

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 10263 of 2016

Date of Decision: 23.5.2016

Giga Ram

....Petitioner.

Versus

State of Haryana and others

...Respondents.

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

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE RAJ RAHUL GARG.**

PRESENT: Mr. R.S. Sangwan, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. By way of instant petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the notifications dated 22.2.2007 (Annexure P-3) issued under Section 4 of the Land Acquisition Act, 1894 (in short "the Act") and dated 20.2.2008 (Annexure P-5) under Section 6 of the Act qua him. Further, a writ of mandamus has been sought directing the respondents to declare the acquisition proceedings deemed to have lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "2013 Act").

2. The petitioner is owner in possession of the land measuring

3 kanal 5 marlas comprised in khewat Nos. 367/326 and 389, 17/81 share out of 15 kanal 8 marlas and had constructed a house and boundary walls as per jamabandi for the year 2004-05 (Annexure P-1). The petitioner had also constructed a hotel for his livelihood over the land in question and all the properties are joint one. Government of Haryana issued a notification dated 30.1.1989 (Annexure P-2) under Section 4 of the Act for acquisition of land for residential and commercial area in Sector 1, Dadri. The said notification was allowed to lapse as the land was not acquired. Thereafter, notification dated 22.2.2007 (Annexure P-3) under Section 4 of the Act followed by notification dated 20.2.2008 (Annexure P-5) under Section 6 of the Act was issued for acquisition of the land including the land of the petitioner for the residential and recreational purpose for development of Sectors 8 and 9, Dadri, District Bhiwani. The petitioner and others filed objections under Section 5-A of the Act on 22.3.2007 (Annexure P-4). State of Haryana framed a policy dated 30.9.2007 (Annexure P-7) regarding release of the constructed buildings. Vide notification dated 20.2.2008 (Annexure P-5), the land measuring 11.406 acres has been left out of the acquisition vide minutes of meeting dated 4.1.2008 (Annexure P-8). Besides this, the other land of Ashram and cremation ground had also been left out of the acquisition. Respondent No.3 vide order dated 5.12.2008 (Annexure P-9) had left out the area on which the Samadhi of Late Shri Munshi Ram had been constructed. The award was passed on 18.1.2010. The petitioner is still in physical possession of the house in question. No compensation has been paid to him. According to the petitioner, the acquisition proceedings have lapsed in view of Section 24(2) of the 2013 Act. Hence, the present writ petition.

3. We have heard learned counsel for the petitioner.

4. Firstly, the petitioners have laid challenge to the compulsory acquisition proceedings initiated vide notifications dated 22.2.2007 (Annexure P-3) under Section 4 of the Act and dated 20.2.2008 (Annexure P-5) under Section 6 of the Act. However, the award was passed on 18.1.2010. The challenge to the acquisition proceedings at this belated stage after the announcement of the award would not be maintainable under Articles 226/227 of the Constitution of India. The Apex Court in ***Municipal Council, Ahmednagar and another vs. Shah Hyder Beig and others, (2000) 2 SCC 48***, while considering the issue of maintainability of the writ petition after the announcement of the award held thus:-

“16. In any event; after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder. This has been the consistent view taken by this Court and in one of recent cases (C. Padma & Ors. v. Dy Secretary to the Govt of T.N. & Ors, reported in [1997] 2 SCC 627, this court observed as below :-

"The admitted position is that pursuant to the notification published under Section 4 (1) of the Land Acquisition Act, 1894 (for short "the Act") in GOM No. 1392 Industries dated 17.10.1962, total extent of 6 areas 41 cents of land in Madhavaram Village, Saidapet Taluk,

Chengalpattu District in Tamil Nadu was acquired under Chapter VII of the Act for the manufacture of Synthetic Rasiua by Tvl. Reichold Chemicals India Ltd., Madras. The acquisition proceedings had become final and possession of the land was taken on 10.4.1964. Pursuant to the agreement executed by the company, it was handed over to Tvl, Simpson and General Finance Co. which is a subsidiary of Reichold Chemicals India Ltd., It would appear that at a request made by the said company, 66 cents of land out of one acre 37 cents in respect of which the appellants originally had ownership, was transferred in GOMs No. 816. Industries dated 24.3.1971 in favour of another subsidiary company, Shri Rama Vilas Service Ltd., the 5th respondent Which is also another subsidiary of the company had requested for two acres 75 cents of land; the same came to be assigned on leasehold basis by the Government after resumption in terms of the agreement in GOMs No. 439 Industries dated 10.5.1985. In GOMs 546 Industries dated 30.3.86, the same came

to be approved of. Then the appellants challenged the original GOMs No. 1392 Industries dated 17.10.62 contending that since the Original purpose for which the land was acquired had ceased to be in operation, the appellants are entitled to restitution of the possession taken from them. The learned Single Judge and the Division Bench have held that the acquired land having already vested in the State, after receipt of compensation by the predecessor-in-title of the appellants, they have no right to challenge the notification. Thus the writ petition and the writ appeal came to be dismissed."

5. This Court in ***Prahlad Singh and others vs. Union of India and others, (2010) 3 RCR (Civil) 756***, delving into the issue of maintainability of the writ petition after the passing of the award recorded as under:-

"5. Considering the issue of maintainability of the writ petition after declaration under Section 6 of the Act and passing of the award, Hon'ble the Supreme Court in the case of ***Municipal Council, Ahmednagar vs. Shaah Hyder Beig, (2000) 2 SCC 48***, in para 17 has held that after the award is passed, no writ petition can be filed challenging the acquisition

notice or against any proceeding thereunder....”

Further, in ***Des Raj Chela Satguru Kirpa Nand Ji vs. State of Haryana and others, (2009) 1 PLR 771***, this court observed:-

“3. After hearing learned counsel for the parties at a considerable length we are of the considered view that by a catena of judgments, Hon'ble the Supreme Court has now held that a writ petition after announcement of award is not maintainable to challenge acquisition proceedings. In that regard reliance may be placed on the judgments of Hon'ble the Supreme Court rendered in the cases of ***Star Wire (India) Ltd. v. State of Haryana, (1996)11 SCC 698; Municipal Council Ahmednagar v. Shah Hyder Beig, (2000)2 SCC 48; C. Padma v. Dy. Secretary to the Government of Tamil Nadu, (1997)2 SCC 627 and M/s Swaika Properties Pvt. Ltd. v. State of Rajasthan, 2008(2) RCR(Civil) 96 : 2008(2) RAJ 82 : JT 2008(2) SC 280***. However, learned counsel for the petitioner has placed reliance on an order dated 25.9.2008 passed by a Division Bench of this Court in C.W.P. No. 18851 of 2006 (Jagdish Rai and others v. State of Haryana and others) and other connected matters, which belongs to the same acquisition. The Division Bench has directed the respondents to decide the representations of the petitioners in that case.”

6. Further, there is delay in approaching the Court as well and,

therefore, the petitioners would not be entitled to any relief. The notifications under Sections 4 and 6 of the Act were issued on 22.2.2007 (Annexure P-3) and 20.2.2008 (Annexure P-5), respectively and the award was announced on 18.1.2010 whereas the present writ petition has been filed in 2016. The Apex Court in ***State of Jammu & Kashmir vs. R.K.Zalpuri and others, (2015) 4 SCT 457***, while delving into the issue of delay in approaching the court summed up the relevant case law as under:-

“21. In this regard reference to a passage from ***Karnataka Power Corpn. Ltd Through its Chairman & Managing Director & Anr Vs. K. Thangappan and Anr, (2006) 4 SCC 322*** would be apposite:-

“Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party”.

After so stating the Court after referring to the authority in ***State of M.P. v. Nandalal Jaiswal, (1986) 4 SCC 566*** restated the principle articulated in earlier pronouncements, which is to the following effect:-

“the High Court in exercise of its discretion does

not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction”.

22. In ***State of Maharashtra V Digambar, (1995) 4***

SCC 683 a three-judge bench laid down that:-

“19. 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."

23. Recently in ***Chennai Metropolitan Water Supply and Sewerage Board & Ors. Vs. T.T. Murali Babu, (2014) 4 SCC 108***, it has been ruled thus:

"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 scrutinise 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”.

24. At this juncture, we are obliged to state that the question of delay and laches in all kinds of cases would not curb or curtail the power of writ court to exercise the discretion. In ***Tukaram Kana Joshi And Ors. Vs. Maharashtra Industrial Development Corporation &Ors, (2013) 1 SCC 353*** it has been ruled that:-

“Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be

mitigating factors, continuity of cause action, etc. That apart, if the whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third-party interest is involved. Thus analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience”.

And again:-

“No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done,

because of a non-deliberate delay. The court should not harm innocent parties if their rights have in fact emerged by delay on the part of the petitioners. (Vide *Durga Prashad v. Chief Controller of Imports and Exports*, (1969) 1 SCC 185, *Collector (LA) v. Katiji* (1987) 2 SCC 107, *Dehri Rohtas Light Railway Co.Ltd. v. District Board, Bhojpur*, (1992) 2 SCC 598, *Dayal Singh v. Union of India*, (2003) 2 SCC 593 and *Shankara Coop. Housing Society Ltd. v. M. Prabhakar*, (2011) 5 SCC 607”).

7. Still further, even the claim of the petitioner under Section 24 (2) of the 2013 Act is not maintainable. It is the admitted position that the land of the petitioner was acquired in the year 2008 for a public purpose, namely, residential and recreational purpose for development of Sectors 8 and 9, Dadri, District Bhiwani. The award was passed on 18.1.2010. The claim of the petitioner under Section 24(2) of the 2013 Act cannot be accepted as the award was announced on 18.1.2010. It would be expedient to refer to Section 24(2) of the 2013 Act, which is in the following terms:-

“24. (2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid

the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

8. A plain reading of the aforesaid provision clearly spells out that it is applicable in those cases where the award is announced five years or more prior to coming into force of 2013 Act. The award having been announced in the present case on 18.1.2010 does not satisfy the essential requirements of Section 24(2) of the 2013 Act.

9. Learned counsel for the petitioner has not been able to substantiate that the petitioner has any claim under Section 24(2) of the 2013 Act. Consequently, finding no merit in the writ petition, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

May 23, 2016
gbs

(RAJ RAHUL GARG)
JUDGE