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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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Date of Decision: 21.01.2015

Balak Ram (since deceased) through his LRs

... Petitioner

Versus

The Commissioner-cum-Secretary Rehabilitation, Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. Dinesh Ghai, Mr. Hitesh Ghai and
Mr. Nikhil Ghai, Advocates for
the petitioner.

Mr. Sandeep S. Mann, Sr. DAG, Haryana.

Paramjeet Singh, J.

Instant writ petition has been filed under Articles 226 and 227 of the Constitution of India for setting aside the order dated 24.01.2003 (Annexure P-14) passed by respondent no.1-Commissioner-cum-Secretary Rehabilitation, Haryana and the order dated 04.07.2002

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(Annexure P-12) passed by respondent no.2-Chief Settlement Commissioner, Haryana and for issuance of a writ in the nature of mandamus directing the respondents to immediately deliver the physical possession of alternative plot in the NIT Zone Faridabad in lieu of the acquired plot, already auctioned in favour of the petitioner, consisting of rect. no.114 killa no.23/2(1-2), situated within the revenue estate of village Badkhal, Tehsil & District Faridabad, by way of implementing the order dated 30.06.1993 (Annexure P-1) passed by respondent no.1 in order to avoid further avoidable complications.

In short, the facts are to the effect that three plots consisting of khasra no.120/11(min.), khasra no.114//23/2 and khasra no.127//15/2 were put to auction on 05.11.1981. The petitioner being the highest bidder in auction was allotted two plots comprised in khasra no.120/11 (min.), khasra no.114//23/2 out of the aforesaid three plots. The petitioner also deposited 1/4th of the bid amount. The bid was rejected by respondent no.2-Chief Settlement Commissioner vide order dated 22.04.1988 and re-auction was ordered after fixing the reserve price. Against that, the petitioner filed three petitions before respondent no.1 exercising the powers of Central Government under Section 33 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954 (in short, 'the 1954 Act'). The petitions were allowed with regard to two plots consisting of khasra nos.120/11(min.) and 114//23/2, however, the petition was dismissed with regard to plot consisting of khasra

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no.127//15/2 on the ground that reserve price was not fixed before putting the same to auction which was in violation of rules framed under the 1953 Act. The matter in respect of two plots became final and in respect of third plot i.e. khasra no.127//15/2, the matter went upto the Hon'ble Supreme Court and ultimately the petitioner was allotted alternative plot in place of third plot.

In the present case, the dispute is with regard to a plot consisting of khasra no.114//23/2 which was acquired by the State Government during pendency of confirmation of auction in favour of the petitioner. The claim of the petitioner has been rejected vide impugned orders dated 04.07.2002 (Annexure P-12) and 24.01.2003 (Annexure P-14). Hence, this writ petition.

Upon notice, respondents no.1 to 3 filed written statement with the averments that sale qua two plots was confirmed by the competent authority on 23.11.1993 in pursuance of the orders passed by the authorities. However, the plot consisting of khasra no.114//23/2 (-2) which was auctioned for ₹ 6500/- out of which the petitioner deposited Rs.1625/- being 1/4th of bid amount, was acquired by the HUDA/Town and Country Planning Department vide notifications dated 20.04.1987 and 19.02.1988 under Sections 4 and 6 of the Land Acquisition Act, respectively. The Award was also passed. The auction of said plot was set aside by the Chief Settlement Commissioner, Haryana, subject to decision of this writ petition as it has virtually become impossible to

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hand over the possession and it was required for the public purpose. Thereafter, the petitioner claimed possession with regard to land in question or in alternative sought plot in lieu of plot which was put in auction in favour of the petitioner.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner vehemently contended that auction was held on 05.11.1981 and it was affirmed on 24.11.1993. As such, the petitioner is entitled to alternative plot because during pendency of confirmation of auction in favour of the petitioner, the said land was acquired vide notifications issued under Sections 4 and 6 of the Land Acquisition Act on 20.07.1987 and 19.02.1988, respectively. Earlier to that, Chief Settlement Commissioner also set aside the auction vide order dated 22.04.1988. Hence, title of plot in question was wrongly given to the petitioner by Rehabilitation Department as plot in question already stood acquired six years back. Learned counsel further contended that the Hon'ble Apex Court in similar circumstances allowed the petitioner an alternative plot vide orders dated 08.04.1996 (Annexure P-4), 02.11.1998 (Annexure P-5) and 21.11.2001 (Annexure P-6). The dispute qua that plot arose as no reserve price was fixed. The Hon'ble Apex Court had allowed the writ petition and ordered allotment of alternative plot. The petitioner deposited the amount in the State Bank of India and in view of this, he is entitled to alternative plot in lieu of

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plot consisting of khasra no.114//23/2 which has been subsequently acquired by the State Government. Reliance has been placed upon Annexures P-4 to P-6. Learned counsel further contended that on one hand, respondent no.1 held that he is not competent to hear the review petition as directions regarding confirmation of auction have already been passed by his predecessor, vide order dated 30.06.1993 and on the contrary, respondent no.1 decided the case on merits. The impugned orders passed by the authorities are against the law and evidence on record, as such are not sustainable in the eyes of law. Learned counsel further contended that the petitioner has raised his grievance before the authorities and also made various applications and representations. The petitioner is entitled to alternative plot in lieu of plot which has been acquired.

Per contra, learned State counsel vehemently opposed the contentions of learned counsel for the petitioner and supported the impugned orders. Learned counsel further contended that plot consisting of khasra no.114//23/2 was provisionally auctioned subject to approval of higher/competent authority by the Tehsildare (Sales), Faridabad on 05.11.1981 whereas the said plot was subsequently acquired by HUDA. Learned counsel further contended that there is no provision to give alternate plot as pleaded in the present petition. Learned counsel further contended that the petitioner has approached the Court after a long delay.

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I have considered the rival contentions of learned counsel for the parties.

Admittedly, auction regarding three plots was held on 05.11.1981. The petitioner being the highest bidder was allotted two plots consisting of khasra no.120/11(min.) and khasra no.114//23/2 whereas with regard to plot consisting of khasra no.127//15/2, the petitioner remained successful in the Hon'ble Supreme Court. It needs to be mentioned here that confirmation of sale was declined by the Chief Settlement Commissioner vide order dated 22.04.1988 which was subsequently confirmed in favour of the petitioner vide order dated 30.06.1993 (Annexure P-1). Thereafter, entire amount was deposited by the petitioner and he became absolute owner of the plots consisting of khasra no.120/11(min.) and khasra no.114//23/2. However, the plot consisting of khasra no.127//15/2 was allotted to the petitioner in pursuance of the order of the Hon'ble Supreme Court.

Now only dispute is with regard to plot consisting of khasra no.114//23/2 measuring 1 kanal 2 marlas, situated within the revenue estate of village Badkhal, Tehsil & District Faridabad which has come in the municipal limits of Faridabad and has been acquired vide notifications dated 20.04.1987 and 19.02.1988 issued under Sections 4 and 6 of the Land Acquisition Act, respectively. The question that arises for determination is whether the petitioner is entitled to alternative plot or entitled to compensation for the acquired plot. Admittedly, when the

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auction was held on 05.11.1981, the petitioner being the highest bidder, acquired rights in the plot consisting of khasra no.114//23/2 measuring 1 kanal 2 marlas. The right of ownership commenced with effect from the deposit of 1/4th of bid money on the date of auction which was subsequently affirmed after following due procedure and rights to appeal, revision etc. During the pendency of proceedings before the authorities under the 1954 Act, the land consisting of khasra no.114//23/2 was acquired. As a result of that, two situations arose i.e. the petitioner could deposit the entire amount and claim compensation qua the property acquired or could ask for refund of money with interest on the date when auction proceedings commenced as notification is a judicial notice to everyone. Presuming that rights to the petitioner accrued only after confirmation of the sale on 30.06.1993 and subsequent letter dated 30.11.1993 (Annexure P-2) whereby amount was deposited, however, the petitioner did not raise any objection before the authorities and the award in the acquisition proceedings was passed by the acquisition authority in the year 1988-89.

This Court gave two options to the petitioner (i) either he should claim compensation awarded in land acquisition proceedings which is stated to have been deposited by the authorities with the treasury or (ii) he can seek refund of the amount with interest at the bank rate preferably 9% from the date of deposit in pursuance of auction proceedings till the payment is made, but he declined both of them. The

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question of allotting alternative plot does not arise because the petitioner did not raise any demand before the authorities immediately after the issuance of notifications under Sections 4 and 6 of the Land Acquisition Act. The notifications under the Land Acquisition Act are public notice. In the year 1993, the possession could not have been delivered to the petitioner in view of acquisition. He never approached this Court for pursuing his case with regard to khasra no.114//23/2. It needs to be mentioned here that the petitioner had been pursuing his claim with regard to khasra no.127//15/2 as is evident from Annexures P-4 to P-7. It appears that the petitioner was fully aware of the fact that his plot consisting of khasra no.114//23/2 has been acquired, but he never agitated. Once the plot has been acquired, the rights vesting in the auctioning authority as well as the petitioner have become redundant qua both and it is not possible to hand over possession of the plot in question.

With regard to plot in question consisting of khasra no. 114//23/2, the petitioner has approached this Court in the year 2003 i.e. after a lapse of more than 10 years from the date of confirmation of auction/sale and more than 15 years after passing of the award by the acquisition authority. In other words, the petitioner has approached this Court when much water has flown and prices have sky-rocketed. There is no explanation on the part of the petitioner for such delay and latches.

It is well settled that if a person has a legal or statutory right

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to be enforced against the respondents, he should ventilate his grievance before the competent authorities, within a time limit, if provided under the statutory rules or any Government instructions issued from time to time. If there is no such rule or instructions prescribing a time limit, then person who alleges infringement of rights or denial of any benefit, arising under Government rules and instructions, ought to have approached the Court, within a reasonable time.

What is reasonable time has not been spelt out in any rule.

However, the Hon'ble Supreme Court in *Veerayeeammal v. Seeniammal* 2002 (1) SCC 134, has explained the words "reasonable time", and held as follows:

"13. The word "reasonable" has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word "reasonable". The reason varies in its conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In other words it means, as soon as circumstances permit. In P. Ramanatha Aiyar's The Law Lexicon it is defined to mean:

"A reasonable time, looking at all the

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circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstances will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than 'directly'; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea."

In the present case, the delay and laches on the part of the petitioner is apparent. The issue of delay and laches and exercise of jurisdiction under Article 226 of the Constitution of India has been dealt with by the Hon'ble Supreme Court in various decisions. In this context, it would be appropriate to refer to a few decisions dealing with delay and laches.

In ***P.S.Sadasivaswamy v. State of Tamil Nadu*** reported in ***AIR 1974 SC 2271***, the Apex Court held as follows;-

"..... A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for

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the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal."

The Hon'ble Supreme Court in ***M/s.Rup Diamonds and Ors. v. Union of India and Ors.***, (1989) 2 SCC 356, while dealing with a belated claim on the basis of the order passed in some other Writ Petitions, observed that those people who were sitting on the fence till somebody else took up the matter to the court, cannot be given the benefit. In that context, their Lordships held as follows:

"Petitioners are re-agitating claims which they had not pursued for several years. Petitioners were not vigilant but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided. Their case cannot be considered on the analogy of one where a law had been declared unconstitutional and void by a court, so as to enable persons to recover monies paid under the compulsion

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of a law later so declared void. There is also an unexplained, inordinate delay in preferring the present writ petition which is brought after a year after the first rejection. As observed by the Court in Durga Prashad case, the exchange position of this country and the policy of the government regarding international trade varies from year to year. In these matters it is essential that persons who are aggrieved by orders of the government should approach the High Court after exhausting the remedies provided by law, rule or order with utmost expedition. Therefore, these delays are sufficient to persuade the Court to decline to interfere. If a right of appeal is available, this order rejecting the writ petition shall not prejudice petitioners' case in any such appeal.

In ***Chairman, U.P. Jal Nigam and another v. Jaswant Singh*** AIR 2007 SC 924, the Hon'ble Supreme Court, after considering a catena of decisions on the aspect of delay held as follows:

"13. Therefore, whenever it appears that the claimants lost time or while away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the Court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted."

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In ***A.P. Steel Re-Rolling Mill Ltd. v. State of Kerala and others***, (2007) 2 SCC 725 as well, same issue was considered and following the earlier judgment in ***U. P. Jal Nigam's case (supra)***, it was opined as under:

“40. The benefit of a judgment is not extended to a case automatically. While granting relief in a writ petition, the High Court is entitled to consider the fact situation obtaining in each case including the conduct of the petitioner. In doing so, the Court is entitled to take into consideration the fact as to whether the writ petitioner had chosen to sit over the matter and then wake up after the decision of this court. If it is found that the appellant approached the Court after a long delay, the same may disentitle him to obtain a discretionary relief.”

(Emphasis supplied)

In ***Chennai Metropolitan Water Supply and Sewerage Board and others v. T. T. Murali Babu***, 2014(1) RSJ 542, Hon'ble the Supreme Court opined 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:*

“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 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 it is well settled that 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 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. In the case at hand, though there has been four years' delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of

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repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons- who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold."

[Emphasis supplied]

In view of above, the instant writ petition is dismissed on merit as well as on account of delay and latches.

Dismissed accordingly.

However, the petitioner can withdraw the amount of compensation deposited in pursuance of acquisition of land in accordance with law.

21.01.2015
parveen kumar

(Paramjeet Singh)
Judge