

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

**CWP No.7399 of 2016
Date of decision:25.4.2016**

Krishan Gopal

.....Petitioner

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE DARSHAN SINGH**

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. Sudhir Mittal, Advocate for the petitioner.

Ajay Kumar Mittal, J.

1. The petitioner prays for quashing the notifications dated 11.7.2006 and 16.7.2007, Annexures P.4 and P.5 respectively issued under sections 4 and 6 of the Land Acquisition Act, 1894 (in short, "the Act").

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. As per the case of the petitioner, he is owner of a plot measuring 121.66 square yards situated on Bajida Road, Karnal. He purchased this plot vide registered sale deed dated 11.5.2001 for a sum of ₹ 35,000/-. It is lying vacant and the petitioner has erected a temporary boundary wall around it. Land measuring 76 acres 3 kanals 3 marlas including the land of the petitioner was acquired by

respondent No.1 for expansion of existing industrial Estate, Sector 3, Karnal. Notification under section 4 of the Act was issued on 11.7.2006, Annexure P.4 followed by notification under section 6 of the Act on 16.7.2007, Annexure P.5. The petitioner could not file objections under section 5A of the Act as he did not realize that notification under section 4 had been issued. According to the petitioner, while issuing declaration under section 6 of the Act, land belonging to certain influential persons had been excluded. On the representation of one Smt.Subhash Chandrika, respondent No.3 had recommended the release of her existing house. Even her vacant land had been released from acquisition. However, in the case of the petitioner, no action with regard to release of the land has been taken. Hence the instant writ petition by the petitioner.

3. We have heard learned counsel for the petitioner and perused the averments made in the writ petition.

4. Admittedly, the land was acquired in the year 2006 for a public purpose namely for the expansion of Industrial Estate, Sector 3, Karnal. The notifications under Sections 4 and 6 of the Act were issued on 11.7.2006 and 16.7.2007 respectively whereas the present writ petition has been filed in the year 2016. Thus, challenge to the acquisition proceedings cannot be entertained after such a delay. 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”.

5. Further, it clearly falls within the domain of the State to decide whether the land which is being acquired for a public purpose would suit the said public purpose. It is only when the action of the State is actuated by malafides that the same would be amenable to judicial review which has not been shown in the present case. A Division Bench of this Court in *Sampuran Singh and others v. Union Territory, Chandigarh and others*, 2007(1) PLR 349 had held as under:-

“11. We are in full agreement with the learned counsel for the respondents. The State can always exercise its absolute power to acquire land, provided a public purpose exists and it is not necessary that it should succumb to the wishes or willingness of the owner or person interested in the land. The only exception can be when mala fide is shown and then the Courts are bound to protect the individuals from being the victims of such arbitrariness.”

6. Still further, the petitioner has stated that land of some influential persons has been released. Even the release was prior to issuance of notification under Section 6 of the Act in the year 2007. This plea equally suffers from delay and laches. Consequently, no interference is called for with the impugned notifications. As a result, finding no merit in the writ petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

April 25, 2016
gs'

(Darshan Singh)
Judge