

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

CWP No.8572 of 2016

Date of decision: 05.05.2016

Jyotsana and others

.....Petitioners

vs.

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE SHEKHAR DHAWAN**

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

Present: Mr. Sandeep Panwar, Advocate for the petitioners.

Ajay Kumar Mittal,J.

1. The petitioners pray for quashing the notifications dated 9.8.2002 and 8.8.2003 issued under sections 4 and 6 of the Land Acquisition Act, 1894 (in short, "the 1894 Act"), award dated 5.8.2005 and order dated 4.4.2016, Annexures P.2 to P.4 and P.12 respectively. Further prayer has been made for a direction to the respondents to release the land of the petitioners under section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short, "the 2013 Act").

narrated in the petition may be noticed. The State of Haryana issued a notification dated 9.8.2002, Annexure P.2 under Section 4 of the 1894 Act for acquisition of land for a public purpose i.e. for setting up residential, commercial and institutional area for Sector 21, Kaithal. The plot of the petitioners measuring 1 kanal 5 marlas is situated within the revenue estate of Patti Kaisth Seth Kaithal. Thereafter, notification under section 6 of the Act was issued on 8.8.2003, Annexure P.3. Award was announced by the Land Acquisition Collector on 5.8.2005, Annexure P.4. According to the petitioners, the area around their plot is thickly constructed and inhabited. The petitioners are having possession over the plot. They have also constructed temporary boundary wall around the plot. They sent a legal notice dated 18.8.2014, Annexure P.9 to the respondents to consider their case as per the new Act but having received no response, they filed CWP No.24461 of 2014 in this court which was decided vide order dated 1.12.2014, Annexure P.10 with a direction to respondent No.1 to consider and decide the legal notice submitted by the petitioners within a period of four months from the date of receipt of a certified copy of the order. The petitioners filed reminder dated 7.9.2015, Annexure P.11 to respondent No.1. Thereafter, the petitioners filed COCP No.3014 of 2015 which is pending. On 4.4.2016, respondent No.1 rejected the claim of the petitioners. Hence the instant writ petition by the petitioners.

3. We have heard learned counsel for the petitioners.

4. It is the admitted position that the land was acquired in the year 2003. The award was announced on 5.8.2005. The present petition has been filed in the year 2016. 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 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. Still 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 1894 Act were issued on 9.8.2002 and 8.8.2003 respectively and the award was announced on 5.8.2005 whereas the present writ petition has been filed in the year 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. In addition to the above, in view of the directions given by this Court, the respondents have considered the case of the petitioners. After examining the matter, it has been categorically recorded in the impugned order dated 4.4.2016 that there is no possibility to re-align the road either in the western side or the eastern side. The operative part of the impugned order reads thus:-

“3. That keeping in view of the above directions, the matter has been examined by the Town & Country Planning department and deliberated in the meeting dated 2.2.2015, wherein, CTP, Haryana, CTP, HUDA, STP, Panchkula and DTP, Kaithal were present. In this meeting, it was decided that STP Panchkula and DTP Kaithal shall submit a report as per ground conditions so that decision regarding realignment of road

can be taken.

4. That the site was visited by STP Panchkual and DTP Kaithal on 28.1.2015 and about 15 individual/cluster of structures were found within the alignment of said road. It was also observed that the area falling in east of said sector road stands acquired by HUDA and development works have been carried out at Site. Moreover, number of structures already stands released in HUDA acquired area also. Towards western side of road, thick constructions in form of unauthorized colony namely DAV colony exist, which, as intimated by DTP Kaithal, stands regularised by the Government in Urban Local Bodies Department. Accordingly, there is no possibility to realign the road either in the western side or the eastern side. In view of above situation and ground reality it is proposed that the alignment of road may be kept as per published Development Plan 2031 AD.”

8. In view of the reasons given by the respondent authorities, we do not find any error in the impugned order dated 4.4.2016 warranting interference by this Court. It is for the State to decide whether the land acquired is suitable for the purpose for which it has been acquired. However, the Court could have examined the issue provided the action was actuated with malafides which has not been shown in the present case. The land was acquired for a public purpose by the State Government.

9. Further, the petitioners have prayed for release of land under Section 24(2) of the 2013 Act for which they may file representation to the respondents who shall decide the same in accordance with law.

In view of the above, prayer for quashing the acquisition proceedings

and also order dated 4.4.2016 cannot be granted. The writ petition is disposed of accordingly.

(Ajay Kumar Mittal)
Judge

May 05, 2016
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(Shekhar Dhawan)
Judge