or claim is with reference to 'live issue' or whether it is in reference to 'dead' or 'stale issue'. In **Chennai Metropolitan Water Supply and Sewerage Board and others vs. T.T. Sewerage Board and others**, reported in [2014] 4 SCC 108, the Hon'ble Supreme Court of India has observed that the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The writ court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the writ court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. It has observed that delay comes in the way of equity. It has been observed that in certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does

bring in hazard and causes injury to the *lis*.

35. Reverting back to the facts of the case in hand, it is already noticed that the lands in respect of which the petitioners have raised claim, were converted to Government Khas land pursuant to an order of the Deputy Commissioner, Barpeta as far back as on 21.05.1969. It was canvassed on behalf of the petitioners that 'perhaps' in the year 1990, they submitted a representation raising the issue of not receiving the compensation amount and the same was received by the Additional Deputy Commissioner, Barpeta. A look at such representation stated to have been submitted by an entity named Barpeta District Four Lane Effected Co-Ordination Committee, signed by its President and Secretary, does not inspire the confidence of the Court in the absence of any other cogent material in support of the same. Though correspondences started being exchanged between the authorities in the matter of acquisition of land in the year 1962 thereafter, the fact which cannot be overlooked is that there was complete silence on the part of the petitioners from 1960s for a period of about four decades till the year 2010. Even if this Court accepts the position that the petitioners had made a representation in the matter of compensation against their lands in 1960s, this Court has not found any explanation whatsoever in the pleadings of the writ petition as to why the petitioners had waited for an inordinately long period more than four decades in staking their claims for compensation against the lands purportedly belonging to them, which were made Government Khas lands in the revenue records in 1960s.

36. From the affidavit appended to the writ petition, it is noticed that the affidavit was sworn by the original writ petitioner no. 1 on 11.05.2015 and the original writ petitioner at the time of swearing the affidavit, was aged about 93 years. If one goes back to the year 1969, it can be easily gauged that when the plots of land were made Government Khas land, the original writ petitioner was in his 40s. A complete silence and inaction on the part of the original writ petitioner no. 1 and others for a period of more than four decades is clearly demonstrative of inexplicable and inordinate delay and laches on their part. In view of raising such stale claim, the State respondents are clearly at disadvantage to contest such stale claim as observed in **Syed Maqbool Ali** [supra] and **Digambar** [supra]. It is not possible for the State respondents after a lapse of more than four/five decades to retrieve the records to show in

what circumstances the lands were given by the landowners or taken by the State in 1960s. The petitioners herein have alleged acquisition of their lands but they have not produced any cogent and believable materials/documents to establish atleast prima facie that there was any wrongful executive action. The petitioners are completely silent as to what steps they had taken since 1960s till the year 2010 for staking their claim against such alleged wrongful executive action. It has been held in **Digambar** [supra], where the relief sought for under Article 226 of the Constitution by 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 is 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 for the officers who were responsible for such action not being available later on. In the considered view of the Court, the petitioners herein have fallen short to explain the inordinate delay of more than four/five decades. Thus, the above proposition is found applicable proprio vigore to the case in hand. With the submission of a representation in the year 2010 and with the filing of a writ petition in the year 2015, the writ petitioners are not entitled to revive an issue which was already stale due to inordinate and inexplicable delay and laches on their part and, thus, this Court is of the unhesitant view that such stale claim which is solely attributable to the petitioners, cannot be allowed to be revived. Thus, There is no good reason to interfere with the impugned Order dated 10.03.2015 as the writ petition itself has suffered from inexplicable and inordinate delay in laches. Consequently, the other prayers of the petitioners do not deserve any consideration.

37. In view of the discussion made above and for the reasons assigned therein, this Court finds that the instant writ petition is bereft of any merits and the same is liable to be dismissed. It is accordingly ordered. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant