

**Court No. - 40**

**Case :-** WRIT - C No. - 32784 of 2023

**Petitioner :-** Ram Raj Singh and 3 others

**Respondent :-** State Of U.P. and 3 others

**Counsel for Petitioner :-** Chandra Narayan Mishra, Vinod Kumar Upadhyay

**Counsel for Respondent :-** CSC

**Hon'ble Mahesh Chandra Tripathi, J.**

**Hon'ble Prashant Kumar, J.**

1. Heard Sri Vinod Kumar Upadhyay, learned counsel for the petitioners and Sri Ambrish Shukla, learned Additional Chief Standing Counsel for State respondents.

2. By means of this petition, the petitioners have prayed for following reliefs:-

"(I) Issue a writ, order or direction in the nature of mandamus commanding the respondents not to interfere in the peaceful possession of the petitioners over the land in dispute being Khata No.1143 and Khasra No.1793/193.27 sq. meter, 1773/51.21 sq. meter, 1774/204.85 sq. meter, 1779/307.28 sq. meter, 1780/256.06 sq. meter, 1781/204.85 sq. meter, 1782/307.28 sq. meter, 1783/256.06 sq. meter, 1784/307.28 sq. meter, 1785/51.21 sq. meter, 1786/204.85 sq. meter, 1787/51.21 sq. meter, 1788/102.42 sq. meter, 1789/204.85 sq. meter, 1790/102.42 sq. meter, 1791/51.21 sq. meter, 1792/153.64 sq. meter 1794/973.04 sq. meter, 1796/256.06 sq. meter.

(ii) Issue a writ, order or direction in the nature of mandamus commanding the respondents to mutate the name of the petitioners over the land in dispute in the revenue records."

3. It appears from the record that the land in dispute was initially recorded in the name of Madari, son of Sukhai, resident of Village Bahrauli Khajuha, Tehsil Bindki, District Fatehpur (brother of petitioner no.1 and uncle of petitioner nos.2 to 4). For declaring the land of said original owner to be surplus, the Competent Authority, Urban Land Ceiling, Kanpur instituted a case under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (in short, Act, 1976). Finally, the Competent Authority declared the land owned by the original owner to the extent of 4239.06 sq. meters to be surplus and published a draft statement under Section 9 of the Act, 1976. Thereafter, the Prescribed Authority, Urban Land Ceiling, Kanpur published a notification No.5976 on 07.03.1981 as per the requirement of Section 10(1) of the Act, 1976 directing the original tenure holder to file his objection before the Prescribed Authority within 15 days. After 25 years, the original owner had executed a registered Will deed dated 27.01.2006 in favour of petitioner no.1 and Ram Prasad (father of petitioner nos.2 to 4) for the land in dispute. In the meanwhile, Madari died on 22.01.2008.

4. Learned counsel for the petitioners in this backdrop submits that the land in dispute was declared as surplus vide notification dated 07.3.1981 and pursuant to the notification the said land was never vested in the state. After the death of original tenure holder, the land was inherited by the petitioners on the basis of Will deed dated 27.1.2006 and since then, they are in actual possession over the land in dispute. Neither the respondents have taken possession of the said land from the original owner nor they had given possession to the respondents. No third party interest has been created by the respondents in the aforesaid land till date. The Competent Authority has not completed proceeding under Section 10 (5) and 10 (6) of the Act, 1976 in respect of all agricultural land of the petitioners. Later on, the Act, 1976 has been repealed by Urban Land (Ceiling and Regulation) Repeal Act, 1999 with effect from 18.3.1999 and hence, all the proceedings of this case against the original owner are liable to be abated under Section 3/4 of the Repeal Act, 1999.

5. Per contra, learned Standing Counsel has raised preliminary objection regarding maintainability of the writ petition on the issue of laches that the present writ petition has been filed after almost 42 years of the order, whereby the Competent Authority, Kanpur had declared 4239.06 sq. meters land as surplus and consequently, the same does not deserve to be entertained. He has submitted that against the brother/uncle of the petitioners, the proceeding under the the Act, 1976 was drawn and notification under Section 10 (3) of the Act, 1976 was duly notified, followed by notice under Section 10 (5) of the Act, 1976. Admittedly, the ceiling proceeding had been finalised against the erstwhile owner way back in the year 1981. The original owner had knowledge about the ceiling proceeding and at no point of time, the said proceeding had been assailed by them before the appellate authority. For all practical purpose the said proceeding has been finalised and as such, the writ petition is liable to be dismissed on the ground of delay and laches. In support whereof, he has placed reliance upon a decision of Supreme Court reported in **State of Assam Vs. Bhaskar Jyoti Sarma and others** (2015) 5 SCC 321. He has further placed reliance upon a decision of Division Bench of this Court passed in **Lalji Choubey Vs. The State of M.P. and another**, W.A. No.91/2006, wherein it was observed that once a compliance under Section 10(5) of the Act, 1976 has been done then it can be considered that possession has been duly taken over. He has also placed reliance on the judgments in **Smt. Kalawati Devi v. State of U.P. & Ors.** Writ-C No.41628 of 2011 decided on 18.01.2023 and **Lal Singh & Ors. v. Competent Authority Urban Land Ceiling and Regulation & Ors**, Writ C No.69115 of 2009 decided

on 21.1.2023.

6. We have considered the rival submissions and perused the material placed on record.

7. It is reflected from the record that the ceiling proceeding was initiated against the brother/uncle of the petitioners and the same was finalised by the Competent Authority in the year 1981. Thereafter, the Competent Authority declared the land owned by the original owners to the extent of 4239.06 sq. meters to be surplus and published a draft statement under Section 9 of the Ceiling Act. A notification was also published on 07.3.1981 as per the requirement of Section 10 (3) of the Act, 1976 and the possession was taken by the State Government in the year 1981 itself. Once the possession was taken over in view of Section 10 (3) of the Act, 1976, the land was vested in the State free from all encumbrances and the alleged transfer on the basis of registered Will deed dated 27.01.2006 in favour of petitioner no.1 and Ram Prasad (father of petitioner nos.2 to 4) is void ab-initio and on the basis of purported Will, no right can be conferred in favour of the petitioners.

8. Moreover, it is evident that the petitioners have allegedly claimed that no notices under Section 10 (5) and Section 10 (6) of the Act, 1976 were given in favour of erstwhile owners. The said claim at this belated stage after more than 42 years cannot sustain as there is no explanation for the inordinate delay. Even the alleged Will deed was executed on 27.1.2006. Nothing is brought on record that the erstwhile owners have ever agitated regarding any right, claim or title over the land, which was declared surplus way back in the year 1981 itself. Therefore, challenge to the ceiling proceeding after lapse of more than 42 years by the petitioners cannot sustain. The said aspect of the matter has been considered in detail in **Dehri Rohtas Light Railway Vs. District Board Bhojpur and Others** (1992) 2 SCC 598, wherein Hon'ble Supreme Court observed in paragraph No. 13 as under :-

"The rule which says that the Court may not inquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its own facts. It will all depend on what the breach of the fundamental right and the remedy claimed are and how the delay arose. The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not to physical running of time. Where the circumstances justifying the conduct exists, the illegality which is manifest cannot be sustained on the sole ground of laches. The

decision in Trilok Chand (supra) relied on is distinguishable on the facts of the present case. The levy is based on the net profits of the railway undertaking was beyond the authority and the illegal nature of the same has been questioned though belatedly in the pending proceedings after the pronouncement of the High Court in the matter relating to the subsequent years. That being the case, the claim of the appellant cannot be turned down on the sole ground of delay. We are of the opinion that the High Court was wrong in dismissing the writ petition in limine and refusing to grant the relief sought for. We however agree that suit has been rightly dismissed."

(Emphasis added)

9. Similarly, Hon'ble Apex Court has also considered the delay and laches pertaining to ceiling matters in **Shivgonda Anna Patil Vs. State of Maharashtra** (1999) 3 SCC 5, wherein the petitioner had approached after considerable delay of ten years after the land was declared surplus and vested in the State Government and the writ petition was summarily dismissed by the High Court and the same was also approved by the Apex Court. Hon'ble Apex Court has also considered the delay and laches in preferring the petition under Article 226 of Constitution of India in **Municipal Council, Ahmednagar Vs. Shah Hyder Beig** (2000) 2 SCC 48 and held that the equitable doctrine, namely, "delay defeats equity" has its fullest application in the matter of grant of relief under Article 226 of the Constitution.

10. The Supreme Court in **U.P. Jal Nigam and Another Vs. Jaswant Singh and another** (2006) 11 SCC 464 referred, with approval the law relating to laches, as summarized in Halsbury's Law of England. The relevant extract from the aforesaid judgement is reproduced below :-

"12. The statement of law has also been summarized in Halsbury's Laws of England, Para 911 , pg. 395 as follows:

"In determining whether there has been such delay as to amount to laches, the chief points to be considered are :

(i) acquiescence on the claimant's part; and

(ii) any change of position that has occurred on the defendant's part.

**Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches."**

(Emphasis added)

11. In **Tukaram Kana Joshi and others Vs. MIDC and others**

(2013) 1 SCC 353 the Supreme Court observed as follows :-

"12. The State, especially 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. Our 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. There is another facet. The Court is required to exercise judicial discretion. 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. Thus analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience.

13. 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. The validity of the party's defence must be tried upon principles substantially equitable. (Vide: P.S. Sadasivaswamy vs. State of T.N. AIR 1974 SC 2271; State of M.P. & Others. vs. Nandlal Jaiswal & Others., AIR 1987 SC 251; and Tridip Kumar Dingal & Others. vs. State of West Bengal & Others, (2009) 1 SCC 768;)

14. 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. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non- deliberate delay. The court should not harm innocent parties if their rights have in fact emerged, by delay on the part of the Petitioners. (Vide: Durga Prasad v. Chief Controller of Imports and Exports & Others, AIR 1970 SC 769; Collector, Land Acquisition, Anantnag & Another vs. Mst. Katiji & Others, AIR 1987 SC 1353; Dehri Rohtas Light Railway Company Ltd. vs. District Board, Bhojpur & Others, AIR 1993 SC 802; Dayal Singh & Others vs. Union of India & Others, AIR 2003 SC 1140; and Shankara Co-op Housing Society Ltd. vs. M. Prabhakar & Others, AIR 2011 SC 2161)."

12. In **State of Assam vs. Bhaskar Jyoti Sharma and others** (2015) 5 SCC 321 it was held by the Apex Court as under:-

"16. The issue can be viewed from another angle also. Assuming that a person in possession could make a grievance, no matter without much gain in the ultimate analysis, the question is whether such grievance could be made long after the alleged violation of Section 10(5). If actual physical possession was taken over from the erstwhile land owner on 7th December, 1991 as is alleged in the present case any grievance based on Section 10(5) ought to have been made within a reasonable time of such dispossession. If the owner did not do so, forcible taking over of possession would acquire legitimacy by sheer lapse of time. In any such situation the owner or the person in possession must be deemed to have waived his right under Section 10(5) of the Act. Any other view would, in our opinion, give a licence to a litigant to make a grievance not because he has suffered any real prejudice that needs to be redressed but only because the fortuitous circumstance of a Repeal Act tempted him to raise the issue regarding his dispossession being in violation of the prescribed procedure.

17. Reliance was placed by the respondents upon the decision of this Court in Hari Ram's case (supra). That decision does not, in our view, lend much assistance to the respondents. We say so, because this Court was in Hari Ram's case (supra) considering whether the word 'may' appearing in Section 10(5) gave to the competent authority the discretion to issue or not to issue a notice before taking physical possession of the land in question under Section 10(6). The question whether breach of Section 10(5) and possible dispossession without notice would vitiate the act of dispossession itself or render it non est in the eye of law did not fall for consideration in that case. In our opinion, what Section 10(5) prescribes is an ordinary and logical course of action that ought to be followed before the authorities decided to use force to dispossess the occupant under Section 10(6). In the case at hand if the appellant's version regarding dispossession of the erstwhile owner in December 1991 is correct, the fact that such dispossession was without a notice under Section 10(5) will be of no consequence and would not vitiate or obliterate the act of taking possession for the purposes of Section 3 of the Repeal Act. That is because Bhabadeb Sarma-erstwhile owner had not made any grievance based on breach of Section 10(5) at any stage during his lifetime implying thereby that he had waived his right to do so.

19. In support of the contention that the respondents are even today in actual physical possession of the land in question reliance is placed upon certain electricity bills and bills paid for the telephone connection that stood in the name of one Mr. Sanatan Baishya. It was contended that said Mr. Sanatan Baishya was none other than the caretaker of the property of the respondents. There is, however, nothing on record to substantiate that assertion. The telephone bills and electricity bills also relate to the period from 2001 onwards only. There is nothing on record before us nor was anything placed before the High Court to suggest that between 7th December, 1991 till the date the land in question was allotted to GMDA in December, 2003 the owner or his legal heirs after his demise had continued to be in possession. All that we have is rival claims of the parties based on affidavits in support thereof. We repeatedly asked learned counsel for the parties whether they can, upon remand on the analogy of the decision in the case of Gyanaba Dilavarsinh Jadega (supra), adduce any documentary evidence that would enable the High Court to record a finding in regard to actual possession. They were unable to point out or refer to any such evidence. That being so the question whether actual physical possession was taken over remains a seriously disputed

question of fact which is not amenable to a satisfactory determination by the High Court in proceedings under Article 226 of the Constitution no matter the High Court may in its discretion in certain situations upon such determination. Remand to the High Court to have a finding on the question of dispossession, therefore, does not appear to us to be a viable solution."

(Emphasis supplied by us)

13. The aforesaid judgment of Hon'ble Supreme Court in Bhaskar Jyoti Sharma and others (supra) has been followed by a coordinate Bench of this Court in the case of **Shiv Ram Singh vs. State of U.P. and others** 2015 (7) ADJ 630 wherein the writ petition was dismissed on the ground of laches with following observations:-

"We must also advert to another aspect of the matter particularly having regard to the recent decision of the Supreme Court in Bhaskar Jyoti Sarma (supra). The petitioner moved the first writ petition in 2002 nearly three years after the Repeal Act had come into force. After the earlier writ petition was disposed of by directing the District Magistrate to pass an order on the representation of the petitioner, an order was passed by the District Magistrate on 10 May 2007. The petitioner thereafter waited for a period of over two years until the present writ petition was filed in July 2009. If the petitioner had been dispossessed of the land without due notice under Section 10(5), such a grievance could have been raised at the relevant time. As a matter of fact, it has been the case of the State all along that a notice under Section 10(5) was, in fact, issued in the present case which would be borne out from the original file which has been produced before the Court. The issue is whether such a grievance could be made long after, before the Court. The petitioner had waited for nearly three years after the Repeal Act came into force to file the first writ petition and thereafter for a period of over two years after the disposal of the representation despite the finding of the District Magistrate that possession was taken over on 25 June 1993. In our view, such a belated challenge should not, in any event, be entertained."

(Emphasis supplied by us)

14. In **Kapilaben Ambalal Patel and Others Vs. State of Gujarat** 2021 (12) SCC 95 the Apex Court has considered the delay and laches in detail and declined to accept the pleas setup by the legal heirs/representatives of the original land holder on the ground of inordinate delay. Relevant paragraph of the judgement is reproduced herein below:-

"Feeling aggrieved, the landowners have approached this Court. It is urged that there is no tittle of evidence to substantiate the fact asserted by the respondent State that physical possession of the land in question has been taken over on 20-3-1986. It was merely a paper-possession in the form of possession panchnama. According to the appellants, de facto possession of the subject land as on the date of the Repeal Act is crucial and entails in abatement of all the actions of the State authorities under the 1976 Act. Mere issuance of notification under Section 10(3) of the 1976 Act regarding deemed vesting of the land in the State is not enough for the purposes of the Repeal Act. Reliance has been placed on Vinayak Kashinath Shilkar Vs. Collector & Competent Authority, (2012) 4 SCC 718, State of U.P. Vs. Hari Ram (2013) 4

SCC 280, Gajanan Kamlya Patil vs. Additional Collector & Competent Authority (ULC) (2014) 12 SCC 523 and Mangalsen Vs. State of U.P. (2014) 15 SCC 332. The consistent view of this Court is that physical possession must be taken by the State authorities, failing which the proceedings shall abate on account of the Repeal Act. The appellants have relied on revenue records to show that the continued possession remained with the appellants/landowners even after the possession panchnama was made on 20-3-1986. The revenue entries have presumptive value and the respondent State had failed to rebut the same.

"Furthermore, in the grounds all that is asserted is that the High Court erred in holding that there was delay of 14 years in filing of writ petition and in not appreciating that the notice under Section 10(5) of the 1976 Act dated 23-1-1986, was not served upon Ambalal Parsottambhai Patel as he had already expired on 31-12-1985 and notice sent to him was returned back on 2-2-1986 unserved with remark "said owner has expired". Further, the legal heirs of Ambalal Parsottambhai Patel ought to have been served with the said notice.....Be that as it may, we are not inclined to reverse the conclusion recorded by the Division Bench of the High court that the writ petition filed by the appellants was helplessly delayed and suffered from laches. That is a possible view in the facts of the present case." .

15. Recently the coordinate Bench of this Court has also considered the Ceiling Act and Repeal Act qua to the subsequent purchaser in **Smt. Kalawati Devi vs. State of UP and others** Writ C No.41628 of 2011 and dismissed the writ petition on 18.1.2023 on the ground that the owner never protested or agitated his dispossession before any authority or Court. In the circumstances, the subsequent purchaser cannot raise challenge to the procedure of dispossession at belated stage on the strength of a sale deed being void ab-initio. Relevant paragraph nos.22, 23 and 24 of the judgement are reproduced herein below:-

"22. The question of issuing notice under Section 10(5) to the petitioner after 16 years from the date of notice under Section 10(1) of the Act does not arise. The State had taken possession from the land owner way back in 1981. The subsequent transfer of the land in 1994, followed by mutation of the name of the petitioner, would have no bearing on the right of the petitioner. The transfer of the surplus land by the erstwhile owner, in the eye of law being nullity i.e. void ab-initio would not confer any right or title upon the petitioner. The possession of the petitioner after the proceedings concluding under the Act, upon the State taking possession, would merely be a case of encroachment of State land. The Repeal Act would not come to the assistance of the petitioner, rather, the case of the petitioner would not fall within the ambit and scope of the Repeal Act being subsequent purchaser of the surplus land after notification under Section 10(1) / 10(3) of the Act.

23. Having regard to the facts and circumstances of the case, petitioner lacks locus, and any case, the proceedings came to be set up belatedly by the petitioner in 2006 by approaching this Court and filing a petition, being Writ Petition No. 14698 of 2006, which came to be disposed of directing the Collector to take a decision. Pursuant thereof, the impugned order came to be passed on 27.04.2011, whereby, the second respondent after recording the

facts arrived at a conclusion that the transfer of the land by the erstwhile owner, declared surplus, vesting in the State, is a void document and does not confer any right and title upon the petitioner. The erstwhile tenure holder (Khelai), had no title or ownership to transfer the land, the petitioner on the strength of alleged possession on State land cannot agitate his dispossession in view of Repeal Act. The surplus land vested with the State upon notification under Section 10(3) followed by dispossession of the erstwhile owner of the land (Khelai) under Section 10(5) way back in 1981. The owner never protested or agitated his dispossession before any authority or Court. In the circumstances, the subsequent buyer (Petitioner) cannot raise challenge to the procedure of dispossession at belated stage on the strength of a sale deed being void ab-initio.

24. The writ petition being devoid of merit, is accordingly, dismissed."

16. For the reasons aforestated and also in view of the law laid down by Hon'ble Supreme Court in the case of Bhaskar Jyoti Sharma (supra), Kapilaben Ambalal Patel (supra) and a coordinate Bench decision of this Court in the case of Shiv Ram Singh (supra), we do not find any merit in the writ petition.

17. Consequently, the writ petition is dismissed.

**Order Date :-** 31.10.2023

Ramakant/RKP