

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

WP (C) 3401/2023, CM (8202/2023)

Farooq Ahmad Mir and another

... Petitioner/Appellant(s)

Through: Mr. M. M. Khan, Advocate

V/s

UT of J&K and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
28-12-2023

1. The petitioners in the instant petition filed under Article 226 of the Constitution are seeking following reliefs:

- 1) Writ of mandamus commanding upon the respondents to assess and pay compensation for the land measuring 166 kanals and 8 marlas covered under khasra no. 117 under the possession of respondents under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation Act, Resettlement Act of 2013 and pass the final award accordingly.
- 2) Respondents be further directed to pay rent along with interest from 1970 the date of dispossession, till disbursement of full award.
- 3) Respondents be further directed to pay solatium, exemplary damages and costs for wrongful deprivation of the landed property.

2. The facts on the strength of which the above said reliefs are being prayed by the petitioners are that the petitioners are the owners of land measuring 166 kanals covered under khasra no. 117, khewat no. 475 and khata no. 2333 situated at Estate Brein, Nishat, Srinagar and the said land along with fruit bearing trees had been taken over by the respondents without following procedure established under law.

3. The counsel for the petitioners while making his submissions in line with the contentions raised in the petition would contend that the land of the petitioners came to be taken over by the respondents somewhere in the year 1970 without following procedure prescribed by law and that the petitioners came to know about the taking over the said land only in the year 2000 after the death of their father and owing to the reason that the petitioner 1 though was of the age of 17 years, the petitioner 2 was only 5 months' old as such, delay got occasioned, in coming to this court through the medium of this petition for seeking redressal of their grievances.

Heard learned counsel for the petitioner and perused the record.

4. The moot point that would beg consideration of this court in the instant case having regard to the submissions of the appearing counsel for the petitioner, would be the maintainability at this belated stage.

It is settled position of law that though there is no limitation prescribed in filing a writ petition under Article 226 of the Constitution, however law is equally settled that the delay and laches would affect the maintainability of the petition under Article 226 of the Constitution having been laid down by the Apex Court in case titled as **M. P. Ram Mohan Raja vs. State of T. N. and others (2007) 9 SCC 878.**

A reference to the judgment of the Apex Court passed in case titled as **State of Madhya Pradesh and another vs. Bhailal Bhai,**

AIR 1964 SC 1006 would also be relevant herein, wherein at paragraph 17 following has been laid down:

“It has been made clear more than once that the power to give relief under Article 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion is the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it . . . it is not easy nor is it desirable to lay down any rule for universal application. It may, however, be stated as a general rule that if there has been unreasonable delay the court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus.”

Further, the Apex Court in the case of *U. P. Jal Nigam Vs. Jawant Singh reported in 2016 (11) SCC 464* has also laid down that when a person is not vigilant of his rights and acquiesces with the situation, his writ petition cannot be heard after a couple of years.

5. The petitioners admittedly are approaching this court for the first time in 2023 qua their claim lodged in respect of the land in question. According to their own showing, the petitioners have come to know about taking over of their land allegedly by the respondents in the year 2000 immediately after the death of their father.

The aforesaid facts manifestly suggest that the petitioners consciously have slept over the matter and now have approached this court for redressal of their grievance qua the land in question while the land is alleged to have been taken over in the year 1970 by the respondents.

6. In view of the aforesaid admitted facts and the law referred to in the preceding paras, the claim of the petitioners manifestly is hopelessly barred by delay and laches, as such, this court is not inclined to exercise discretion. Resultantly, petition fails and is dismissed.

(JAVED IQBAL WANI)
JUDGE