



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

WRIT APPEAL NO.166 OF 2022

1. The Union of India, represented by the General Manager Works, N.F. Railway, Maligaon, Guwahati - 781011, Assam.
2. The General Manager Works, N.F. Railway, Maligaon, Guwahati - 781011, Assam.
3. The Divisional Engineer, N.F. Railway, Maligaon, Guwahati - 781011, Assam.

.....Appellants

-Versus-

1. Shri Kshitish Chandra Karmakar,
Son of Late Dinobandhu Karmakar,
Resident of Village: Shivbari Road,
PO & District: Barpeta, Assam.
2. Shri Debendra Kumar,
Son of Late Nandi Kumar,
Resident of Ward No.2, Gotanagar, PS:
Jalukbari, Guwahati - 781023, District:
Kamrup (M), Assam.

On the death of respondent No.2, his legal heirs:-

- (a) Shri Jyotipran Kumar
- (b) Shri Bipul Kumar

3. Shri Muhinath Kumar,
Son of Late Nandi Kumar,
Resident of Ward No.2, Gotanagar, PS:
Jalukbari, Guwahati – 781023, District:
Kamrup (M), Assam.

4. Shri Harmohan Kumar,
Son of Late Nandi Kumar,
Resident of Ward No.2, Gotanagar, PS:
Jalukbari, Guwahati – 781023, District:
Kamrup (M), Assam.

On the death of respondent No.4, his legal heir:-

(a) Shri Dipu Kumar
Son of Late Harmohan Kumar.

5. Shri Harekrishna Kumar,
Son of Late Humeswar Kumar,
Resident of Ward No.2, Gotanagar, PS:
Jalukbari, Guwahati – 781023, District:
Kamrup (M), Assam.

6. Shri Chandra Kanta Kumar,
Son of Late Padma Kumar,
Resident of Ward No.2, Gotanagar, PS:
Jalukbari, Guwahati - 781023, District:
Kamrup (M), Assam.

7. Shri Lankeswar Kumar,
Son of Late Ghate Kumar,
Resident of Ward No.2, Gotanagar, PS:
Jalukbari, Guwahati - 781023, District:
Kamrup (M), Assam.

8. The State of Assam, represented by the
Commissioner & Secretary to the
Government of Assam, Revenue
Department, Dispur, Guwahati – 781006,
Assam.

9. The Deputy Commissioner, District
Kamrup (M), Guwahati – 781001, Assam.

10. The Circle Officer, Guwahati Revenue
Circle, Guwahati, District: Kamrup (M),
Assam.

.....Respondents

- B E F O R E -
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

For the Appellants : Mr. A. Dasgupta, Senior Advocate,
assisted by Mr. S. Chakraborty, Advocate.

For the Respondents : Mr. A.R. Bhuyan, Advocate for respondent
No.1.

: Mr. K.N. Choudhury, Senior Advocate,
assisted by Mr. A. Ganguly, Advocate for
respondent Nos.5 to 7.

: Ms. N. Bordoloi, Standing Counsel,
Revenue Department for respondent No.8.

: Mr. D.K. Sarmah, Additional Senior
Government Advocate, Assam for
respondent Nos.9 & 10.

Date of Hearing : 09.05.2024.

Date of Judgment : 14.05.2024.

JUDGMENT & ORDER (CAV)

(Vijay Bishnoi, CJ)

Heard Mr. A. Dasgupta, learned senior counsel, assisted by Mr. S. Chakraborty, learned counsel for the appellants. Also heard Mr. A.R. Bhuyan, learned counsel for the respondent No.1; Mr. K.N. Choudhury, senior counsel, assisted by Mr. A. Ganguly, learned counsel for the respondent Nos.5 to 7; Ms. N. Bordoloi, learned Standing Counsel, Revenue Department representing the respondent No.8 and Mr. D.K. Sarmah, learned Additional Senior Government Advocate, Assam, representing the respondent Nos.9 & 10.

2. This writ appeal is filed by the appellants, who are the respondent Nos.1 to 3 in the writ petition, being aggrieved

with the order dated 05.04.2019 passed by the learned Single Judge in WP(C) No.7191/2013, whereby the learned Single Judge has disposed of the writ petition filed on behalf of the writ petitioners (private respondents herein) by concluding that the writ petitioners/private respondents have able to make out a case of illegal occupation over their land by the Railways and, therefore, the Railway is directed to vacate the land of the private respondents, specifically mentioned in the schedule, and handover the peaceful possession of it to them. The learned Single Judge has further observed that for balancing the equities, it is also provided that if over the land, certain immovable structures have been constructed by the Railways or for any other matter, the Railways are not in a position to part with the possession of the land in question, the market price of the land has to be offered and paid to the writ petitioners/private respondents. It is further directed that the said process be completed within a period of 3(three) months from the date of passing of the said order.

3. Brief facts of the case are that the respondent No.1/ writ petitioner No.1 Kshitish Chandra Karmakar has initially filed WP(C) No.3389/2013 before this Court with a prayer for issuing a direction to the Revenue Authorities of the State to demarcate the land for which an application/ representation was already moved before the concerned authority on 15.05.2013. The learned Single Judge, considering the grievance raised in the said writ petition, has disposed of the same vide order dated 21.06.2013 directing the Circle Officer, Guwahati Revenue Circle to take on record the said representation dated

15.05.2013 and dispose of the same in accordance with law with a further direction that the demarcation prayed for may be carried out upon issuing notice to all the parties, as expeditiously as possible, preferably within 2(two) months from the date of furnishing a certified copy of the said order along with the copy of the writ petition and its enclosures.

4. It appears that pursuant to the said order, the respondent No.1/writ petitioner No.1 has preferred an application before the Circle Officer and pursuant to that, demarcation proceedings were concluded by the Circle Officer and the report was also prepared on 31.08.2013, which is annexed with the writ petition as Annexure-F. The respondent No.1/writ petitioner No.1 has thereafter approached the General Manager (W), N.F. Railway by moving a representation alleging that the Railways were in illegal possession and occupation of the land belonging to certain persons, who have executed a power of attorney in his favour, so the Railways should take necessary action for vacating the said land and handover the possession of the said land to those persons. As per the writ petitioners when the Railways did not respond to the said representation, a legal notice was served upon it through an Advocate on 26.10.2013 but Railways had not acceded to the request of the writ petitioners in response to the said legal notice, therefore, they are forced to approach this Court by way of filing the writ petition.

5. In the writ petition, in support of their claim the writ petitioners/private respondents have placed on record copies of the draft Chithas pertaining to the disputed land claiming that

K.P. Patta No.891 was also issued in favour of the Pattadars. However, the copy of the said K.P. Patta No.891 has not been produced in the writ petition. It was contended in the writ petition that the Railways were in unauthorized possession of the land of the writ petitioners/private respondents, except the respondent No.1/writ petitioner No.1 and, therefore, specific prayers were made in the writ petition to issue a direction to the Railway authorities to vacate the land in question. The prayers made in the writ petition are reproduced hereunder:-

“Under the aforesaid facts and circumstances your petitioner humbly prays that Your Lordships may be pleased to admit this petition and call for the records of the case and issue Rule upon the Respondent authorities to show cause as to why:-

(i) a writ of Mandamus should not be issued directing and commanding the Respondents (particularly Respondent no.1 to 3) to vacate the land mentioned in the schedule ‘A’ of the petition and to handover the vacant possession to the petitioner.

(ii) a writ of like nature should not be issued directing the Respondent authorities to remove all the constructions made over the said land mentioned in schedule ‘A’ of this petition and to hand over the vacant possession to the petitioner for the interest of justice.

(iii) a writ of like nature should not be issued declaring that the deprivation of the petitioner from his property without the authority of law and without paying any compensation as illegal and null and void.

-AND-

cause or causes being shown and after hearing both the parties make the rule absolute and/or pass any such other order(s) as Your Lordships may deem fit and proper.”

6. The Railways have filed their affidavit-in-opposition in the writ petition, wherein the claim of the private respondents/writ petitioners was denied and it was claimed that a certain portion of land was acquired by the Railways way back in the

year 1958 through the Government of Assam precisely vide Government Notification dated 21.06.1958 and Government Gazette declaration dated 25.06.1958. It was further contended on behalf of the Railways that after acquisition of the said land, the same was mutated in the name of the Railways in the revenue records and since then the said land is in possession of it. It was further contended that the Railways have developed this land by constructing quarters, roads, drains, etc., with a specific contention that the quarters were constructed in an around the year 1980 and at that time, the so called patta holders had never raised any objection for the construction of the Railway quarters on the said land while claiming that the land belongs to them. It was also contended on behalf of the Railways that the legal notice served upon them on behalf of the private respondents has been duly replied wherein the claim of the private respondents was specifically denied. Along with the reply, the Railways have annexed certain documents including the report of the Circle Officer dated 31.08.2013, whereby the demarcation proceedings were concluded.

7. It appears that no affidavit-in-opposition on behalf of the revenue officials has been filed, who were impleaded as party respondent Nos.4 to 6 in the writ petition through the Commissioner & Secretary to the Government of Assam, Revenue Department; Deputy Commissioner, Kamrup (Metro) and Circle Officer, Guwahati Revenue Circle, respectively. However, the learned Standing Counsel, Revenue Department, during the course of hearing, has made a statement that necessary survey carried out by the Lat Mandal establishes that

the land of the writ petitioners/private respondents is under the occupation of the Railways and the documents support the case of the writ petitioners/private respondents.

The learned Single Judge, having heard the learned counsel appearing for the parties, has disposed of the writ petition vide the impugned order dated 05.04.2019 mainly relying on the statements made by the learned Standing Counsel, Revenue Department. The relevant portion of the impugned order is reproduced hereunder:-

“10. Shri B.J. Talukdar, learned Standing counsel Revenue Department has submitted that pursuant to direction of the Court, necessary survey was carried out by the Lat Mandal which establishes that land of the petitioners is under the occupation of the Railways. The learned counsel of the Revenue fairly submits that the documents support the case of the petitioners.

11. In view of the aforesaid position, taking into consideration the documents on records, this Court is of the opinion that a case of illegal occupation over the land of the petitioners by the Railways is made out. In view of the said finding, corollary direction is issued for vacating the land in question which is more specifically mentioned in scheduled of the petitioner and hand over the peaceful possession to the petitioners. However, balancing the equities, it is also provided that if over the land, certain immovable structures have been constructed by the Railways or for any other matter, the Railways are not in a position to part with the possession of land in question, the market price of the land has to be offered and paid to the petitioners.”

8. It is to be noted that during the course of final hearing of the said writ petition, none has appeared on behalf of the Railway Department.

It appears that though the appellant Railways have preferred the present writ appeal but they have also filed a

review petition being Review Petition No.169/2019 for review of the impugned order dated 05.04.2019 before the learned Single Judge. However, the said review petition came to be dismissed by the learned Single Judge vide judgment & order dated 02.06.2021 with a cost of Rs.5000/- with certain observations. The said order was produced on record by the Railways through an additional affidavit filed on 17.05.2022.

9. Assailing the impugned order dated 05.04.2019, Mr. A. Dasgupta, learned senior counsel for the appellants has argued that the learned Single Judge has grossly erred in directing the appellants either to vacate the land in question or to pay compensation to the private respondents. It is contended that the land in question was acquired by the Railways way back in the year 1958 and the construction of residential quarters, roads and drainage was carried out way back in the year 1980. However, the private respondents have never raised any objection and have never approached the Railway authorities at any point of time and directly approached this Court by way of filing WP(C) No.3389/2013 while impleading only the revenue officials as party respondents with a prayer to direct those authorities to conduct demarcation of the land in question. It is contended that the learned Single Judge has not taken into consideration the fact that there is a gross delay on behalf of the private respondents in approaching the Court and this fact itself is sufficient to non-suit the private respondents from claiming equitable relief. The learned senior counsel for the appellants has further submitted that after the demarcation, proceedings were carried out, the private

respondents have filed the writ petition only with a prayer to direct the Railway authorities to vacate the land in question with no alternate prayer of compensation in lieu of the said land. It is further contended by the learned senior counsel that the learned Single Judge has mainly relied on the statement of the learned Standing Counsel, Revenue Department without there being availability of any cogent or reliable evidence regarding the title of the private respondents over the land in question. It is argued that along with the writ petition, the writ petitioners/ private respondents have produced the copies of the draft Chithas in support of their claim that they are the owners of the land, however, the said draft Chitha does not confer any title or right of the private respondents as the entries in the revenue records are only for fiscal purpose, i.e. for payment of land revenue and on the basis of the said revenue entries, no ownership can be conferred on any person. It is contended by the learned senior counsel for the appellants that only a competent Civil Court can adjudicate the issue regarding the right and title over an immovable property and a writ petition under Article 226 of the Constitution of India cannot be said to be a proper forum for this.

10. The learned senior counsel for the appellants while relying on the decision of the Hon'ble Supreme Court rendered in ***Special Leave Petition (C) No.13146/2021 (Jitendra Singh -Vs- The State of Madhya Pradesh & Ors.)***, decided on 06.09.2021, has argued that the Hon'ble Supreme Court in very certain terms has held that the entries in the revenue records have only fiscal purpose and no ownership is conferred

on the basis of such entries. The learned senior counsel has further submitted that heavy reliance is placed by the private respondents on the report of the Circle Officer dated 31.08.2013, however, from the perusal of the said report, it can be gathered that the Circle Officer has nowhere certified that the private respondents are the owners of the land in question and the said report only speaks that a certain portion of the land is in occupation of the Railways and except that nothing has been certified.

The learned senior counsel has, therefore, argued that even on the basis of the said report of the Circle Officer dated 31.08.2013, it cannot be said that the private respondents are the owners of the land in question and they can seek a direction against the Railways for vacating the land in question or in lieu of that to pay compensation. The learned senior counsel for the appellants has, therefore, argued that the impugned order dated 05.04.2019 passed by the learned Single Judge is against the settled principles of law and the same is, therefore, liable to be set aside.

11. Defending the impugned order dated 05.04.2019 passed by the learned Single Judge, Mr. K.N. Choudhury, learned senior counsel representing the respondent Nos.5 to 7 has vehemently submitted that the learned Single Judge has not committed any error in passing the impugned order.

It is contended that a certain land was acquired by the Railways way back in the year 1958, however, in the Notification for acquisition issued under Section 4 of the Land Acquisition Act, 1894, the land in question was not included. It

is further contended that in the demarcation proceedings conducted by the Circle Officer pursuant to the direction given by this Court, it is verified that a certain portion of land belonging to the private respondents is in occupation of the Railways though the same was not subjected to acquisition and in such circumstances, the learned Single Judge has not committed any illegality in directing the appellant Railway either to vacate the land or to pay compensation to the private respondents.

12. On the question of maintainability of the writ petition, the learned senior counsel has argued that when the facts are more or less admitted and proved, the writ petition cannot be thrown on the ground of availability of alternative remedy. In support of the above contention, the learned senior counsel for the respondent Nos.5 to 7 has placed reliance on the decision of the Hon'ble Supreme Court rendered in ***A.B.L. International Limited & Anr. -Vs- Export Credit Guarantee Corporation of India Limited & Ors.***, reported in ***(2004) 3 SCC 553***.

13. The learned senior counsel has further argued that in the year 2022, the Railways has filed a writ petition being WP(C) No.1838/2022 before this Court with the grievance that certain portion of land, acquired by it vide acquisition Notifications dated 21.06.1958 and 25.06.1958, has not been demarcated by the Revenue Authorities and due to lack of demarcation of the said land, the Railway authorities are not able to take steps for removal of the encroachers.

It is contended by Mr. Choudhury that in the said writ petition, counter affidavit was filed on behalf of the Revenue Authorities, wherein a demarcation report was placed on record and in the said demarcation report, it is clearly mentioned that the land belonging to the writ petitioners is in possession of the Railways. The learned senior counsel has submitted that the said reply filed on behalf of the Revenue Department in WP(C) No.1838/2022 is already produced on record along with the additional affidavit. It is, therefore, submitted that from the above report of the Revenue Department, it is not in dispute that the land belonging to the private respondents is in illegal occupation of the Railways and in such circumstances, there is no point in relegating the writ petitioners to avail civil remedy, particularly, when there is no dispute about the fact that they are the owners of the land in question and the same is in illegal occupation of the respondents. It is, therefore, contended that in the above facts and circumstances of the case, the learned Single Judge has not committed any illegality in passing the impugned order. Hence, no case for interference is made out and the writ appeal filed by the appellant Railway is liable to be dismissed.

14. Heard the learned counsel appearing for the parties and perused the material available on record.

15. It is not in dispute that a large chunk of land was acquired by the Railways through the acquisition proceedings initiated in the year 1958. The private respondents have claimed that the land belonging to them was never acquired by the Railways in the acquisition proceedings and the Railway is in

illegal occupation of their land. It is claimed by the private respondents that the land in question is not the part of the acquisition Notifications and this fact is sufficient to presume that the said land in question has illegally been occupied by the appellant Railways.

On the other hand, the appellant Railways are claiming that the land in question was acquired by it way back in the year 1958 on the basis of the acquisition proceedings and the same belong to it.

The claim of the private respondents regarding their ownership over the land in question rests upon the report of the Circle Officer dated 31.08.2013. The said report is in vernacular language and its translation reads as under:-

“Undersigned Order in regard to Land Dispute Case No.60/13-14 at Village - Gotanagar, Mouza - Jalukbari under Guwahati revenue Circle.

Applicant: Sri Kshitish Ch. Karmakar

Order dated on 31.08.2013:

Perused the report of Lat Mandal. As per direction of the Hon’ble Gauhati High Court for registration of Land Dispute case after serving the notice on 31.08.2013 filed by the applicant Kshitish Ch. Karmakar measurement the disputed land by the govt. officials. After inspection of the land measurements, it is found that the applicant Myadi Patta No.891 No.310 No.Dag, 2.60 Arch, 3.16 No. Dag, 51.50 Arch shows the measurement under Railway Colony, Road and Drainage and 280 No. Dag, 3.30 Arch shows the measurement inside the wall of St. Marys School. Accordingly, the whole narrated facts to the petitioner. Hence, the dispute case has been closed.

*Sd/-
Illegible
Circle Officer, Guwahati
Kamrup (Metro)”*

16. From the perusal of the above report, it is clear that it only certifies that the land described herein is in occupation of

the Railways and the St. Mary's School. The report nowhere speaks that the land belongs to the writ petitioners. In other words, the report does not certify that the writ petitioners are the title holders of the land which is in occupation of Railways.

Heavy reliance is placed by the counsel for the private respondents on the survey report produced on behalf of the Revenue Department in its counter affidavit filed in WP(C) No.1838/2022. However, it is to be noticed that while disposing of WP(C) No.1838/2022 vide order dated 08.06.2023, the learned Single Judge, while taking into consideration the said report, in Paragraph 26 has made it clear that the Court has not adjudicated the right, title and interest of any of the parties to the writ petition. For ready reference, Paragraph 26 of the order dated 08.06.2023 is quoted here under:-

“26. Before parting with the records, the Court is inclined to clarify that this Court has not adjudicated the right, title and interest of any of the parties to these writ petitions and therefore, if there is any inter se dispute between the parties with regard to the title or ownership of the said land, or right of the Railway authorities to evict the encroachers, the respective parties would be free to approach the competent Court of law and/or Forum, as the case may be.”

17. Apart from that, it is settled that the entries in the revenue records have only fiscal purpose, i.e. payment of land revenue and no ownership can be conferred on the basis of such entries. The Hon'ble Supreme Court in the case of **Jitendra Singh** (supra) has held as under:-

“6.1 In the case of Suraj Bhan v. Financial Commissioner, (2007) 6 SCC 186, it is observed and held by this Court that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. Entries in the revenue records or jamabandi have only 'fiscal purpose', i.e., payment of land revenue, and no ownership is conferred on

the basis of such entries. It is further observed that so far as the title of the property is concerned, it can only be decided by a competent civil court. Similar view has been expressed in the cases of Suman Verma v. Union of India, (2004) 12 SCC 58; Faqrudin v. Tajuddin (2008) 8 SCC 12; Rajinder Singh v. State of J&K, (2008) 9 SCC 368; Municipal Corporation, Aurangabad v. State of Maharashtra, (2015) 16 SCC 689; T. Ravi v. B. Chinna Narasimha, (2017) 7 SCC 342; Bhimabai Mahadeo Kambekar v. Arthur Import & Export Co., (2019) 3 SCC 191; Prahlad Pradhan v. Sonu Kumhar, (2019) 10 SCC 259; and Ajit Kaur v. Darshan Singh, (2019) 13 SCC 70.”

18. There is no doubt that a writ petition, in given circumstances, is maintainable even if it involves disputed question of facts as held in ***A.B.L. International Limited*** (supra) but where the facts themselves are not sufficient for proving a claim of party approaching the Writ Court, the equitable relief cannot be granted.

19. From the facts, it emerges that some land belonging to the writ petitioners is adjacent to the land acquired by the Railways. The writ petitioners are apprehending that some of their land is encroached by the Railways though it is not covered under the acquisition that took place way back in the year 1958. It seems to be a boundary dispute more and not a case of acquisition of the land without due process of law. True it is that if a land holder's land is taken without acquisition, he has 2(two) remedies for redressal of his grievances either to file a suit for recovery of possession or for compensation or to approach the High Court under Article 226 of the Constitution of India by filing a writ petition with a claim that certain authority has arbitrarily, unreasonably and *malafidely* without authority of law, has acquired his land but where from the facts

it is clear that it is a simple boundary dispute, the only remedy available to the aggrieved person is of filing a civil suit. The Hon'ble Supreme Court dealing with a similar situation in the case of **Syed Maqbool Ali -Vs- State of Uttar Pradesh & Anr.**, reported in **(2011) 15 SCC 383** has held as under:-

“9. The remedy of a landholder 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, mala fide or without the authority of law, and seek a direction that the land should be acquired in a manner known to law. The appellant has chosen to follow the second course. The High Court was not, therefore, justified in dismissing the writ petition on the ground that the remedy was under section 18 of the Act. The order of the High Court, which is virtually a non-speaking order, apparently proceeded on the basis that appellant was seeking increase in compensation for an acquired land. The matter therefore, requires to be reconsidered by the High Court, on merits.

10. But that does not mean that the delay should be ignored or appellant should be given relief. In such matters, the person aggrieved should approach the High Court diligently. If the writ petition is belated, unless there is good and satisfactory explanation for the delay, the petition will be rejected on the ground of delay and laches. Further the High Court should be satisfied that the case warrants the exercise of the extraordinary jurisdiction under Article 226 of the Constitution of the India, and that the matter is one where the alternative remedy of suit is not appropriate. For example, if the person aggrieved and the State are owners of adjoining lands and the claims that the State has encroached over a part of his land, or if there is a simple boundary dispute, the remedy will lie only in a civil suit, as the dispute does not relate to any high-handed, arbitrary or unreasonable action of the officers of the State and there is a need to examine disputed questions relating to title, extent and actual possession. But where the person aggrieved establishes that the State had high-handedly taken over his land without recourse to acquisition or deprived him of his

property without authority of law, the landholder may seek his remedy in a writ petition.”

20. In the present case, having gone through the material available on record, we are convinced that in the absence of any conclusive proof produced in the writ petition, regarding title/ownership of writ petitioners over the land in question, learned Single Judge has erred in directing the Railway authorities either to vacate the land in question or to pay compensation to the private respondents.

21. It is also to be noticed that by way of the writ petition, the sole prayer made by the private respondents was to issue a direction to the Railways for vacating the land in question. It is not the case of the private respondents that the Railways have recently occupied their land. Rather before the Writ Court the private respondents have not disputed the stand of the Railways that the land in question is in their possession and occupation since the year 1958. A person seeking eviction of an unauthorized occupant from his property is, ordinarily supposed to approach only the Civil Court since it requires serious adjudication on many points as with the efflux of time, the owner may have extinguished his right over the property or lost right to claim tenancy or the illegal occupant may have acquired any right on the basis of old possession/ occupation over the said property. The learned Single Judge, without considering all those aspects, simply relying on the statement of the learned Standing Counsel for the Revenue Department, Government of Assam, has passed the impugned order, which in our opinion, cannot be sustained.

22. Another point, which is having a significant bearing on the case, is that whether the private respondents are entitled for any relief in view of the fact that they have approached the Court with a great unexplained delay.

As per the facts of the case, the Railways were in occupation of the said land since the year 1958 and have raised construction over the said land in the year 1980. The private respondents or the so called land holders who are their ancestors have never raised any objection regarding the alleged illegal occupation by the Railways till the year 2013 when for the first time they filed a writ petition before this Court simply with a prayer to issue a direction to the Revenue Authorities for demarcation of the land in question without impleading the Railways as parties to the said proceedings. The said unexplained delay on the part of the private respondents is fatal and only on this ground, no relief can be granted to the private respondents in the extra ordinary jurisdiction exercised by this Court under Article 226 of the Constitution of India. In the present case, the private respondents remained silent for about 64(sixty-four) years and thereafter have approached the Court without explaining the said delay.

23. Dealing with the question regarding the delay in approaching the Court, the Hon'ble Supreme Court in the case of ***State of Maharashtra -Vs- Digambar***, reported in **(1995) 4 SCC 683** has held 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 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 decision 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 blame-worthy 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 blame-worthy 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.

15.

16.

17.

18. *Coming to the exercise of power conferred upon the High Court under Article 226 of the Constitution for issuing orders, directions or writs for 'any purpose', such power is discretionary, being a matter well-settled, cannot be disputed.*

19. *Power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a persons entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the Court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blame-worthy conduct.*

20. *Laches or undue delay, the blame-worthy conduct of a person in approaching a Court of Equity in England for obtaining discretionary relief which disentitled for grant of such relief was explained succinctly by Sir Barnes Peacock, long ago, in Lindsay Petroleum Co. v. Prosper Armstrong (1874) 5 PC 221) thus:*

'Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation, in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute or limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts

done during the interval, which might affect either party and cause a balance of Justice or injustice in taking the one course or the other, so far as it relates to the remedy.'

21. *Whether the above doctrine of laches which disentitled grant of relief to a party by Equity Court of England, could disentitle the grant of relief to a person by the High Court in exercise of its power under Article 226 of our Constitution, when came up for consideration before a Constitution Bench of this Court in Moon Mills Ltd. v. M.R. Meher, President, Industrial Court, Bombay (AIR 1967 SC 1450) it was regarded as a principle that disentitled a party for grant of relief from a High Court in exercise of its discretionary power under Article 226 of the Constitution.*

22. *A three-Judge Bench of this Court in Maharashtra State Road Transport Corporation v. Shri Balwant Regular Motor Service, Amravati, (1969 (1) SCR 808), reiterated the said principle of laches or undue delay as that which applied in exercise of power by the High Court under Article 226 of the Constitution.*

23. *Therefore, where a High Court in exercise of its power vested under Article 226 of the Constitution issues a direction, order or writ for granting relief to a person including a citizen without considering his disentitlement of such relief due to his blameworthy conduct of undue delay or laches in claiming the same, such a direction, order or writ becomes unsustainable as that not made judiciously and reasonably in exercise of its sound judicial discretion, but as that made arbitrarily.*

24. The Hon'ble Supreme Court, in the case of ***City and Industrial Development Corporation -Vs- Dosu Aardeshir Bhiwandiwalla & Ors.***, reported in **(2009) 1 SCC 168** while dealing with a similar question regarding the delay in approaching the Court, has held as under:-

"26. It is well settled and needs no restatement at our hands that under Article 226 of the Constitution, 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.

27. *The appellant in its reply opposing the admission of Writ Petition in clear and categorical terms pleaded that the writ petitioner has kept silent for more than 35 years and filed belated writ petition. It was asserted that on account of inordinate delay and laches the writ petition suffers from legal infirmities and therefore liable to be rejected in limine. The High Court did not record any finding whatsoever and ignored such a plea of far reaching consequence.*

28. *As noticed hereinabove the High Court obviously was impressed by the oral statement made during the course of the hearing of the writ petition and some vague and self defeating averments made in the affidavit filed by the appellant in the High Court.*

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.*

30. *The court while exercising its jurisdiction under Article 226 is duty bound to consider whether:*

- (a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;*

- (b) *petition reveals all material facts;*
- (c) *the petitioner has any alternative or effective remedy for the resolution of the dispute;*
- (d) *person invoking the jurisdiction is guilty of unexplained delay and laches;*
- (e) *ex facie barred by any laws of Limitation;*
- (f) *grant of relief is against public policy or barred by any valid law; and host of other factors.*

The court in appropriate cases in its discretion may direct the State or its instrumentalities as the case may be to file proper affidavits placing all the relevant facts truly and accurately for the consideration of the court and particularly in cases where public revenue and public interest are involved. Such directions always are required to be complied with by the State. No relief could be granted in a public law remedy as a matter of course only on the ground that the State did not file its counter affidavit opposing the writ petition. Further, empty and self-defeating affidavits or statements of Government spokesmen by themselves do not form basis to grant any relief to a person in a public remedy to which he is not otherwise entitled to in law.”

25. The Hon’ble Supreme Court in the case of **Chennai Metropolitan Water Supply & Sewerage Board & Ors. -Vs- T.T. Murali Babu**, reported in **(2014) 4 SCC 108**, while dealing with the issue regarding delay, has held as under:-

“13. First, we shall deal with the facet of delay. In Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, Amravati and others [AIR 1969 SC 329] the Court referred to the principle that has been stated by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd, Abram Farewall, and John Kemp [(1874) 5 PC 221], which is as follows: -

“11. ‘Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put

the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.'

14. *In State of Maharashtra v. Digambar [(1995) 4 SCC 683], while dealing with exercise of power of the High Court under Article 226 of the Constitution, the Court observed that:*

'19. Power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct.'

15. *In State of M.P. and others etc. etc. v. Nandlal Jaiswal and others etc. etc. [AIR 1987 SC 251] the Court observed that:*

'24. it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic.'

It has been further stated therein that:

‘24. If there is inordinate delay on the part of the petitioner in filing a petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction.’

Emphasis was laid on the principle of delay and laches stating that resort to the extraordinary remedy under the writ jurisdiction at a belated stage is likely to cause confusion and public inconvenience and bring in injustice.

16. Thus, 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 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 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. Be it noted, delay comes in the way of equity. 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.”

26. Hence, in view of the above discussions, we are of the opinion that the order passed by the learned Single Judge is not liable to be sustained for the reasons indicated above, therefore, this writ appeal is allowed. The impugned order dated 05.04.2019 passed by the learned Single Judge is set aside and the WP(C) No.7191/2013 filed by the private respondents is dismissed.

However, we make it clear that this order would not preclude the private respondents from raising any claim in respect of the land in question based on title and the writ petitioners/private respondents are free to avail appropriate remedy under the civil law, if so advised.

27. With the above observations and directions, the writ appeal stands disposed of.

JUDGE

CHIEF JUSTICE

Comparing Assistant