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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No.1676 of 2012**

1. Balmukund, S/o Late Gokul, aged about 40 years, R/o Village Palaud, Patwari Halka No.21, Mandir Hasaud, Tahsil Arang, District Raipur, Chhattisgarh
2. Harinarayan, S/o Late Gokul, aged about 43 years, R/o Village Palaud, Patwari Halka No.21, Mandir Hasaud, Tahsil Arang, District Raipur, Chhattisgarh

---- Petitioners**versus**

1. State of Chhattisgarh, through Secretary, Department of Revenue, D.K.S. Bhawan, Raipur, District Raipur, Chhattisgarh
2. Naya Raipur Development Authority, through its Director, Naya Raipur Development Authority, Mantralaya, Near Mahanadi Gate, Raipur, Chhattisgarh
3. Collector, Raipur, District Raipur, Chhattisgarh
4. Chief Executive Officer, Naya Raipur Development Authority, Raipur, District Raipur, Chhattisgarh
5. Sub-Divisional Officer (Revenue)-cum-Land Acquisition Officer, Arang and Abhanpur Division, Head Office, Raipur, District Raipur, Chhattisgarh

---- Respondents**and****Writ Petition (C) No.207 of 2013**

1. Rajkumar Chandrakar, S/o Chabilal Chandrakar, aged about 45 years, R/o Village Palaud, Patwari Halka No.21, Mandir Hasaud, Tahsil Arang, District Raipur, Chhattisgarh
2. Domeswar, S/o Chabilal Chandrakar, aged about 43 years, R/o Village Palaud, Patwari Halka No.21, Mandir Hasaud, Tahsil Arang, District Raipur, Chhattisgarh

---- Petitioners**versus**

1. State of Chhattisgarh, through Secretary, Department of Revenue D.K.S. Bhawan, Raipur, District Raipur, Chhattisgarh
2. Naya Raipur Development Authority, through its Director, Naya Raipur Development Authority, Mantralaya, Near Mahanadi Gate, Raipur, Chhattisgarh
3. Collector, Raipur, District Raipur, Chhattisgarh
4. Chief Executive Officer, Naya Raipur Development Authority, Raipur, District Raipur, Chhattisgarh
5. Sub-Divisional Officer (Revenue)-cum-Land Acquisition Officer, Arang and Abhanpur Division, Head Office, Raipur, District Raipur, Chhattisgarh

---- Respondents

For Petitioners	:	Shri Manoj Paranjpe, Advocate
For State/Respondents No.1, 3 and 5	:	Shri B. Gopa Kumar, Deputy Advocate General
For New RDA/Respondents No.2 and 4	:	Shri Sumesh Bajaj, Advocate

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per Navin Sinha, Chief Justice

23/11/2015

1. The two appeals with identity of facts involving common questions of law have been heard together and are being disposed by a common order.

2. The Petitioners in both writ applications came to this Court earlier in Writ Petition (C) No.6129 of 2011 on 12.10.2011 along with others challenging the notification issued under Section 4(1) read with Section 17(1) of the Land Acquisition Act, 1894 (hereinafter called 'the Act') contending that the urgency provision had been invoked without specifying the nature of urgency depriving the land owners of the right to file objections under Section 5A of the Act. The four Petitioners along with two others, filed an application on 19.10.2011 seeking leave to withdraw from the writ applications reserving the right to file fresh separate writ applications on the ground that their lands were situated in village Palaud, Mandir Hasaud, Tahsil Arang, District Raipur while the remaining Petitioners were from different villages. On 20.10.2011, the writ application was permitted to be withdrawn with liberty to file a fresh writ application, if necessary.

3. Writ Petition (C) No.6129 of 2011 was finally disposed on 19.4.2012 with directions to receive objections and decide it under Section 5A of the Act declining to quash the entire acquisition proceedings. It was further directed that in case declaration under Section 6 of the Act and notice under

Section 9 of the Act had been issued, they were declared to be illegal with regard to the Petitioners therein only, requiring issuance of fresh notifications under Sections 6 and 9 of the Act.

4. Learned Counsel for the Petitioners submitted that notifications under Section 4(1) and Section 17(1) of the Act were issued on 3.3.2011 and 5.4.2011 respectively. Notification under Section 9(1)(2) was issued on 9.9.2011. Objections to the same were filed by the Petitioners on 2.11.2011. The notice under Section 12(2) was issued on 24.11.2011 and the award finally published on 15.11.2011 in Writ Petition (C) No.207 of 2013 and on 26.3.2012 in Writ Petition (C) No.1676 of 2012. Pursuant to the liberty granted on 20.10.2011, Writ Petition (C) No.207 of 2013 was filed on 13.2.2013 and Writ Petition (C) No.1676 of 2012 was filed on 18.9.2012, no sooner that the Petitioners were made aware of the Award having finally been published.

5. The fresh writ applications have been preferred promptly and the delay, if any, is irrelevant because the Petitioners are still in possession of their lands. The Petitioners are therefore entitled to the same relief for filing of objections and consideration of the same as granted in Writ Petition (C) No. 6129 of 2011. The invocation of the urgency clause does not vest the lands automatically with the Respondents unless the act of taking formal possession by preparation of 'panchnama' duly signed by the Petitioners is completed. Continued physical possession with the Petitioners also signifies lack of any urgency. Judicial precedents abound that agricultural lands, to the extent possible, are to be avoided for acquisition and also that if possession had not been taken, the aggrieved could approach the Court within three years. If the Petitioners were to be non-suited on the ground of delay, they would be left remediless as it has been held that no civil suit lies to question the land acquisition proceedings. Reliance was placed on

(2011) 5 SCC 394 (Banda Development Authority, Banda v. Moti Lal Agarwal), (2012) 9 SCC 503 (Patasi Devi v. State of Haryana), AIR 2012 SC 515 (Leela Wanti v. State of Haryana), (2015) 3 SCC 327 (Magnum Promoters Private Limited v. Union of India) and (2015) 4 SCC 325 (Velaxan Kumar v. Union of India).

6. Learned Counsel for the Respondents submits that the writ petitions are devoid of merit. Even otherwise, the writ petitions are highly belated. The Petitioners have not been vigilant for the protection of their rights and interests. Their conduct borders on reckless callous negligence which also disentitles them to any relief on basis of parity even with Writ Petition (C) No.6129 of 2011. They withdrew from the earlier writ petition with full awareness of the scepter of a land acquisition proceeding hanging over their head and that it would culminate in an Award as Section 9 Notification had already been issued. Yet they did not take steps to institute a fresh application at the earliest despite the liberty granted. The pleading that they became aware only in the month of May, 2012 that final Award had been passed, to explain the delay in filing afresh, is too vague and evasive and does not even mention the source of information. If the lands of the Petitioners were part of a larger chunk of lands being acquired, and they had come to this Court earlier for protection of their rights and interests, it is difficult to believe that after withdrawing their writ applications they were sanguine about their own lands and did not take any further steps to protect their interests further and for which they are to answer alone.

7. Writ Petition (C) No.6129 of 2011 was preferred on 12.10.2011. The proceedings were at the stage of Section 9(1) of the Act. Thus the order to provide hearing under Section 5A of the Act was passed. The order dated 12.10.2011 specifically confines the relief to the Petitioners therein alone. Reliance was placed on (2012) 12 SCC 133 (V. Chandrasekaran v.

Administrative Officer), AIR 2010 SC 1068 (Om Prakash v. Union of India), AIR 2008 SC 1494 (Swaika Properties Pvt. Ltd. v. State of Rajasthan), AIR 1998 SC 1608 (M/s Larsen and Toubro Ltd. v. State of Gujarat) and AIR 2002 SC 3309 (Urban Improvement Trust, Udaipur v. Bheru Lal).

8. The present writ petitions have been filed much after publication of the Award. The Petitioners fall in the category of fence sitters as they have chosen to approach this Court after the order dated 19.12.2012 passed in Writ Petition (C) No.6129 of 2011 making it the sheet anchor of their case seeking similar relief for hearing under Section 5A of the Act.

9. We have considered the submissions on behalf of the parties. The facts of the present case, coupled with the conduct of the Petitioners themselves leaves us satisfied for reasons discussed hereinafter that they are not entitled to any relief.

10. The lands which are the subject matter of Writ Petition (C) No.207 of 2013 is situated in Khasra No.1505 measuring area of 0.45 hectares and that in Writ Petition (C) No.1676 of 2012 is situated in Khasra No.1493 measuring area 1.77, both in Village Palaud, Tahsil Arang, District Raipur. The two Petitioners in each of the writ petitions are brothers.

11. One of the Petitioners in Writ Petition (C) No.207 of 2013, Rajkumar Chandrakar was Petitioner No.4 in Writ Petition (C) No.6129 of 2011. Likewise, Late Gokul, father of the two Petitioners in Writ Petition (C) No.1676 of 2012 was a Petitioner in the same. Gokul was deceased in November, 2011 soon after withdrawal of the writ petition in October 2011. The present Petitioners who are sons of Gokul were also recorded owners and were therefore well aware of the land acquisition proceedings as it is not in dispute that separate notices had not been given to them in respect of

their share of the lands.

12. The writ petitions were withdrawn on 20.10.2011 with full consciousness under the scepter of an imminent loss of their lands in the land acquisition proceedings which had reached the stage of Section 9. The act of withdrawal reserving the right to pursue matters in a fresh writ petition reveals their awareness of the need to pursue legal remedies for protection of their right and interests with promptness as developments were bound to take place in the meantime. The delay on part of the Petitioners in having approached this Court thereafter belatedly with no explanation after culmination of the proceedings by publication of the Award now put them in a class apart from Writ Petition (C) No.6129 of 2011 and no claim of parity can be made.

13. The Petitioners were not vigilant and alert for the protection of their rights and interests if not callously negligent in not pursuing remedies in accordance with law allowing a fundamental change in the fact situation with creation of third party interests. There is no explanation worth the name in the two writ petitions for having filed by them as late as on 13.2.2013 and 18.9.2012 after withdrawal on 20.10.2011. The explanation in Writ Petition (C) No.207 of 2013 that the certified copy of the land acquisition case was obtained by them in March, 2012 is frivolous considering that they were only required to file a fresh writ petition for technical reasons. In Writ Petition (C) No.1676 of 2012 the explanation is that they became aware of the Award in May, 2012 with no source of information mentioned. The right to object to the land acquisition proceedings as being infirm or contrary to the law was a statutory right. If lands of a person are being acquired and he has a grievance, the right to object flows out of the Act itself. A person having a statutory right to object can waive it. Whether there has been waiver in a particular case or not is a question of fact for which either there may be

express waiver or waiver by conduct. In the facts of the present case, it is apparent that the Petitioners were not serious about pursuing their remedies in a fresh writ petition after having withdrawn themselves from the earlier one and waived their right to object by their conduct. Had the fresh writ petitions been preferred within reasonable time after withdrawal on 20.10.2012 matters may have been different. Not only were the Petitioners negligent in filing the fresh writ petitions after withdrawal of the earlier writ petition, they also have been negligent and callous in pursuing their remedies after the publication of the award. The delay is at both stages. Cumulatively, in our opinion, the Petitioners are not entitled to any relief in exercise of the discretionary writ jurisdiction.

14. The portals of the Court are no doubt open to all for justice. But the right to justice entails responsibility to approach the Court in due time. No one can be permitted to come ambling along at his own sweet will at any stage to the portal of the Court and say that delay is irrelevant in the quest of justice. The explanation for the delay and consequences of the same will become relevant considerations. Additionally a person coming to Court for relief must come with clean hands and not doubtful documentary evidence.

15. The benefit of order dated 19.4.2012 in Writ Petition (C) No.6129 of 2011 cannot be given to the Petitioners for more than one reason. That writ petition was preferred before publication of the award and the land acquisition proceedings were at the stage of Section 9. Secondly, the Court restricted the operation of its directions specifically to the Petitioners before it. Others who were not party or who had withdrawn cannot be given benefit of the directions. We have no hesitation in holding that the Petitioners clearly fall in the category of fence sitters waiting and watching the outcome of the litigation by the original Petitioners in Writ Petition (C) No.6129 of 2011 and then opting to jump on the band wagon having

come to know of the relief granted. Those who come to Court in time and those who do not, form separate classes and relief claimed on basis of parity can be denied on this classification. In the facts of the present case we may only appropriately refer to (2015) 8 SCC 723 (T.N. Housing Board v. S. Saraswathy) observing as follows :-

“11. We are respectfully in accord with the observations of Coordinate Benches that unless the declaration under Section 6 or the notification under Section 4 of the Act is not explicitly quashed in toto or in its wholeness by the Court, the benefits of relief granted by the Court would be effective only qua the parties before it.....

12. It has been repeatedly reiterated by this Court that those who have missed the boat in challenging the acquisition proceedings, who sat idle and have let the grass grow under their feet cannot, thereafter, be permitted to jump on the bandwagon of others who entered the portals of the Court at the appropriate time and thereafter obtained favourable orders. Significantly, in *Chandrasekaran* the Court was alive to the reality of utilisation of large chunks of land by the State for housing scheme; and in this scenario, it was obviously and rightly reluctant and facially hesitant to quash the acquisition proceedings in toto, knowing that that would result in grave consequences to society. In this analysis, the respondents including their vendor, P. Velu, cannot be permitted to take any advantage of the orders passed by this Court in *A.S. Naidu*.”

16. The notification in the present case was issued under Section 4(1) read with Section 17(1) of the Act. The latter provides for taking of possession of lands for a public purpose on expiration of 15 days from the publication of the notice mentioned under Section 9(1) of the Act. It is not the case of the Petitioners that the lands were not being acquired for a public purpose or possession has not been taken in accordance with the provisions under Section 17(1) of the Act. While the Petitioners contend that the possession still remains with them notwithstanding the above, the Respondents contend that the lands have been acquired and possession taken over for the purposes of the Border Security Force (BSF) and the Indo-Tibetan Border Police (ITBP). The Respondents have brought on record the handing over

of possession certificate dated 28.4.2011 in both cases duly signed by the Naib Tahsildar, Patwari and others. There is no denial of the fact in the rejoinder. The photographs placed on record by the petitioner's in proof of continued possession of the lands appears to be a manufactured document for the purpose of the case. Modern cameras no doubt contain features with regard to date and time of the photograph having been taken. They normally appear in digital form, very small in size on the photograph and certainly do not contain any software for recording the details of the lands with Khasra number and area, to the best of our knowledge. In V. Chandrasekaran (supra) relied upon by the Respondents it was observed as follows :-

“44. The appellants have not approached the court with clean hands, and are therefore, not entitled for any relief. Whenever a person approaches a court of equity, in the exercise of its extraordinary jurisdiction, it is expected that he will approach the said court not only with clean hands but also with a clean mind, a clean heart and clean objectives. Thus, he who seeks equity must do equity. The legal maxim *jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiores*, means that it is a law of nature that one should not be enriched by causing loss or injury to another.

45. The judicial process cannot become an instrument of oppression or abuse, or a means in the process of the court to subvert justice, for the reason that the court exercises its jurisdiction, only in furtherance of justice. The interests of justice and public interest coalesce, and therefore, they are very often one and the same. A petition or an affidavit containing a misleading and/or an inaccurate statement, only to achieve an ulterior purpose, amounts to an abuse of process of the court.”

17. Banda Development Authority (supra), relied upon by the Petitioners is of no avail. The acquisition proceedings were challenged on grounds of non publication of the Award within the statutory time under Section 11-A of the Act. Delay in approaching the Court for relief in land acquisition proceedings was considered relevant observing as follows :-

“19. In matters involving challenge to the acquisition of land for public purpose, this Court has consistently

held that delay in filing the writ petition should be viewed seriously and relief denied to the petitioner if he fails to offer plausible explanation for the delay. The Court has also held that the delay of even few years would be fatal to the cause of the petitioner, if the acquired land has been partly or wholly utilised for the public purpose.”

Likewise on the issue regarding taking of possession in the background of a notification under Section 4 (1) read with Section 17 (1) of the Act it was observed :-

“37. The principles which can be culled out from the above noted judgements are ;

(i) no hard – and – fast rule can be laid down as to what would constitute taking possession of the acquired land.

(ii) if the acquired land is vacant, the act of the state authority concerned to go to the spot and prepare a punch, (read possession certificate) will ordinarily be treated as sufficient to constitute taking off possession.....”

18. Patasi Devi (supra) likewise has no application to the facts of the present case. The challenge after publication of Award was on the ground that acquisition was for a private colonizer, the appellant had constructed a house before notification alleging discrimination by release of adjoining lands on that ground coupled with a finding of fact in absence of any documentary evidence that possession of the lands had not been taken by the respondents pursuant to the acquisition not considered by the High Court.

19. Leela Wanti (supra) has no relevance to the present case. It related to release of lands not required after acquisition.

20. In Magnum Promoters (supra), the issue regarding taking of possession fell for consideration in the background of a factually false plea of having taken possession when an order of status quo existed. It has no application to the facts of the present case.

21. In Velaxan Kumar (supra), a finding of fact was arrived at that possession had not been taken by the respondents and even if it had been, there was no proper panchnama. We have already noticed that there is no challenge to the possession certificate dated 28.4.2011 signed by Naib-Tahsildar handing over the possession to the New Raipur Development Authority bearing the signature of the competent person in acknowledgement of receipt of possession and duly signed by the Patwari as also by the Revenue Inspector.

22. The other citations referred to by Learned Counsel for the Respondents primarily relate to waiver and delay as being relevant factors to deny relief in land acquisition proceedings and are not considered necessary for discussions.

23. In the entirety of the discussion we are satisfied that the writ petitions stand devoid of merit and are fit to be dismissed. It is so ordered.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE