

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 30.11.2015

C.W.P.No.28170 of 2013

Jasbir Singh & others

...Petitioners

Versus

State of Haryana & 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. Vijay Kumar Jindal, Senior Advocate, with
Mr. Maninder Singh Punia, Advocate,
for the petitioners.

Mr. Vishal Garg, Addl. AG, Haryana,
for respondents No.1, 2, 3, 4 & 6.

HEMANT GUPTA, J.

Challenge in the present writ petition is to the notifications dated 02.01.2002 & 24.12.2002 issued under Sections 4 & 6 of the Land Acquisition Act, 1894 (for short 'the Act') respectively and also to the sale deeds executed by the predecessor-in-interest of the petitioners in favour of respondent No.5 - M/s True Zone Buildwell Pvt. Ltd. in the year 2004.

The petitioners were owner of land situated in the revenue estate of Budha Khera, Tehsil Thanesar, District Karnal. The land measuring 807

acres including the land of the petitioners became subject matter of acquisition vide the aforesaid notifications for the public purpose namely development and utilization as residential & commercial area, Sectors 9 (part), 32 and 33 (part), Karnal. The petitioners and some other land-owners entered into agreements to sell with respondent No.5 – M/s True Zone Buildwell Pvt. Ltd. On the basis of such agreements to sell, the license was granted on 12.01.2006. It is, thereafter, the father of the petitioners and respondent No.5 filed CWP No.4071 of 2005 titled ‘Khazan Singh & others Vs. State of Haryana & others’, which was disposed of vide order dated 09.09.2005 with a direction to the respondents to consider the claim of the petitioners in case they move a representation in terms of the order passed in CWP No.10845 of 2004. The petitioners filed another writ petition bearing CWP No.10936 of 2013, which was also dismissed as withdrawn on 29.05.2013 with liberty to the petitioners to file a detailed representation in terms of the earlier above-said order.

The sale deed was executed by the petitioner in the year 2004. The present writ petition challenging the sale deed was filed in the year 2013 i.e. after more than 8 years. The question, as to whether a sale deed can be permitted to be disputed in a writ petition after the expiry of statutory period of challenge the document that is three years under the Limitation Act, 1963, was examined by this Court in CWP No.16775 of 2015 titled ‘**Vijay Pal & others Vs. State of Haryana & others**’ decided on 14.8.2015, wherein the judgment rendered by a Coordinate Bench of this Court in CWP No.19096 of 2011 titled ‘**Sant Singh & others Vs. State of Haryana & others**’ decided on 20.12.2013 and referred to by the petitioners, has been extinguished. This Court held as under:

“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.”

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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.”

The petitioners have challenged the sale deed executed in the year 2004 after more than 8 years for the first time in the year 2013 i.e. by way of present writ petition. The challenge to such sale deed in a writ petition after long lapse of time cannot be entertained for the reasons as recorded in Vijay Pal's case (supra). Consequently, we do not find any merit in the present writ petition. The same is dismissed.

(HEMANT GUPTA)
JUDGE

05.11.2015
Vimal

(RAJ RAHUL GARG)
JUDGE