

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

CWP No.16775 of 2015

Date of decision:14.8.2015

Vijay Pal and others

....Petitioners

VERSUS

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE RAJ RAHUL GARG

1. Whether Reporters of 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.Rajeev Kawatra, Advocate for the petitioners.

HEMANT GUPTA, J.

The challenge in the present writ petition is to the notifications dated 05.10.2005 and 06.10.2006 published under Section 4 and 6 of the Land Acquisition Act, 1894 (for short 'the Act'), respectively as colourable exercise of the powers and the notification dated 16.10.2008 published under Section 48 of the Act whereby the land measuring 653 acres (approximately) including the land owned by the petitioners have been left from acquisition in favour of the private respondents (colonizers).

Petitioners No.1, 3 and 4 are the owners of the land situated in village Atterna, Tehsil Rai, District Sonapat whereas petitioner No.2 is the owner of the land situated in village Nangal Kalan, District Sonapat.

Notification under Section 4 of the Act was issued on 05.10.2005 for the development of residential sectors 59 and 60 of Sonapat

followed by a declaration under Section 6 of the Act on 06.10.2006. The petitioners filed objections under Section 5A of the Act before publication of a declaration under Section 6 of the Act.

It is pleaded that agents of respondents No.6 to 8 approached the petitioners and other co-villagers and offered to purchase the land owned by the petitioners. The petitioners claimed to have signed certain blank papers which have been used by the private respondents for the creation of power of attorney and collaboration agreement. It is pointed out that the private respondents applied for licences for development of a colony which were granted on 21.04.2006 and 18.11.2005 and that the notification under Section 6 of the Act was issued to terrorize the poor farmers like the petitioners. Therefore, under threat of acquisition, the petitioners executed registered sale deeds of their land in favour of the private respondents on 25.08.2005, 17.01.2006 and 24.09.2007 (Annexure P-11 colly.)

The grievance of the petitioners is that the land has been released vide notification dated 16.10.2008 under Section 48 of the Act in favour of the private respondents after adopting a pre-designed route by taking internal concurrence of the Government to exclude the land from purview of the acquisition.

The petitioners earlier filed writ petitions bearing CWP No.15118 of 2014 titled Rattan Singh v. State of Haryana and others and CWP No.15959 of 2014 titled Vijay Pal v. State of Haryana and others which were disposed of on 12.08.2014 wherein the following order was passed:-

“The petitioner has raised multiple grievances in this writ petition including challenge to the notifications dated 5.10.2005 (Annexure P-3) and 6.10.2006 (Annexure P-5) issued under Sections 4 & 6 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act'), respectively, as well as against the use of alleged coercion applied for execution of sale deed dated 25.10.2006 in favour of the private respondent-builders.

Since the above mentioned allegations have been levelled after a considerable long period, it appears to us that such a disputed question of fact cannot be entertained by this Court unless the petitioner firstly approaches the authorities and they hold a fact finding enquiry in to these allegations. We thus dispose of this writ petition without expressing any views on the merits of the petitioner's claim, with a direction to respondent Nos.2 & 3 to treat this writ petition as a representation on behalf of the petitioner and redress his grievance by passing a speaking order after giving opportunity of hearing to him and/or other affected persons, within a period of four months from the date of receiving a certified copy of this order.

Any action meanwhile shall be without prejudice to the petitioner's legal rights.

Ordered accordingly.”

In pursuance of the direction given by this Court, the impugned orders dated 24.03.2015, 16.03.2015 and 20.02.2015 (Annexure P-13 colly and Annexure P-14) have been passed. It has been found that respondent No.2 is not the Competent Authority to set aside the sale deeds executed by the petitioners in favour of the private respondents.

Learned counsel for the petitioners referred to a Division Bench judgment of this Court in CWP No.19096 of 2011 titled Sant Singh and others v. State of Haryana and others, decided on 20.12.2013, to contend that the sale deeds executed after publication of notifications under Section 4 and 6 of the Act are null and void. Therefore, this Court in writ petitions is competent to grant declaration that the sale deeds are void.

It is also argued that the sale deeds are actuated by fraud, therefore, the

said question could be examined by this Court in a writ petition. The undisputed fact is that the petitioners wish to avoid the sale deeds executed in the years 2005 to 2007 in a writ petition earlier filed in the year 2014 and in the present writ petition. In the earlier writ petition, this Court has noticed that allegations have been levelled after a considerable long period and such disputed question of fact cannot be entertained and that authorities should hold a fact-finding inquiry into these allegations.

In Sant Singh's case (supra), the Court examined the issues as “whether it is lawful to enter into 'Agreement to Sell' or 'Collaboration Agreement' in respect of the land under acquisition and can an instrument of sale be executed in respect of such land? The Court noticed the judgments of Hon'ble Supreme Court in Gian Chand v. Gopala and others, 1995 (2) SCC 528; Mahavir & another v. Rural Institute, Amravati & another, 1995 (5) SCC 335; U.P.Jal Nigam, Lucknow v. Kalra Properties [P] Ltd., 1996 (3) SCC, 124 and Meera Sahni v. Lt. Governor of Delhi, 2008 (9) SCC 177 that transactions of sale after publication of the notification under Section 4 of the Act does not bind the State. The Court held that it is a proven case of unconscionable bargain exerted through undue influence and fraud and that en-mass 'Agreements' conclusively belie the plea of need-based bona-fide sales. The Court in respect of an argument that the petitioners have got an alternative remedy of filing civil suit observed as under:-

“[80]. Learned Advocate General, Haryana raised a preliminary objection that the foremost relief sought in these writ petitions is to declare these null and void and to set aside the sale deeds, for which the petitioners have got an effective alternative remedy of filing civil suits. He submitted that most of the petitioners are party to the sale transactions and are estopped by their act and conduct from invoking the

discretionary jurisdiction of this Court. We are, however, not impressed by the contention. We say so for the reasons that firstly there are several writ petitions in which the petitioners have not entered into any Collaboration or Agreements to Sell nor have they executed the Sale Deeds. They have successfully made out a case of hostile discrimination meted out to them as only those lands have been released for which respondent No. 11 managed to secure Collaboration or Agreements to Sell. If it were a case of release of land in favour of the landowners as projected in the written statements, we see no distinguishable reason to deny such benefit to those landowners who did not enter into any agreement with respondent No. 11. Secondly, it is not a case of challenging the Sale Deeds for the breach of any bilateral terms and conditions or on the conventional grounds where a question of fact has to be proved. The incidental relief to declare the Sale Deeds as null and void is an offshoot of the broader issues raised by the petitioners including those hovering around the systematic colourable exercise of power by the State apparatus. A Constitutional Court while performing its solemn duty as a Trustee of the fundamental rights of the citizens shall thus be well within its right to lift the veil and unmask the private object behind an acquisition carried out in disregard to the mandate of Articles 14 and 300-A of the Constitution.”

The said judgment arises out of the fact that in pursuance of the notifications dated 11.04.2002 and 08.04.2003 under Section 4 and 6 of the Land Acquisition Act 1894, an award determining the amount of compensation was announced on 06.04.2005. But prior to the Award, a builder entered into agreements for sale of the land and that sale deeds were executed on 27th January 2007 after licence to develop colony was granted to such builder. The Court answered Question No.3 framed to the effect that the sale deeds executed are null and void and non-existent in the eyes of law in a writ petition filed in the year 2011 that is after the expiry of three years of the execution of the sale deeds.

Coming to the facts of the present case, notifications under Section 4 and 6 of the Act were issued in the year 2005 and 2006,

respectively. The sale deeds were executed between the years 2005 to 2007. The notification withdrawing the acquisition was published on 16.10.2008. The petitioners have sought to dispute the sale deeds after receiving the sale consideration by way of a writ petition for the first time in 2014 i.e. almost 6 years after publication of notification under Section 48 of the Act on 16.10.2008. The petitioners never disputed acquisition of land vide notifications dated 05.10.2005 and 06.10.2006 published under Section 4 and 6 of the Act, respectively soon after their publication.

Though the petitioners were willing executants of the sale deeds in favour of the private respondents but assuming that such sale deeds are open to question on account of fraud or misrepresentation, the same could be challenged before the Civil Court within the period of limitation to avoid such document. Assuming, the petitioner could invoke the writ jurisdiction of this Court to avoid the sale deeds executed by them on the basis of fraud and misrepresentation, the same were again required to be challenged within a reasonable period.

In a judgment reported as Shri Vallabh Glass Works Ltd. and another v. Union of India and others, AIR 1984 Supreme Court 971, Hon'ble Supreme Court held that where a petitioner who could have availed of alternative remedy by way of a suit approaches the High Court under Article 226 of the Constitution, it is appropriate ordinarily to construe that any unexplained delay in filing of the writ petition after the expiry of the period of limitation prescribed for filing a suit as unreasonable. The Court observed as under:-

“9.While there are different periods of limitation prescribed for the institution of different kinds of suits by the limitation Act, 1963, there is no such period prescribed by law in respect of petitions filed

under Article 226 of the Constitution. Whether relief should be granted to a petitioner under Article 226 of the Constitution where the cause of action had arisen in the remote past is a matter of sound judicial discretion governed by the doctrine of laches. Where a petitioner who could have availed of the alternative remedy by way of suit approaches the High Court under Article 226 of the Constitution, it is appropriate ordinarily to construe that any unexplained delay in the filing of the writ petition after the expiry of the period of limitation prescribed for filing a suit as unreasonable. This rule, however, cannot be a rigid formula. There may be cases where even a delay of a shorter period may be considered to be sufficient to refuse relief in a petition under Article 226 of the Constitution. There may also be cases where there may be circumstances which may persuade the court to grant relief even though the petition may have been filed beyond the period of limitation prescribed for a suit. Each case has to judge on its own facts and circumstance touching the conduct of the parties, the change in situation, the prejudice which is likely to be caused to the opposite party or to the general public etc.....”

As per the documents on record, the petitioners have received a sum of Rs.2,09,44,375/-(vide three different sale deeds), way back between the years 2005 to 2007. After execution of the sale deeds, the civil rights of the purchaser have come to existence. Interference in the writ jurisdiction, at this stage, on the alleged fraud or misrepresentation is illegal, inequitable and unjust.

To challenge the sale deeds in a writ petition in the year 2015 on the ground that such documents are fraudulent suffers from the gross delay and laches. In a recent judgment in State of Orissa and another v. Mamata Mohanty, (2011) 3 Supreme Court Cases 436, Hon’ble Supreme Court held that though the Limitation Act, 1963 does not apply in writ jurisdiction but the doctrine of limitation being based on public policy, the principles enshrined therein are applicable. The Court also found that if a litigant approaches the Court after coming to know of the relief granted by

the Court in a similar case, the same cannot furnish a proper explanation for delay and laches. The Court observed as under:-

“52. In the very first appeal, the respondent filed writ petition on 11.11.2005 claiming relief under the Notification dated 6.10.1989 w.e.f. 1.1.1986 without furnishing any explanation for such inordinate delay and on laches on her part. Section 3 of the Limitation Act 1963, makes it obligatory on the part of the court to dismiss the Suit or appeal if made after the prescribed period even though the limitation is not set up as a defence and there is no plea to raise the issue of limitation even at appellate stage because in some of the cases it may go to the root of the matter. (See: Lachhmi Sewak Sahu v. Ram Rup Sahu & Ors., AIR 1944 Privy Council 24; and Kamlesh Babu v. Lajpat Rai Sharma & ors. (2008) 12 SCC 577).

53. Needless to say that Limitation Act 1963 does not apply in writ jurisdiction. However, the doctrine of limitation being based on public policy, the principles enshrined therein are applicable and writ petitions are dismissed at initial stage on the ground of delay and laches. In a case like at hand, getting a particular pay scale may give rise to a recurring cause of action. In such an eventuality, the petition may be dismissed on the ground of delay and laches and the court may refuse to grant relief for the initial period in case of an unexplained and inordinate delay. In the instant case, the respondent claimed the relief from 1.1.1986 by filing a petition on 11.11.2005 but the High Court for some unexplained reason granted the relief w.e.f. 1.6.1984, though even the Notification dated 6.10.1989 makes it applicable w.e.f. 1.1.1986.

54. This Court has consistently rejected the contention that a petition should be considered ignoring the delay and laches in case the petitioner approaches the Court after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. A litigant cannot wake up from deep slumber and claim impetus from the judgment in cases where some diligent person had approached the Court within a reasonable time. (See: M/s Rup Diamonds & ors. v. Union of India & ors, AIR 1989 SC 674; State of Karnataka & Ors. v. S.M. Kotrayya & Ors., (1996) 6 SCC 267; and Jagdish Lal & Ors. v. State of Haryana & Ors., AIR 1997 SC 2366).”

In Mutha Associates v. State of Maharashtra, (2013) 14 SCC

304, the Hon'ble Supreme Court upheld the order of the High Court dismissing the writ petition on the ground of delay and laches. The Court held:-

“18. In the absence of any objections or opposition to the proposed acquisition the Land Acquisition Officer was free to make an award which he did on 9-11-1989. It was only after the Collector (Land Acquisition) initiated the proceedings for taking over the possession of the land in question that the landowners filed a civil suit in which they challenged the award made by the Collector without raising any question regarding the validity of the declaration made under Section 126(2) of the MRTP Act read with Section 6 of the Land Acquisition Act. That suit remained pending for nearly six years before the same was withdrawn to challenge the acquisition proceedings in Writ Petition No. 670 of 1996 filed before the High Court. This challenge was on the face of it barred by inordinate delay and laches. The High Court was fully justified in declining to interfere with the acquisition proceedings on that ground.

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22. The view taken by the Constitution Bench in *Aflatoon v. Lt. Governor of Delhi*, (1975) 4 SCC 285 has been reiterated by another Constitution Bench decision in *Indrapuri Griha Nirman Sahakari Samiti Ltd. v. State of Rajasthan*, (1975) 4 SCC 296. To the same effect are the decisions of this Court in *Municipal Corpn. of Greater Bombay v. Industrial Development Investment Co. (P) Ltd*, (1996) 11 SCC 501, *Ramjas Foundation v. Union of India*, 1993 Supp (2) SCC 20 and *Larsen & Toubro Ltd. v. State of Gujarat*, (1998) 4 SCC 387. The common thread that runs through all these decisions is that in order to succeed in a challenge to the acquisition proceedings the interested person must remain vigilant and watchful. If instead of doing so, the interested person allows grass to grow under his feet, he cannot invoke the powers of judicial review exercisable under Article 226 of the Constitution. The failure of the interested persons to seek redress at the appropriate stage and without undue delay would in such cases give rise to an inference that they have waived of their objections to the acquisitions. The bottom line is that the High Court can legitimately decline to invoke their powers of judicial review to interfere with the acquisition proceedings

under Article 226 of the Constitution if the challenge to such proceedings is belated and the explanation offered a mere moonshine as is the position in the case at hand. The High Court has in the fact situation of this case rightly exercised its discretion in refusing to interfere with the acquisition proceedings.”

In Sant Singh’s case (supra), no argument was raised that writ petition has been filed after the expiry of the limitation to seek setting aside the sale deed. It has been consistently held that the writ jurisdiction should be invoked without any delay or laches but the period to institute suit cannot be ignored. Had the petitioners filed a civil suit to dispute the sale deed now, it would have been barred by limitation. The sale deeds were executed by the petitioners even prior to the publication of the notification under Section 48 of the Act. Thus we find that the challenge to the notification under Section 48 of the Act suffers from gross delay and laches.

The earlier writ petitions filed by the petitioners have been dismissed finding that the Writ Court is not the appropriate forum. This Court directed the authorities to hold a fact-finding inquiry when the writ petition was to be treated as a representation. Such order would not confer jurisdiction on the authorities under the Land Acquisition Act, 1894; Haryana Urban Development Authority Act, 1977 or Haryana Urban Development and Regulation of Urban Areas Act, 1975 to declare the sale deeds as null and void. The Competent Court to declare the sale deeds as null and void on any of the ground is the Civil Court alone or may be writ court. By virtue of an order passed by this Court, no jurisdiction can be conferred on the authorities to declare a sale deed as null and void.

Therefore, a sale deed cannot be declared to be null and void by the authorities.

The disputed question of fact that as to whether there was misrepresentation, coercion or fraud exercised over the petitioners to execute the sale deeds could be examined only by the Civil Court which is competent to declare a sale deed null and void on the grounds pleaded on the basis of the evidence led before it. Such disputed questions of fact are generally not examined by the Writ Court. Therefore, the order passed by the Competent Authority that it has no jurisdiction to declare the sale deeds as null and void cannot be said to be illegal and unwarranted.

In view of the above, the present writ petition is dismissed.

(HEMANT GUPTA)
JUDGE

AUGUST 14, 2015
‘D. Gulati’

(RAJ RAHUL GARG)
JUDGE