

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 778 of 2014**

1. Sukritlal Sahu S/o Late Shri Santram, Aged About 62 Years, R/o Village Auraikala Tahsil Baloda, P.S. Janjgir Distt. Janjgir Champa, Chhattisgarh
2. Sushila W/o Shri Ramsharan, Aged About 52 Years, R/o Village Okhar Tahsil Masturi, P.S. Pachpedi, Distt. Bilaspur, District : Bilaspur, Chhattisgarh
3. Nandkumari W/o Shri Jagdish, Aged About 41 Years, R/o Village Jhopda Para Bilaspur P.S Torwa, Distt. Bilaspur, Chhattisgarh
4. Ramchandra S/o Late Shri Santo Ram, Aged About 39 Years, R/o Village Sarkho Tah. Janjgir, P.S. Naila, Distt. Janjgir Champa, Chhattisgarh

---- Petitioners**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Energy, Mantralaya, Mahanadi Bhawan, New Raipur, Police Station – Rakhi, Tahsil and Distt. Raipur, Chhattisgarh
2. Chairman And Manaing Director, Chhattisgarh State Power Generation Co. Ltd. Raipur Distt. Raipur, Chhattisgarh
3. The Executive Engineer (Civil) Construction Division 2x500 Mw Madwa Tendubhata Thermal Power Project, C.G. State Power Generation Co. Ltd. Janjgir, District : Janjgir-Champa, Chhattisgarh
4. The Sub Divisional Officer Cum Land Acquisition Officer, Janjgir District : Janjgir-Champa, Chhattisgarh
5. Collector, Janjgir, District Janjgir Champa (C.G.)

--- Respondents

For Petitioners	:	Mr. Sushobhit Singh, Advocate.
For Respondent No. 1, 4 & 5 / State	:	Mr. R. N. Pusty, G. A.
For Respondents No. 2 & 3	:	Mr. K. R. Nair, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board**

20/07/18

1. This writ petition is directed questioning the award dated 16.01.2012 (Annexure – P/1) passed by the Sub-Divisional Officer-cum-Land Acquisition Officer, Janjgir Champa on the ground that the award passed is in violation of Section 5A of the Land Acquisition Act, 1894 (for brevity, 'Act of 1894') and, therefore, the award is unsustainable and bad in law and is liable to be set aside.
2. Learned counsel for the petitioners would submit that though the petitioners have submitted their objection under Section 5A of the Act of 1894 but that was not considered and the impugned award came to be passed and even possession has been taken that vitiates the award.
3. Learned State counsel would submit that out of the total land owned by the petitioners, only 0.25 acres of land has been taken and objection filed by the petitioners have been considered and decided and as such after the award was passed on 16.01.2012, possession has already been taken long back and thus, the award has become final and the writ petition has been filed on 21.04.2014 which suffers from delay and laches.
4. Mr. Nair, learned counsel appearing for respondents No. 2 and 3 would also support the order impugned.
5. I have heard learned counsel for the parties, considered their rival submissions made herein above and went through the records with utmost circumspection.
6. It is not in dispute that the award was passed on 16.01.2012 and

thereafter, possession of the subject land has been taken and the subject land has been vested with the State free from encumbrance under Section 16(1) of the Act of 1894 and thereafter, the writ petition has been filed on 21.04.2014. The question is whether the writ petition would be maintainable and whether it suffers from delay and laches ?

7. The Supreme Court in the case of **State of Rajasthan v. D. R. Laxmi**¹, following the decision in *Municipal Corpn. Of Greater Bombay*², has held in para 9 as under :-

“9.... When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third-party rights were created in the case, is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches.”

8. Similarly, the Supreme Court in the case of **Municipal Council, Ahmednagar v. Shah Hyder Beig**³, wherein the Supreme Court, following the decision in *C. Padma v. Dy. Secy. to the Govt. of T.N.*⁴, held :

“17. 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 the recent cases (*C. Padma v.*

1 (1996) 6 SCC 445

2 (1996) 11 SCC 501

3 (2000) 2 SCC 48

4 (1997) 2 SCC 627

Dy. Secy. to the Govt. of T.N).....”

9. Thereafter, the Supreme Court in the Case of **Swaika Properties (P) Ltd. And Another v. State of Rajasthan and Others**⁵, following the decisions in *D. R. Laxmi* (supra) and *Municipal Council, Ahmednagar* (supra), has held in Para- 19 as under :-

“19. In the present case also, the writ petition having been filed after taking over the possession and the award having become final, the same deserves to be dismissed on the ground of delay and laches. Accordingly, the orders of the learned Single Judge and that of the Division Bench are affirmed to the extent of dismissal of the writ petition and the special appeal without going into the merits thereof. This appeal also deserves to be dismissed without going into the merits of the case and is dismissed as such. No costs.”

10. Reverting to the facts of the present case, admittedly after passing of the impugned award in question, possession of the subject land has already been taken from the petitioner and the land has vested with the State Government under Section 16(1) of the Act of 1894 free from encumbrances and thus, the principle of law enunciated by the Supreme Court in the above stated judgments squarely applies to the facts of the present case warranting dismissal of the writ petition which I direct, leaving the parties to bear their own cost(s).

SD/-

(Sanjay K. Agrawal)
Judge

5 (2008) 4 SCC 695