

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 788 of 2016

1. Uttam Joshi, S/o Manbodh Joshi Aged about 35 years
2. Santosh Kumar Dhidhi S/o Sonchand Dhidhi Aged about 38 years
3. Kunjlal Dhidhi, S/o Shri Sonchand Dhidhi Aged about 58 years
4. Sujit Kumar S/o Shri Chanku Ram Aged about 42 years
5. Suresh Kumar Ratre S/o Shri Chanku Ram Ratre Aged about 38 years
6. Chanku Ram Ratre, S/o Shri Kalwa Ratre Aged about 67 years

All are R/o. Gram Barauda Tah- Arang, District – Raipur (CG)

---- Petitioners

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Housing And Enviornment, Mantralaya, Naya Raipur, Raipur Chhattisgarh
2. Department Of Agriculture And Animal Husbandary, Through Secretary, Mantralaya, Naya Raipur, Raipur Chhattisgarh
3. District Collector Cum Officiating Dy. Secretary, Government Of Chhattisgarh Collectorate, Raipur Chhattisgarh
4. Naya Raipur Development Authority, Through Its Chief Executive Officer New Rajendra Nagar, Infront Of Vijeta Complex, R.D.A. Building, Raipur Chhattisgarh
5. Land Acquisition Officer / Sub Divisional Officer, Tahsil Arang, Abhanpur, Civil And Revenue District Raipur Chhattisgarh
6. Commissioner, Raipur, District Raipur Chhattisgarh

---- Respondents

Shri Sanjay Kumar Agrawal, counsel for the petitioner/s.
Shri Ramakant Mishra, Dy.A.G. for the State.
Shri Mayank Chandrakar, counsel for the caveator.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

08/04/2016

Heard on admission.

This writ petition has been filed by the petitioners against award dated 31/05/2013 by which an area of 64.060 hectares have been acquired under erstwhile Land Acquisition Act, 1894.

2. Assailing the correctness and validity of the land acquisition proceedings and the award dated 31/05/2013, learned counsel for the petitioners raises submission to the effect that the award has been passed without preparation and due publication of development plan under C.G. Nagar Tatha Gram Nivesh Adhiniyam, 1973. The submission is that first planning ought to have been made and development plan prepared and notified and thereafter, Naya Raipur Development Authority should have first explored the possibility of acquisition of land by way of mutual consent of the land owners including the petitioners and only in the event of failure of any amicable settlement, proceedings of land acquisition ought to have been initiated. Second submission is that under Section 64 of the Land Acquisition Act, special area for development of Mantralaya and Naya Raipur was to be earmarked and efforts could have been made to purchase the land by mutual consent and only in the event of failure, acquisition of land ought to have followed under the provisions of Land Acquisition Act. Further submission is that emergency clause under Section 17 of the Land Acquisition Act has been wrongly invoked for development of airport and development of area of New Mantralaya, Vidhan Sabha etc. It is submitted that it was not a situation of invoking emergency clause under Section 17 of the then Land Acquisition Act. The decision not to invite objections and non-publication of notification under Section 64 of the Act of 1973 deprived the petitioners of their valuable right to submit objection. It is also contended that pursuant to issuance of notice under Section 9 of the Act of 1973, objections were raised not only with regard to the very acquisition but also to the proposed compensation, which according to the petitioners was not adequate. Proper assessment of compensation with reference to the then existing market value was not made. Sale and purchase was illegally banned only to deprive the land owners / farmers of due compensation under the law. It is also submitted that alternative land has not been provided under the rehabilitation policy.

3. On the other hand, learned State counsel raises serious objection with regard to the very maintainability of the petition on the ground of delay and laches. He submitted that the land acquisition proceedings were initiated in the year 2011. As development had become necessary to ensure that New Raipur is developed, Airport with proper facility was required to be established and therefore, development like construction of Vidhan Sabha, Mantralaya etc. had been taken up for which, it was imminent to acquire land to give impetus to the infrastructure group for facilitating development of Naya Raipur and therefore, it became necessary to invoke 'emergency clause'.

4. The petitioners have filed this petition after almost four years of passing of the award. At this stage, when the award has been passed 3 years before, possession has been taken, most of the developments after taking possession having taken place, the petition is liable to be dismissed only on this ground.

5. It is not in dispute that the land acquisition proceedings were initiated way back in the year 2011 by invoking Emergency Clause, which was followed by publication of notification under Section 6 of the then applicable Land Acquisition Act, 1894 on 24/07/2012 followed by publication of notification under Section 9 of the Act inviting objections. The petitioners have raised objection not only to the acquisition proceedings but also to the compensation. Thereafter, award was passed on 31/05/2013. The petitioners slept over their rights for almost three years allowing the respondents to proceed for development of land after passing of the award. All through during this period, the petitioners did not raise any objection but accepted the award and also the compensation determined under the award. There is nothing on record to show that the petitioners filed any application under Section 18 of the Land Acquisition Act before the Collector, dissatisfied with the amount of compensation awarded.

6. In the matter of **Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. Pvt. Ltd. & Others, (1996) 11 SCC 501**, the Supreme Court held as under -

“29. It is thus well settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt discretionary powers under Article 226 of the

Constitution of India to quash the notification under Section 4 (1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches.”

7. In the matter of **State of Rajasthan & Others v. D.R. Laxmi and Others, JT 1996 (9) SC 327**, it was held as under :

“9.....When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case, is hardly a ground for interference.”

8. In the matter of **Municipal Council, Ahmednagar & another v. Shah Hyder Beig & Others, (2000) 2 SCC 48**, it was held as under :

“17. In any event, after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceedings thereunder. This has been the consistent view taken by this Court and in one of the recent cases (C.Padma v. Dy.Secy. to the Govt. of T.N.)...”

9. In **State of Karnataka & Another v. Sangappa Dayappa Biradar & Others, (2005) 4 SCC 264**, the Supreme Court held as under :

“12. A right of a landholder to obtain an order of reference would arise only when he has not accepted the award. Once such award is accepted, no legal right in him survives for claiming a reference to the civil court. An agreement between the parties as regards the value of the lands acquired by the

State is binding on the parties. So long as such agreement and consequently the consent awards are not set aside in an appropriate proceeding by a court of law having jurisdiction in relation thereto, the same remain binding. It is one thing to say that agreements are void or voidable in terms of the provisions of the Indian Contract Act having been obtained by fraud, collusion, etc., or are against public policy but it is another thing to say that without questioning the validity thereof, the respondents could have maintained their writ petitions. We have notices hereinbefore that even in the writ petitions, the prayers made by the respondents were for quashing the order dated 23/08/1999 passed by the Special Land Acquisition Officer and for issuance of a direction upon him to refer the matter to the civil court. The High Court while exercising its jurisdiction under Article 226 of the Constitution, thus, could not have substituted the award passed by the Land Acquisition Officer by reason of the impugned judgment. Furthermore, the question as regards the validity of the agreements had not been raised before the High Court. As indicated hereinbefore, the Division Bench of the High Court had also rejected the contention raised on behalf of the respondents herein to the effect that the agreements did not conform to the requirements of Article 299 of the Constitution or had not been drawn up in the prescribed proforma.”

10. In the matter of **Royal Orchid Hotels Limited and another v. G. Jayarama Reddy and others, (2011) 10 SCC 608**, dealing with challenge to the land acquisition proceedings after several years, it was held -

“**25.** Although the Framers of the Constitution have not prescribed any period of limitation for filing a petition under Article 226 of the Constitution of India and the power conferred upon the High Court to issue to any person or authority including any Government, directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari is not hedged with any condition or constraint, in the last 61 years the superior courts have

evolved several rules of self-imposed restraint including the one that the High Court may not enquire into belated or stale claim and deny relief to the petitioner if he is found guilty of laches. The principle underlying this rule is that the one who is not vigilant and does not seek intervention of the Court within reasonable time from the date of accrual of cause of action or alleged violation of the constitutional, legal or other right is not entitled to relief under Article 226 of the Constitution. Another reason for the High Court's refusal to entertain belated claim is that during the intervening period rights of third parties may have crystallised and it will be inequitable to disturb those rights at the instance of a person who has approached the Court after long lapse of time and there is no cogent explanation for the delay. We may hasten to add that no hard-and-fast rule can be laid down and no straightjacket formula can be evolved for deciding the question of delay/laches and each case has to be decided on its own facts."

11. In **Swaika Properties Pvt. Ltd. & another v. State of Rajasthan and others, 2008 (4) SCC 696**, the Supreme Court held that a writ petition having been filed after passing of award which has become final, deserves to be dismissed on the ground of delay and laches.

12. In the case of **Sulochana Chandrakant Galande v. Pune Municipal Transport and others, (2010) 8 SCC 467**, it was observed as under -

"16. Thus, "free from encumbrances" means vesting of land in the State without any charge or burden in it. Thus, the State has absolute title / ownership over it.

17. In *Satendra Prasad Jain v. State of U.P.*, this Court held that once land vests in the State free from all encumbrances, it cannot be divested. The same view has been reiterated in *Awadh Bihari Yadav v. State of Bihar*, *U.P. Jal Nigam v. Kalra Properties (P) Ltd.*, *Pratap, Chandragauda Ramgonda Patil v. State of Maharashtra*, *Allahabad Development Authority v. Nasiruzzaman*, *State of Kerala v. M. Bhaskaran Pillai*, *M.Ramalinga Thevar v. State of T.N.*, *Printers (Mysore) Ltd.*

v. M.A.Rasheed, Bangalore Development Authority v. R.Hanumaiah and Govt. of A.P. v. Syed Akbar.

22. In view of the above, the law can be summarised that once the land is acquired, it vests in the State free from all encumbrances. It is not the concern of the landowner how his land is used and whether the land is being used for the purpose for which it was acquired or for any other purpose. He becomes persona non grata once the land vests in the State. He has a right to get compensation only for the same. The person interested cannot claim the right of restoration of land on any ground, whatsoever.”

13. In view of the aforesaid authoritative pronouncement of the Supreme Court, award having been passed long back and petitioners not taking any steps, respondents having already proceeded to develop the area for the purposes of which, acquisition has taken place, this Court is not inclined to entertain this petition, on the ground of delay and laches. The petition is accordingly dismissed in limine.

Sd/-

**(Manindra Mohan Shrivastava)
Judge**