

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.22803 of 2015 (O&M)

Date of Decision: 29.11.2016

Vimla Devi & Anr.

... Petitioners

VS.

UT Chandigarh & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE SUDIP AHLUWALIA

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| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | Yes |
| 3. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 4. To be referred to the Reporters or not? | Yes |
| 5. Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. PC Dhiman, Advocate for the petitioners

Mr. Sanjeev Sharma, Senior Advocate with
Mr. Shekhar Verma, Advocate;
Mr. Vishal Sodhi, Advocate for UT Chandigarh

Ms. Deepali Puri, Advocate for MC Chandigarh

SURYA KANT, J. (Oral)

(1) This order shall dispose of CWP Nos.22803, 23405 & 23488 of 2015 as the petitioners in all these cases have challenged the acquisition of their land/properties by the Chandigarh Administration vide notifications dated 12.06.2002 and 29.11.2002 issued under Sections 4&6 of the Land Acquisition Act, 1894 followed by the Award dated 28.03.2003.

(2) The petitioners' foremost plea is that the impugned acquisition is vitiated in law as the final decision to acquire the subject land was taken by the then Advisor to the Administrator, UT Chandigarh who was not the 'Competent Authority' within the meaning of Article 239(1) of the Constitution read with Section 3 of the Chandigarh (Delegation of Powers) Act, 1987 as such a decision could only be taken by the Administrator and not by an inferior authority like his Advisor. It is urged that the controversy

in this regard stands settled by the Hon'ble Supreme Court in **Surinder Singh Brar & Ors. vs. Union of India & Ors. (2013) 1 SCC 403** and **Gurbinder Kaur Brar & Ors. vs. Union of India & Ors. (2013) 11 SCC 228**. The petitioners thus assert that their claim is squarely covered by the above-cited decisions.

(3) Learned senior counsel for the UT Administration though does not dispute the legal proposition laid down by the Hon'ble Supreme Court in the cited decisions, namely, that the UT Administration could not have acquired the land under the orders of the Advisor to the Administrator, UT Chandigarh, who was exercising only the delegated powers and such a decision could be taken by the Administrator alone within the meaning of Article 239(1) of the Constitution, read with the provisions of Chandigarh (Delegation of Powers) Act, 1987, nevertheless, he raises a preliminary objection that the writ petitions challenging the acquisition on the aforesaid ground are not maintainable at this belated stage especially when the acquired land has been fully developed and third party rights have been created. He urges that there is an inordinate and unexplained delay of 10 to 12 years in filing the writ petitions though none of the petitioners was suffering from a cause like illiteracy or meager resources. Most of them had been pursuing their cases vigorously before one forum or the other for enhancement of compensation. According to learned senior counsel even a writ petition seeking enforcement of Fundamental Rights would be liable to be dismissed on the ground of unexplained inordinate delay and laches. He further urges that in most of the cases, principle of *res judicata* is also attracted as the petitioners had earlier unsuccessfully challenged the subject-acquisition before this Court without taking any such plea. Not only this, the

judgment in **Surinder Singh Brar & Ors.** case (supra) was rendered by the Apex Court on October 11, 2012 whereas most of the writ petitions have been filed almost three years thereafter. There is not even a whisper, what to talk of any reasonable explanation, as to what prevented the petitioners, firstly, from approaching the Court before passing the award and raise such a mixed question of law and facts. Assuming that the decision of the Apex Court revived their cause of action (though strongly refuted) yet there is a fatal delay in seeking the remedy, hence, the petitioners are guilty of acquiescence besides delay and laches at every stage.

(4) Learned counsel(s) for the petitioners, on the other hand, contend that the delay should not be an impediment for this Court in exercising its discretionary jurisdiction as the petitioners' land was acquired in utter violation of Article 239(1) read with Article 300-A of the Constitution. They urge that where the very process of land acquisition is null and void, this Court would not refuse to annul the same only on the ground of delay and laches. Learned counsels rely upon the decisions of Hon'ble Supreme Court in (i) **The Vyalikaval House Building Co-Op. Society by its Secretary vs. V.Chandrappa & Ors. (2007) 9 SCC 304**; and (ii) **Kedar Nath Yadav vs. State of West Bengal & Ors. 2016 AIR (SC) 4156**.

(5) We have given our thoughtful consideration to the rival submissions on the question whether the instant writ petitions are liable to be dismissed on the ground of inordinate and unexplained delay and laches?

(6) It is well settled that the delay or laches indeed is a factor to be kept in view by a writ court while exercising its discretionary powers under Article 226 of the Constitution. Even in a case where infringement of

Fundamental Rights is involved but there is stark delay in approaching the Court and no explanation to cure such fatality comes forth, a Writ Court may refuse to exercise its extraordinary jurisdiction [please see **Durga Prashad vs. Chief Controller of Imports & Exports & Ors. (1969) 1 SCC 185** and (ii) **Shiv Dass vs. Union of India (2007) 9 SCC 274**].

(7) The proceedings of a writ court are surely not regulated by the law of limitation. The Constitutional Court is free to liberate itself from all other hyper-technicalities also so as to do complete justice. Nonetheless, there are well recognized self-evolved rules of restraint where, regardless of the fact that a person has enforceable fundamental or legal right, the Court would foreclose the remedy for him. Delay and laches are one of the most-often used ground to render a person remediless. A writ-petitioner is thus obligated to clearly justify the laches or undue delay and explain the circumstances which prevented him from approaching the Court within a reasonable period. All that the High Court has to see is whether the delay on the part of a petitioner is sufficient enough to dissuade it from granting the relief as prayed for.

(8) It is equally settled that one of the real test to determine the delay is whether the petitioner has come to the Court before a parallel right is created or that the lapse of time is not attributable to any laches or negligence on his part. However, where the circumstances justifying the delay are brought on record to the satisfaction of Court, the illegality which is manifest cannot be sustained on the sole ground of laches. [Re: **Dehri Rohtas Light Railway Company Limited v. District Board Bhojpur And Ors. (1992) 2 SCC 598**]. Conversely, where a person is not vigilant of his rights and acquiesces in the situation, his claim cannot be entertained **after a**

couple of years on the ground that the same relief be granted to him as was granted to a person similarly situated who was vigilant about his rights. [Ref. *U.P.Jal Nigam & Anr vs Jaswant Singh & Anr (2006) 11 SCC 464* and *M.P.Ram Mohan Raja Vs. State of T.N. & Ors. (2007) 9 SCC 78*].

(9) In *State of Rajasthan & Ors vs. D.R.Laxmi & Ors. (1996) 6 SCC 445*, the Supreme Court has held that even a void order need not be set at naught, in all events, if the party does not approach the Court within reasonable time.

(10) So far as the challenge to the acquisition proceedings is concerned, the Hon'ble Supreme Court in (i) *Aflatoon vs. Lt. Governor of Delhi (1975) 4 SCC 285*; (iv) *State of Tamil Nadu vs. L.Krishnan (1996) 1 SCC 250*; (iii) *Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. (P) Ltd., (1996) 11 SCC 501*; and (iv) *Govt. of A.P. and Ors. v. Kollutla OBI Reddy and Ors. 2005(6) SCC 493* has authoritatively ruled that the persons aggrieved must approach the Court before the completion of acquisition proceedings and if such proceedings have been completed, the Court shall be loath to quash the notification. It has also been held that non-use of the land for the purpose of acquisition or merely because some other party had challenged the acquisition and got stay will not justify the unexplained delay on the part of the petitioners.

(11) Similarly, in *Banda Development Authority, Banda vs. Moti Lal Agarwal & Ors. (2011) 5 SCC 394*, the aggrieved person(s) chose to challenge the acquisition after a period of six months from the date of award but their challenge was finally turned down on the ground of delay and laches, keeping in view the subsequent events like creation of third party

rights. A somewhat similar view was taken by the Supreme Court in ***Swaika Properties Pvt. Ltd. Vs. State of Rajasthan & Ors. (2008) 4 SCC 695.***

(12) Surely, where the acquisition proceedings were found to be vitiated by *mala fides* or fraud, the Court struck down such acquisition even after 14 years of delay in ***Vyalikaval House Building Co-Op. Society's*** case (supra), relied on behalf of the petitioners.

(13) These principles have been summed up by the Hon'ble Supreme Court in ***M/s Royal Orchid Hotels Limited and another vs. G.Jayarama Reddy and others (2011) 10 SCC 608*** laying down as follows:-

“25. Although, 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 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 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 crystallized 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.”

(emphasis applied)

(14) Let us examine the facts of the case(s) in hand in the light of the well settled principles as noticed above.

(15) It may be seen that the notifications under Section 4&6 of the Land Acquisition Act, 1894 were issued on 12.06.2002 and 29.11.2002. It appears that different awards were passed in the year 2003 and in the case of petitioners, Award No.559 was passed on 28.03.2003.

(16) Petitioners admittedly did not challenge the acquisition process at any stage. They accepted the acquisition though being dissatisfied with the compensation amount assessed by the Collector they filed references under Section 18 of the 1894 Act which were partly answered in their favour by the Additional District Judge, Chandigarh on 07.01.2013. The petitioners thereafter approached this Court for further enhancement of compensation and their appeals were partly allowed on 22.09.2015.

(17) As against it, some of the landowners who were aggrieved by the subject-acquisition approached this Court without any delay, namely, by

way of CWP No.8545 of 2004 and CWP No.12779 of 2004. Those writ petitions were dismissed on 18.03.2011. The aggrieved petitioners filed SLPs and their Civil Appeals arising out of those SLPs were finally allowed by the Hon'ble Supreme Court on 12.07.2013 [**Gurbinder Kaur Brar's** case (supra)] in terms of the earlier decision in **Surinder Singh Brar and others** case (supra) laying down that the acquisition proceedings could not have been initiated under the orders of the Advisor to the Administrator, UT, Chandigarh as such power vested in the Administrator alone within the meaning of Article 239 of the Constitution.

(18) Pertinently, the petitioners have chosen to challenge the acquisition on the strength of the above-stated decisions of the Supreme Court as late as in the year 2015 [writ petition in the lead case filed on 21.10.2015] i.e. after more than three years.

(19) From the above narrated facts, it stands crystallized that the petitioners are indeed fence-sitters who acquiesced at every stage and had no grievance against acquisition of their land but for the decision of the Supreme Court in **Gurbinder Kaur Brar** (supra).

(20) The petitioners do not fall amongst those who, on account of illiteracy, meagre resources or other social disabilities, could not approach the Court within a reasonable time. Their own pleaded case reveals that they have been relentlessly pursuing cases before one or the other Court for enhancement of compensation. Had they been aggrieved by the acquisition of their land at any point of time, there was no impediment whatsoever in approaching the Court within a reasonable time.

(21) There is an unexplained long lapse of 12 years in questioning the acquisition which, in our considered view, can neither be condoned nor overlooked.

(22) The petitioners accepted the compensation amount unlike those who refused to accept the same and opted to question the acquisition of their land.

(23) There is yet another strong circumstance which dis-entitles the petitioners' to seek the desired relief. The respondents have categorically averred in the written statement as follows:-

“It is matter of record that the said land was acquired for setting up 3rd phase Industrial Area and other allied uses near Mauli-Jagran for allotment of land to the private persons for expansion of existing industrial area. It is important to mention here that earlier the U.T. Administration had allotted the plots to the individuals for setting up the Industrial Area but the matter went in dispute in Court litigation and same is still pending in the Hon’ble Supreme Court. On the acquired land as per the scheme and policy framed by the Chandigarh Administration, the present land has been allotted to the private persons and since the matter is pending in the Court therefore the possession of the land has not been handed over to the individual allottees. However, it is submitted that the basic infrastructure like road,

electricity, sewage etc. has been developed by the Chandigarh Administration by spending huge amount.”

(emphasis applied)

(24) It may be seen that after taking physical possession of the acquired land, the Chandigarh Administration has spent a huge amount on infrastructural development; plots have been carved out and allotments have been made in favour of third parties. In view of the fact that the parallel rights have been created and those allottees are not party respondents in these proceedings, we are satisfied that the impugned acquisition cannot be interfered with. While taking such a view, we have further kept in mind that in some of the connected cases, the acquired land was fully developed and allotted to various companies who have further developed the allotted sites and huge commercial establishments have been set up from the last several years.

(25) The decisions relied upon by learned counsel for the petitioners are clearly distinguishable. In Vyalikaval House Building Co-Op. Society's case (supra), it was found as a matter of fact that the whole acquisition proceedings were a fraud as the society for whom the land was acquired was found to be a “not bona fide housing society”. There was thus no ‘public purpose’ of acquisition. No such attributes are made in the case in hand where the land was admittedly acquired for a genuine public purpose.

(26) In Kedar Nath Yadav's case (supra), the notification under Section 4 of the Land Acquisition Act, 1894 was published on 21.07.2006 and the acquisition was immediately challenged in WP No.23836(W) of 2006 and other connected cases. The High Court dismissed those writ petitions on 18.01.2008. The Hon'ble Supreme Court allowed the appeal

delay on the part of the aggrieved persons in approaching the Court. The observations regarding 10 years' delay made by the Hon'ble Supreme Court in para 75 of its report refers to the time period during which the proceedings remained pending in Courts. The cited decision thus does not advance the petitioners' cause.

(27) We may hasten to add that with a view to refute the petitioners' claim on merits, the respondents have come up with a plea that the legal deficiency in the process of acquisition has since been rectified by obtaining *ex post facto* approval from the Administrator, UT Chandigarh. Since we are not inclined to entertain the writ petitions on merits on account of delay and laches, we do not deem it necessary to go into the merits of the above-stated plea.

(28) In the light of the above discussion, we hold that the instant writ petitions cannot be entertained on merits and are liable to be dismissed being hopelessly belated. Ordered accordingly.

(Surya Kant)
Judge

29.11.2016
vishal shonkar

(Sudip Ahluwalia)
Judge