

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

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CJ Court

Case :LPA No. 237/2024 in
(WP(C) No. 303/2021)

Shrivallabh Datt

..... Appellant/Petitioner(s)

Through: Mr. Ajay Vaid, Advocate

vs

U. T. of J&K and others

..... Respondent(s)

Through: Ms. Monika Kohli, Sr. AAG
Mr. Suneel Malhotra, GA

**Coram: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE**

ORDER
24.02.2026

1. The appellant had filed a writ petition bearing WP(C) No. 303/2021, titled, 'Shrivallab Datt vs. U. T. of J&K and others' for commanding the respondents to retrieve the land measuring 103 kanals 15 marlas comprising khasra No. 367 and land measuring 48 kanals 15 marlas comprising khasra No. 369 in Village Pouni Chak Wand Waziran, Tehsil Jammu and handover the same to the appellant or in the alternative, directing the respondents to pay the compensation to the appellant for deemed acquisition of the aforesaid land of the appellant at the prevailing market rate in the interest of justice and to pay the rent to the appellant for the utilization of abovementioned land from 1962 till the same is retrieved and handed over to the appellant.

2. The respondents resisted the writ petition on various counts; notably, respondent No. 4 raised a preliminary objection asserting that the petition deserves dismissal because as per the Limitation Act, the right to property is extinguished if the aggrieved party fails to take appropriate legal recourse for the recovery of possession within 12 years.
3. Vide judgment dated 02.09.2024, the learned Writ Court dismissed the petition as being barred by the doctrine of delay and laches.
4. The appellant has come up with this *intra* court appeal thereby assailing judgment of the Writ Court dated 02.09.2024 on the grounds that the learned Writ Court has not appreciated the controversy in its right perspective and wrongly observed that the judgments of the Hon'ble Apex Court in **Vidya Devi v. State of Himachal Pradesh and others, AIR 2020 SC 4709** and Coordinate Bench this Court in **Amina Begum vs. State of J&K and others, 2023 (2) JK[HC]** are not applicable in the present facts and circumstances of the case.
5. Heard learned counsel for the parties and perused the record.
6. In paragraph 11 of the impugned judgment, the learned Writ Court has observed that the petitioner/appellant has preferred the writ petition in the year 2021, and has sought reliefs for a cause originating in 1962; accordingly, the Court dismissed the same as being hit by the doctrine of delay and laches.
7. The appellant contends that the doctrine of delay and *laches* cannot be used as a shield in the hands of the State to justify the unauthorized deprivation of private property. Judicial precedents establish that delay is not an absolute

bar to the grant of relief, especially when the violation involves a continuing wrong. In the present case, the appellant has alleged that he has been deprived of his land without following the due process of law, thereby resulting in a clear violation of Article 300-A of the Constitution of India. The learned writ court ought to have examined the merits of the case instead of dismissing the same on the ground of delay and laches. Dismissal of a petition involving allegation of fundamental constitutional violation solely on the grounds of delay and *laches* would result in a miscarriage of justice and would effectively reward the State for its own high-handed conduct, if the same is established. The State cannot be permitted to rely upon the doctrine of *laches* to legitimise an ongoing illegality, as a citizen's belated approach to the Court does not grant legitimacy to an otherwise unconstitutional action. To dismiss this petition on the ground of delay would be amount to condone the State's illegalities. In this context, it would be proper to take note of the judgment of the Hon'ble Supreme Court in **Tukaram Kana Joshi and others v. M. I. D. C. and others, (2013) 1 SCC 353**, relevant paragraphs are extracted as under:

9. The right to property is now considered to be not only a constitutional or a statutory right but also a human right. Though, it is not a basic feature of the Constitution or a fundamental right. Human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment, etc. Now however, human rights are gaining an even greater multifaceted dimension. The right to property is considered very much to be a part of such new dimension.

10. In the case at hand, there has been no acquisition. The question that emerges for consideration is whether, in a democratic body polity, which is supposedly governed by the rule of law, the State should be allowed to deprive a citizen of his property, without adhering to the law. The matter would have been different had the State pleaded that it has right, title and interest over the said land. It however, concedes to the right, title and

interest of the appellants over such land and pleads the doctrine of delay and laches as grounds for the dismissal of the petition/appeal.

11. There are authorities which state that delay and laches extinguish the right to put forth a claim. Most of these authorities pertain to service jurisprudence, grant of compensation for a wrong done to them decades ago, recovery of statutory dues, claim for educational facilities and other categories of similar cases, etc. Though, it is true that there are a few authorities that lay down that delay and laches debar a citizen from seeking remedy, even if his fundamental right has been violated, under Article 32 or 226 of the Constitution, the case at hand deals 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. The State must either comply with the procedure laid down for acquisition, or requisition, or any other permissible statutory mode. There is a distinction, a true and concrete 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 the present case clearly shows that neither of the said powers have been exercised. A question then arises with respect to the authority or power under which the State entered upon the land. It is evident that the act of the State amounts to encroachment, in exercise of “absolute power” which in common parlance is also called abuse of power or use of muscle power. To further clarify this position, it must be noted that the authorities have treated the landowner as a “subject” of medieval India, but not as a “citizen” under our Constitution.

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 the 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.

(emphasis added)

8. Further, the Hon’ble Apex Court in **Urban Improvement Trust v Smt. Vidhya Devi and others, 2024 INSC 980**, while placing reliance upon various of its earlier pronouncements, has observed as under:

“46. As regards the appellant’s challenge to the inordinate delay of 21 years in filing of the writ petitions by the respondents, we are of the view that the same needs to be considered in the facts and circumstances of the case. **While it is true that the courts have consistently held that undue delay in approaching the court can be a ground for refusing relief, the courts have also recognized that in exceptional cases, where the impugned action is patently illegal or affects fundamental rights, the delay must be condoned.**

47. It is pertinent for us to consider the judgment of this Court in *Vidya Devi v. State of Himachal Pradesh* reported in (2020) 2 SCC 569, wherein it was held, inter alia, as follows:

“12.12. The contention advanced by the state of delay and laches of the appellant in moving the court is also liable to be rejected. **Delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the court. Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice.**

12.13. In a case where the demand for justice is so compelling, a constitutional court would exercise its jurisdiction with a view to promote justice, and not defeat it. [*P.S. Sadasivaswamy v. State of T.N.*,]”

[Emphasis supplied]

48. The aforesaid view has also been reiterated by this Court in *Sukh Dutt Ratra v. State of Himachal Pradesh* reported in (2022) 7 SCC 508 wherein the court opined that there cannot be a ‘limitation’ to doing justice. The relevant observations are reproduced below:

“16. Given the important protection extended to an individual vis-a-vis their private property (embodied earlier in Article 31, and now as a constitutional right in Article 300-A), and **the high threshold the State must meet while acquiring land, the question remains – can the State, merely on the ground of delay and laches, evade its legal responsibility towards those from whom private property has been expropriated? In these facts and circumstances, we find this conclusion to be unacceptable, and warranting intervention on the grounds of equity and fairness.**”

[Emphasis supplied]

49. Similarly, this Court in its decision in *Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service* reported in 1969 (1) SCR 808 held that:

“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.”

[Emphasis supplied]

50. This Court in its decision in *Ramchandra Shankar Deodhar v. State of Maharashtra*, reported in (1974) 1 SCC 317 held that:

“10. ... There was a delay of more than ten or twelve years in filing the petition since the accrual of the cause of complaint, and this delay, contended the respondents, was sufficient to disentitle the petitioners to any relief in a petition under Article 32 of the Constitution. We do not think this contention should prevail with us. In the first place, it must be remembered that the rule which says that the Court may not inquire into belated and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay, the Court must necessarily refuse to entertain the petition. Each case must depend on its own facts. The question, as pointed out by Hidayatullah, C.J., in *Tilokchand Motichand v. H.B. Munshi* [(1969) 1 SCC 110, 116 : (1969) 2 SCR 824] “is one of discretion for this court to follow from case to case. There is no lower limit and there is no upper limit It will all depend on what the breach of the fundamental right and the remedy claimed are and how the delay arose”. ...”(Emphasis supplied)

51. **The decisions of this Court have consistently held that the right to property is enshrined in the Constitution and requires that procedural safeguards be followed to ensure fairness and non-arbitrariness in decision-making especially in cases of acquisition by the State. Therefore, the delay in approaching the court, while a significant factor, cannot override the necessity to address illegalities and protect right to property enshrined in Article 300A. The court must balance the need for finality in legal proceedings with the need to rectify injustice. The right of an individual to vindicate and protect private property cannot be brushed away merely on the grounds of delay and laches.**

(emphasis added)

9. It is a settled principle of law that the State and its instrumentalities cannot adopt the posture of a private litigant to justify the illegal seizure of property

through the plea of delay. Given the peculiar facts and circumstances of the present case, the learned Writ Court fell in error in dismissing the writ petition solely on the ground of delay and laches, and instead ought to have adjudicated the matter on its merits.

- 10. After having gone through the judgment impugned, we are of the considered view that the same cannot sustain.
- 11. Accordingly, the instant appeal is allowed and the judgment impugned is set aside. The matter is remitted to the learned Writ Court for disposal afresh in accordance with law. Writ petition bearing WP(C) No. 303/2021 shall be listed before the learned Single Judge having the roster on 24.03.2026.
- 12. Needless to say, we have not examined the merits of the claims of the parties.

(RAJNESH OSWAL)
JUDGE

(ARUN PALLI)
CHIEF JUSTICE

JAMMU:
24.02.2026
Rakesh PS

Whether the judgment is speaking:	Yes/No
Whether the judgment is reportable:	Yes/No