

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

OWP No. 74/2013

Reserved on: 28.11.2023

Pronounced on: 29.12.2023

Ghulam Mohi ud Din Khanday and Ors.

...Petitioner(s)

Through: Mr. Rizwan Bhat, Advocate.

Vs.

Union of India and Ors.

...Respondent(s)

Through: Mr. Nazir Ahmad, CGSC

Mr. Faheem Shah, GA.

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

JUDGEMENT

1. The petitioners in the instant petition are seeking following reliefs:-

Mandamus commanding the respondents to pay the adequate compensation to the petitioners at the market rates which is prevalent in the market with respect to the land measuring 16 knls 6 mls under survey nos: 80, 81, 84, 257, situated at Mamal, Tehsil Pahalgam, District, Anantnag.

2. The facts under the shade and cover of which the aforesaid reliefs are prayed by the petitioners as stated in the petition are that the petitioners are jointly recorded as owners of the land measuring 16 kanals 6 marlas covered under Survey nos. 80, 81, 84, 257 situated at Mamal Pahalgam, Anantnag, alleged to have been illegally occupied by the respondents and handed over to Railway Authorities for construction of Railway Holiday Home without either undertaking any acquisition proceedings or else paying compensation to the petitioners despite the fact that representation came to be submitted in this regard by the petitioners as the petitioners came to know about the taking over of their land in the year 2012 upon receiving revenue extracts before the respondents, whereupon a report came to be sought

by respondent 8 herein from respondent 2 and thereafter did not take any further action in the matter, thus, necessitating the filing of the instant petition before this Court.

3. **Objections** to the petition has been filed by respondents 1 to 3, whereas, statement of facts has been filed by respondents 4 to 9.
4. In the objections filed by respondents 1 to 3, it is being stated that the land in question is under their possession since 1959 and no construction thereof has been raised by them however, the State authorities have had earlier constructed a youth hostel thereon the said land before its transfer to the answering respondents by the Chief Engineer, Public Works Department, Kashmir.

It is further stated in the objections that the site plan as well as revenue extracts relied upon by the petitioners in the petition itself reveal that land belong to the State authorities being under the occupation of the State authorities.

5. In the statement of facts filed by respondents 4 to 9, it is being stated that as per the report of the respondent 9 furnished to Sub Divisional Magistrate Pahalgam dated 27.04.2022, wherein it has been stated therein that as per the record of the rights of Mamal Estate, a settlement was done in the year 2009-10 and Survey nos. 80, 81, 84 and 257 though in the name of private respondents, yet, is recorded as Makbooza Sarkaar in the tenancy column and under Khasra nos. 80, 81 and 84 exists Helipad in Pahalgam and on a portion of land covered under Survey no. 257 exists a park maintained by Pahalgam Development Authority, whereas, rest of the land has got merged with the river Lidder and that land measuring 31 kanals 8 marlas covered under Survey nos. 79, 80, 81, 84 and 57 is under the possession of Helipad Authorities and land measuring 28 kanals 5 marlas covered under 8 Sarsai covered under Survey nos. 44, 78, 73, 69, 71, 68, 67, 70, 65 min, 76 and 74 min is under the possession of Railway Authorities.

It is being further stated in the statement of facts that the record of Jamabindi of the year 1958, 1968 and 1969 reveal that prior to the settlement of the operation of the said estate, Survey nos. 80, 81, and 84 were carved out and Survey nos. 50 and 257 was carved out from

erstwhile Survey no. 168 and that the same is recorded in the tenancy column in revenue records as Makboza Sarkaar.

Heard counsel for the parties and perused the record.

6. The core issue involved in the instant petition raised by the petitioners is that their proprietary land measuring 16 kanals 6 marlas covered under Survey nos. 80, 81, 84 and 257 situated at Mamal Pahalgam, Anantnag, came to be taken over by respondents without following procedure prescribed by law and had been previously under the occupation of respondents 1 to 3 herein wherein a Railway Holiday Home has been constructed thereon and that the petitioners have not been paid any compensation against the said land by the respondents.

In response to the said claim setup by the petitioners in the petition, the respondents 1 to 3 have taken up a specific stand that the land in question has been under their occupation since 1959 upon being transferred to them by Public Works Department Kashmir and that in the relevant revenue extracts the land is shown to be under the occupation of State reflected in the tenancy columns.

The aforesaid stand taken by respondents 1 to 3, in their reply has not been disputed and denied by the petitioners herein by filing any pleadings thereto. In presence of the said facts pleaded by the respondents 1 to 3 that the land has been under their occupation since 1959, the moot question that would beg for consideration of this Court under these circumstances would be, as to whether exercise of discretion in the matter is warranted or not.

7. It is settled position of law that Article 226 of the Constitution confers extraordinary writ jurisdiction on the High Courts to issue high prerogative writs for enforcement of the fundamental rights or for any other purpose and though the power of high court under Article 226 of the Constitution is discretionary in nature and no limits can be placed upon such discretion, yet, the said discretion has to be exercised along the recognized lines and subject to certain self imposed limitations amongst which delay and laches is one such limitation to be taken into cognizance of.

A reference hereunder in regard to above to the judgement of the Apex Court passed in case titled as ***“Shiv Das Vs. Union of India and Ors.,*** reported in ***2007 (9) SCC 274***, based upon the judgement of the Apex Court passed in case titled as ***“Durga Prashad Vs. Chief Controller of Imports and Exports*** reported in ***1969 (1) SCC 185,***” would be appropriate and advantageous wherein following came to be observed and noticed: -

“In an appropriate case the High Court may refuse to invoke its extraordinary powers 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 causing prejudice to the opposite party and even where a fundamental right is involved, the matter is still within the discretion of the Court.”

A further reference to the judgement of the Apex Court passed in case titled as ***“State of Orissa Vs. Arun Kumar Patnaik and Anr.*** reported in ***1976 (3) SCC 579***” also would be relevant herein wherein the Apex Court has observed as follows: -

“Though there is no specific period of limitation prescribed for exercise of extraordinary writ jurisdiction, the high court may refuse to exercise its extraordinary jurisdiction where the petitioner is guilty of laches or undue delay for which there is no satisfactory explanation.”

8. Keeping in mind the aforesaid principles of law and coming back to the case in hand, there is no denial to the fact pleaded by the respondents 1 to 3 herein that the land stands under their occupation since 1959, after the same had been transferred to them by Public Works Department, Kashmir. Petitioners indisputably have lodged a claim over the said land for the first time in the year 2011 while maintaining an application before the Collector. No plausible and satisfactory explanation has been offered by the petitioners in the petition as to what prevented them from claiming a right over the land in question ever since the same had been taken over by the respondents in the year 1959. In absence of any satisfactory explanation by the

petitioners in this regard in the matter does not warrant exercise of discretion by this Court in the instant petition.

9. Viewed thus, what has been observed, considered and analyzed hereinabove the petition is found to be hopelessly barred by delay and laches as such, entails dismissal. Accordingly the petition is dismissed along with all connected applications without any costs.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR

29.12.2023

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