

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 218 of 2015**

1. Inderchand Dhariwal, s/o late Uttamchand Dhariwal, aged about 69 years, r/o 11/2, Sadar Bazar, Raipur, P.S. City Kotwali, district Raipur (C.G.)
2. Smt. Pushpa Surana, w/o late Deepak Surana, aged about 54 years, r/o Shankar Nagar, Raipur, district Raipur (C.G.)
3. Smt. Garima Nahar, R/o late Deepak Surana, aged about 29 years, R/o Shankar Nagar, Raipur, district Raipur (C.G.)

---- Appellants**Versus**

1. State of M.P. (Now State of Chhattisgarh) through the Secretary, Department of Housing & Environment, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, District Raipur (Chhattisgarh)
2. The Raipur Development Authority, a body incorporated under Section 39 of Nagar Tatha Gram Nivesh Adhiniyam, having its office at G.E. Road, Raipur (Chhattisgarh)

---- Respondents

For Appellants	:	Dr. N.K. Shukla, Senior Advocate with Shri Ashish Surana, Advocate
For Respondent No.1	:	Shri U.N.S. Deo, Government Advocate
For Respondent No.2	:	Shri Pankaj Agrawal, Advocate

HON'BLE SHRI NAVIN SINHA, CHIEF JUSTICE &
HON'BLE SHRI P.SAM KOSHY, J.

Judgment On Board**Per NAVIN SINHA, C.J.****10/04/2015**

1. The present appeal arises from order dated 24.2.2015 dismissing Writ Petition No. 835 of 1999. The Learned Single Judge *inter alia* held that the unconditional withdrawal of Misc. Petition No. 3360 of 1985 on 15.02.1996 barred the subsequent writ application from which the present appeal arises.

2. Learned Senior Counsel for the Appellants submitted that they were the highest bidders pursuant to the auction held for settlement of 1,08,000 sq.ft. of lands on 24.05.1985. The Appellants deposited 1/4th of the bid amount also, but on account of an interim order dated 23.05.1985 passed by the then High Court of Madhya Pradesh, final agreement could not be executed in favour of the Appellants. The Respondents had promised to consider the claim after the matter was disposed by the High Court. Despite query made by the Appellants after the matter was disposed by the High Court, the Respondents wrongly forfeited the security amount and did not execute the documents in favour of the Appellants. Miscellaneous Petition No. 3360 of 1985 before the Madhya Pradesh High Court was withdrawn on the assurance of the Respondents to consider the case of the Appellants sympathetically. The Respondents are a Government body and are expected to act fairly, reasonably and responsibly. The Appellants did not have equal bargaining power with the Respondents. The matter therefore warrants interference by the court.

3. Learned Senior Counsel next submitted that after withdrawal of the writ petition, the Respondents on 29.02.1996 executed a lease in part for 66,000 sq. ft. of lands only taking a wrong defence that no further lands were available. The subsequent execution of a lease agreement on 29.02.1996, after withdrawal of the writ petition is but a confirmation that the writ petition was withdrawn on the assurance of the Respondents and therefore the Respondents are now obliged to stand by their assurance invoking the principle of estoppel also. It was therefore submitted that the withdrawal of Miscellaneous Petition No. 3360 of 1985 did not bar the subsequent writ application giving rise to the present appeal. The Respondents are raising a

frivolous plea with regard to non-availability of further lands for allotment.

4. Learned Counsel for Respondent No.2 submitted that Miscellaneous Petition No. 3360 of 1985 was withdrawn unconditionally without reserving any liberty and therefore the Learned Single Judge has rightly held that the subsequent writ petition from which the present appeal arises, was barred. It does not appear from the order of the Court that any assurance was given by the Respondents to the Appellants to act in any specified manner. Reliance was also placed on a letter dated 13.2.1996 addressed to the Appellants co-terminus with the withdrawal of the writ petition to grant lease for the available area of land only in Plot No.2. Furthermore, on 23.02.1996, the Respondents specifically stated for granting lease of 66,000 sq. ft. lands only. In response to the same the Appellants on 26.02.1996 accepted the offer and deposited Rs.11,60,250/-. The fact that the petitioners may have mentioned in their letter that they are willing to deposit the amount for the balance area as and when required, does not create a cause of action because no such offer for additional lands was ever made to the Appellants by the Respondents. He supported the order under appeal on grounds of delay and laches also.

5. We have considered submissions on behalf of the parties.

6. The original auction by the Respondents was for 1,08,000 sq. ft. Even if the Appellants were the highest bidders, it did not vest a right in them. If the security deposit was wrongly forfeited on 10.09.1985, and the Respondents were acting contrary to the auction notice, it was for the Appellants to pursue their remedies appropriately in Miscellaneous Petition No. 3360 of 1985. On the contrary the writ petition was unconditionally

withdrawn. The law stands well settled that if a writ petition is unconditionally withdrawn it bars a fresh writ application for the same cause of action. Undoubtedly the forfeiture of the security deposit and the claim of the Appellants for settlement of the entire auctioned lands were integral in nature. No liberty was reserved by the Appellants while withdrawing the writ petition.

7. In (1987) 1 SCC 5 (Sarguja Transport Service v. S.T.A.T.) with regard to a fresh writ petition on the same cause of action after unconditional withdrawal of the earlier writ petition it was observed:-

“9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High court under Article 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High court under that article.

.....But we are of the view that the principle underlying Rule 1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to res judicata, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ

petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject matter since the earlier writ petition had been withdrawn without permission to file a fresh petition.....”

8. The writ petition was withdrawn on 15.02.1996. Two days prior to the same on 13.02.1996, the Respondents had made it known to the Appellants that only the available area of lands in Plot No.2 may be settled with them. Naturally, there shall be a presumption from the facts on record that the withdrawal of the writ petition on 15.02.1996 was done by the Appellants conscious and aware of the limited nature of offer made by the Respondents at variance with the auction notice. In other words, there was a waiver by conduct on part of the Appellants willing to forgoe the remaining area of the lands as may have originally been mentioned in the auction notice. On 23.2.1996, the Respondents specifically wrote to the Appellants offering them 66,000 sq. ft. only. The earlier waiver by conduct now assumed a positive act of waiver with full knowledge on part of the Appellants when they wrote to the Respondents on 26.2.1996 and accepted settlement of 66,000 sq. ft. only. The Respondents never made any offer to settle any additional lands at a subsequent stage.

9. The Learned Single Judge, in our opinion, has rightly opined that any challenge to the order dated 13.2.1996 restricting allotment to 66,000 sq. ft. only was also highly belated in a writ petition filed on 23.2.1999.

10. Learned Senior Counsel for the Appellants had sought to persuade us that delay cannot be an invariable factor defeating all claims in the writ jurisdiction. The discretion to condone or not to condone the delay is not

prescribed in any law for exercise of powers under Article 226 of the Constitution of India. It would depend on the facts and circumstances of each case. If discretion has been exercised in accordance with law, it shall be wholly improper exercise of powers for us to interfere with the same merely because another view may be possible or as a superior Court we may have the jurisdiction to do so. In matters relating to settlement of lands, it hardly needs any emphasis that delay is vital and crucial especially when issues are arising with regard to non-availability of lands also. The Learned Single Judge held that there was no explanation worth the name with regard to delay of three years in institution of the writ application even if the lease dated 29.2.1996 for 66,000 sq. ft. only be considered as a fresh cause of action.

11. In conclusion, we are of the considered opinion that the order under appeal calls for no interference both on grounds of unconditional withdrawal of the earlier writ petition as also the delay and laches in so far as the second writ application giving rise to the present appeal is concerned.

12. The appeal is dismissed.

(Navin Sinha)
CHIEF JUSTICE

(P. Sam Koshy)
JUDGE