

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

**CWP No.3054 of 2015 (O&M)
Date of decision:27.04.2016**

Raghbir Kumar and another

.....Petitioners

The State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
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? **YES**
3. Whether the judgment should be reported in the Digest?

Present: Mr. Yogesh Kumar Saini, advocate for the petitioners.
Mr. Saurabh Mago, AAG, Haryana.

Mr. Ashish Gupta, Advocate for respondents NO.5 and 6.

None for HUDA.

Ajay Kumar Mittal, J.

1. The petitioners pray for quashing the notifications issued under sections 4 and 6 of the Land Acquisition Act, 1894 (In short, "the Act") and the award dated 28.2.2016, 27.2.2007 and 3.3.2009, Annexures P.2, P.3 and P.4

respectively.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioners were owners in possession of agricultural land situated in Village Jandali, Tehsil and District Ambala. They were cultivating their land. According to the petitioners, by way of fraud, the land had been taken away from them under the threat of acquisition at throwaway price and sold to the private respondents vide sale deeds dated 22.3.2006 and 8.3.2007. The builders/developers were trying to grab the land of the petitioners alongwith other land. On 28.2.2006, notification, Annexure P.2 under section 4 of the Act was issued proposing to acquire the land measuring 165.13 acres of Village Jandali, 50.40 acres of land of Village Kanwali, 33.91 acres of land of Village Saunda and 3.86 acres of land of Village Sarai, Mehdood, District Ambala including the land of the petitioners for development and utilization as commercial, residential and institutional area for Sector 23, Ambala City. Thereafter, respondent Nos.5 and 6 started purchasing the land of the farmers in Sector 23, Ambala for making construction in connivance with the respondents. Subsequently, another notification, Annexure P.3 was issued under Section 6 of the Act on 27.2.2007 for Sector 23, Ambala. In the said notification, respondents No.1 to 4 did not acquire the land purchased by the company although it was mentioned in the notification under section 4 of the Act and released it from acquisition and only the land of the farmers who had not sold their land to the

Acquisition Collector announced the award, Annexure P.4. According to the petitioners, the entire proceedings for acquisition were initiated for the benefit of respondent No.5. Subsequently, respondent No.3 issued licence dated 12.11.2007 to private respondent No. 5 i.e. Vatika Land Base Pvt. Limited, New Delhi. Thus, the purpose for which the land was acquired was not fulfilled. Hence the instant writ petition by the petitioners.

3. In the written statement filed on behalf of respondents No.5 and 6, it has been inter alia stated that no objections under section 5A of the Act had been filed by the petitioners. The necessary parties in whose favour the land was released by the State were not made parties to the writ petition. Further, the notification under section 4 of the Act was issued in the year 2006 and the award was announced in the year 2009 whereas the present writ petition was filed in the year 2015. Further, as per averments of respondents No.5 and 6 in their written statement, the notification under section 6 of the Act was issued on 27.2.2007 for an area measuring 95.25 acres and thereafter the award was announced on 3.3.2009 for 94.25 acres. The allegations of malafide and fraud were denied. It has been claimed that licence has been issued in favour of respondents No.5 and 6 and the land owners in respect of land which is not declared under Section 6 of the Act. Thus, the writ petition after six years of passing of the award was not maintainable as per law. On these premises, prayer for dismissal of the writ petition has been made.

5. Admittedly, the land was acquired in the year 2006 for a public purpose namely for the development and utilization of land as commercial, residential and institutional area for Sector 23, Ambala City. Notification under section 4 of the Act was issued on 28.2.2006. No objections were filed by the petitioners under Section 5A of the Act. Notification under Section 6 of the Act was issued on 27.2.2007. The award was announced on 3.3.2009. The present petition was filed in the year 2015. The challenge to the acquisition proceedings and the award 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 Rasium 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."

6. 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.”

7. Further, there is delay in approaching the Court as well and, therefore, the petitioner would not be entitled to any relief. 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)”.

8. Respondents No.5 and 6 in their written statement have clearly stated that area measuring 95.25 acres was subject matter of notification under Section 6 of the Act and the award was announced in respect of 94.25 acres on 3.3.2009. Thus, by virtue of Section 16 of the Act, after the announcement of the award under section 11 of the Act, the Collector may take possession of the land and therefore it shall vest absolutely in the State Government free from all encumbrances. Needless to say, award had been made in respect of land measuring 94.25 acres, therefore, by virtue of Section 16 of the Act, the said land had vested in the State Government which can now be used by them for the purpose for which

9. In view of the above, we do not find any merit in the writ petition and the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

April 27, 2016
‘gs’

(Raj Rahul Garg)
Judge