

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

WA.No. 1745 of 2015 () IN WP(C).31777/2009

AGAINST THE JUDGMENT IN WP(C) 31777/2009 of HIGH COURT OF KERALA
DATED 11/08/2014

APPELLANT/PETITIONER:

PONNICHAI MARIYAM ALIAS P.MARIYUMMA
SUBAIDA MANZIL, RAMANTHALI P.O., VADAKKUMPAD
KANNUR DISTRICT.

BY ADV. SRI.V.N.RAMESAN NAMBISAN

RESPONDENTS/RESPONDENTS:

1. THE DISTRICT COLLECTOR
KANNUR - 670 001.
2. THE SPECIAL TAHSILDAR (LA)
NAVAL ACADEMY, KANNUR -670 001.

BY SR.GOVERNMENT PLEADER SMT.P.I.DAVIS

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 07-08-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ASHOK BHUSHAN, CJ

&

A.M.SHAFFIQUE, J.

W.A.No.1745 of 2015

Dated this the 7th day of August 2015

J U D G M E N T

Ashok Bhushan, CJ

Heard learned counsel for the appellant.

2. This writ appeal has been filed against the judgment dated 11/08/2014 in W.P.C.No.31777 of 2009, by which judgment, the writ petition filed by the petitioner has been dismissed. The brief facts necessary in deciding the writ appeal are:

Proceedings under the Land Acquisition Act, 1894 (hereinafter referred to as 'the LA Act') were initiated against the petitioner and he was paid compensation. Petitioner made an application under Section 28A for re-determination of the compensation on the basis of an award. Re-determination was made on the basis of an application under Section 28A and the amount re-determined was paid and received by the petitioner on 30/03/1998. Petitioner thereafter claims that, on 07/04/1998 he had submitted an application under Section 28A(3) of the LA Act, praying that the matter be referred to Sub Court, Payyannur,

at the earliest. The said application is claimed to have been sent by the petitioner by post. Petitioner, thereafter on 25/08/2005, claimed to have filed a reminder in reference to his earlier application, seeking reference. Again, after three years, on 17/12/2008, petitioner sent an application repeating the prayer for consideration of his earlier application on 07/04/1998. By communication dated 15/01/2009, petitioner was informed by the Special Tahsildar that his application dated 07/04/1998 is not traceable. It was further stated that for the very same purpose, application submitted by the petitioner on 25/08/2005 has been replied by the office vide ref.No.A.3224/05. The learned Single Judge observed that petitioner cannot be permitted to resurrect a stale claim merely by filing an application under the RTI Act and then challenging the piece of information which he obtained under the RTI Act. Petitioner, aggrieved by the said judgment, has come up in the appeal.

3. The learned counsel for the appellant submits that the petitioner, being an illiterate lady, had sent the application by post and the claim cannot be rejected on the ground of delay and laches. He has placed reliance on the three judgments of the Supreme court that is **Ramchandra Shankar Deodhar and**

Others v. The State of Maharashtra and others [AIR 1974 SC 259], **Dehri Rohtas Light Rly Co. v. District Board, Bhojpur** [1992(2) SCC 598], **Ram Chand and Others v. Union of India and Others** [1994(1) SCC 44].

4. The learned Senior Government Pleader, refuting the submission of the appellant, contends that in Ext.P5 order, which has been issued by the Special Tahsildar, it was clearly stated that the application dated 07/04/1998 was not traceable. It is further submitted that the order further indicates that, in the year 2005 also, petitioner was informed about the same by sending a reply to the letter dated 25/08/2005. He submits that, the fact that the petitioner did not take up the issue at any point of time indicates that the application was never submitted and in any view of the matter, inordinate delay in taking up the matter before this Court is sufficient ground for rejecting the writ petition.

5. From the facts which are brought on record, it is clear that the writ petitioner claims to have sent an application on 07/04/1998 by post. It is further relevant to take note that the writ petitioner herself had filed an application under Section 28A and the compensation was re-determined and the enhanced compensation amounting to Rs.6,719/- was received by the writ

petitioner on 30/03/1998. Submission of the learned counsel for the appellant that the writ petitioner, being an illiterate lady, was not aware of the complicated procedure, does not appeal to us. The fact that, after submitting the application on 07/04/1998, writ petitioner did not raise even a small finger till 25/08/2005, is also not clearly explained. For seven years, writ petitioner did not even enquire as to what is happening on her application. This gives effect to the submission of the learned Senior Government Pleader that the application was never sent or traceable. The order Ext.P5 clearly indicates that application is not traceable. It is not the case of the writ petitioner that application was registered in the relevant register maintained in the office of the Special Land Acquisition Officer.

6. The conduct of the petitioner in not raising a finger for seven years and thereafter only on 25/08/2005 and again after three years on 17/12/2008, sending applications clearly shows the laches on the part of the petitioner. Application sent on 17/12/2008 was an application seeking information under the RTI Act. It was replied by Ext.P5, which is under challenge.

7. Learned counsel for the appellant submits that the respondents did not follow the statutory duty in deciding the

application which was sent by the writ petitioner. Hence, in the said circumstances, question of delay shall not arise. He placed reliance on the following observations made in paragraph 9 of the judgment in **Ramchandra Shankar Deodhar** (supra).

“9. The first preliminary objection raised on behalf of the respondents was that the petitioners were guilty of gross laches and delay in filing the petition. The divisional cadres of Mamlatdars/Tehsildars were created as far back as 1/11/1956 by the Government Resolution of that date, and the procedure for making promotion to the posts of Deputy Collector on the basis of divisional select lists, which was a necessary consequence of the creation of the divisional cadre of Mamlatdars/Tehsildars, had been in operation for a long number of years, at any rate from 7/04/1961, and the Rules of 30/07/1959 were also given effect to since the date of their enactment and yet the petitioner did not file the petition until 14/07/1969. 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 Art. 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 Tilockchand Motichand v. H. B. Munshi, (1969) 2 SCR 824 = (AIR 1970 SC 898) "is one 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." Here the petitioners were informed by the Commissioner, Aurangabad Division, by his letter dated 18/10/1960 and also by the then Secretary of the Revenue Department in January 1961 that the rules of recruitment to the posts of Deputy Collector in the reorganised State of Bombay had not yet been unified, and that the petitioners continued to be governed by the rules of Ex-Hyderabad State and the Rules of 30/07/1959 had no application to them. The petitioners were, therefore, justified in proceeding on the assumption that there were no unified rules of recruitment to the posts of Deputy Collector and the promotions that were being made by the State Government were only provisional, to be regularised when unified rules of recruitment were made. It was only when the petition in Kapoor's case was decided by the Bombay High Court that the petitioners came to know that it was the case of the State Government in that petition - and that case was accepted by the Bombay High Court - that the Rules of 30/07/1959 were the unified rules of recruitment to the posts of Deputy Collector applicable throughout the reorganised State of Bombay. The

petitioners thereafter did not lose any time in filing the present petition. Moreover, what is challenged in the petition is the validity of the procedure for making promotions to the posts of Deputy Collector - whether it is violative of the equal opportunity clause - and since this procedure is not a thing of the past, but is still being followed by the State Government, it is but desirable that its constitutionality should be adjudged when the question has come before the Court at the instance of parties properly aggrieved by it. It may also be noted that the principle on which the Court proceeds in refusing relief to the petitioner on ground of laches or delay is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable explanation for the delay. This principle was stated in the following terms by Hidayatullah, C. J., in (1969 2 SCR 824 = (AIR 1970 SC 898):

"The party claiming Fundamental Rights must move the Court before other rights come into existence. The action of courts cannot harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court."

Sikri, J., (as the then was), also re-stated the same principle in equally felicitous language when he said in R. N. Bose .v Union of India, (1970) 2 SCR 697 = (AIR 1970 SC 470): "It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set

aside after the lapse of a number of years." Here, as admitted by the State Government in paragraph 55 of the affidavit in reply, all promotions that have been made by the State Government are provisional and the position has not been crystallised to the prejudice of the petitioners. No rights have, therefore, accrued in favour of others by reason of the delay in filing the petition. The promotions being provisional, they have not conferred any rights on those promoted and they are by their very nature liable to be set at naught, if the correct legal position, as finally determined, so requires. We were also told by the learned counsel for the petitioners, and that was not controverted by the learned counsel appearing on behalf of the State Government, that even if the petition were allowed and the reliefs claimed by the petitioners granted to them, that would not result in the reversion of any Deputy Collector or officiating Deputy Collector to the post of Mamlatdar/Tehsildar; the only effect would be merely to disturb their inter se seniority as officiating Deputy Collectors or as Deputy Collectors. Moreover, it may be noticed that the claim for enforcement of the fundamental right of equal opportunity under Art. 16 is itself a fundamental right guaranteed under Article 32 and this Court which has been assigned that role of a sentinel on the qui vive for protection of the fundamental rights cannot easily allow itself to be persuaded to refuse relief solely of the jujune ground of laches, delay or the like."

8. Further, the learned counsel for the appellant submits

that the Apex Court in **Ram Chand** (Supra) has also laid down the following in paragraph 16.

“16. xxxx

According to us, the question of delay in invoking the writ jurisdiction of the High Court under Article 226 or of this Court under Article 32, has to be considered along with the inaction on the part of the authorities, who had to perform their statutory duties. Can the statutory authority take a plea that although it has not performed its duty within a reasonable time, but it is of no consequence because the person, who has been wronged or deprived of his right, has also not invoked the jurisdiction of the High Court or of this Court for a suitable writ or direction to grant the relief considered appropriate in the circumstances? The authorities are enjoined by the statute concerned to perform their duties within a reasonable time, and as such they are answerable to the Court why such duties have not been performed by them, which has caused injury to claimants. By not questioning, the validity of the acquisition proceedings for a long time since the declarations were made under Section 6, the relief of quashing the acquisition proceedings has become inappropriate, because in the meantime, the lands notified have been developed and put to public use. The lands are being utilised to provide shelter to thousands and to implement the scheme of a planned city, which is a must in the present set-up. The outweighing public interest has to be given due weight. That is why this Court has been

resisting attempts on the part of the landholders, seeking quashing of the acquisition proceedings on ground of delay in completion of such proceedings. But, can the respondents be not directed to compensate the petitioners, who were small cultivators holding lands within the ceiling limit in and around Delhi, for the injury caused to them, not by the provisions of the Act, but because of the non-exercise of the power by the authorities under the Act within a reasonable time?"

9. There cannot be any dispute to the proposition laid down by the Apex Court in the aforesaid judgments. The question of delay and laches is necessarily a question to be considered in the facts of each case. In a particular case, even a delay of few months may defeat the claim whereas in particular cases, delay of even a decade may not bar the remedy. The submission of the learned counsel for the appellant that when there is statutory obligation on the part of the respondents to make reference under Section 28A(3), petitioner cannot be non-suited on the ground of delay, does not apply in the present case.

10. Respondent's case is that the application submitted by the petitioner was not traceable. The fact that, after the filing of the application on 07/04/1998 as alleged by the writ petitioner, no steps had been taken for seven years, itself speaks about the

fact. The question of non-performance of their statutory obligation will arise when there is satisfactory proof of submission of the application on 07/04/1998. There are no materials on record to take any contrary view that the application was submitted by the petitioner and she was vigilantly prosecuting his application. In the Land Acquisition matter, there are different stages regarding different rights and remedies. Non-exercise of a particular remedy or right has its own consequence and in the facts of this case, we do not find any error in the judgment of the learned Single Judge in refusing to exercise the jurisdiction to entertain the writ petition.

This writ appeal is dismissed.

(sd/-)
(ASHOK BHUSHAN, CHIEF JUSTICE)

(sd/-)
(A.M.SHAFFIQUE, JUDGE)

jsr

