

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**Judgment reserved on 26/10/2018****Judgment delivered on 31/10/2018****Writ Appeal No. 314 of 2016**

Rajendra Shankar Shukla S/o Shri Ram Awtar Shukla, Aged about 79
Years, R/o Malviya Road, Raipur (C.G.).

---- Appellant**Versus**

1. State of Chhattisgarh Through Collector, Raipur (C.G.).
2. Union of India Through the Ministry of Home Affairs, New Delhi (C.G.).

---- Respondents

For Appellant	:	Shri Varun Sharma, Advocate
For Respondent/State	:	Shri Prasun Bhaduri, Government Advocate
For Respondent/UOI	:	Shri B. Gopa Kumar, Assistant Solicitor General

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****C A V JUDGMENT****Per Parth Prateem Sahu, Judge**

1. The appellant has challenged the legality, validity and propriety of the impugned order dated 13/04/2016 passed by the learned Single Judge in Writ Petition (C) No. 4351/2010 whereby the writ petition filed by appellant/writ petitioner was dismissed wherein the appellant/writ petitioner sought following reliefs:-

“10.1 That a writ of mandamus be issued against respondent No. 1 for issuing a certificate that the petitioner is in possession of the land and they have not taken any land since the date of acquisition.

10.2 Any other relief this Hon'ble Court deems fit be granted.”

2. During pendency of the writ petition, the appellant/writ petitioner has filed an application for amendment of relief 10.1 which was allowed by the Court and the following relief has been substituted as 10.1, which reads as under :-

“10.1 That a direction be issued to the respondent No. 1 either to withdraw the acquisition of land since it has not taken possession of the same from the date of which acquisition i.e. in the year 1944-45 and the acquisition itself has lapsed or to pay the compensation of the land.”

3. Learned counsel appearing for the appellant submits that land acquisition made in the year 1944-45 was temporary in nature for the purpose of war and no amount of compensation was paid. He further submits that the learned Single Judge has failed to consider the judgments' relied upon by him in support of his arguments.

4. We have heard learned counsel appearing for the parties and perused the records.

5. From the documents annexed along with the writ petition, it is apparent that the appellant was not original owner of the land in question, but it was owned by Brijrani Bai and Ram Narayan. The appellant claimed that he succeeded the property of Brijrani Bai and Ram Narayan through will deed dated 13/12/1985 executed by Brijrani Bai.

6. The pleadings made in the writ petition and the documents annexed along with, it shows that the land in question was already acquired under the land acquisition proceedings in Land Acquisition Case No. 21/1944-45 and the said lands were recorded in the name of the Government of India. Subsequently, in the year 1982, the Department of Home Affairs vide letter dated 09/07/1982 directed to record the land in question along with other lands in the name of the State Government and vide order dated 02/12/1987, the name of the State Government of erstwhile State of Madhya Pradesh was recorded in the revenue records.

7. It is aforementioned lands which is part of the concluded land acquisition proceedings of the year 1944-45 and subsequently recorded in the name of the State Government, the appellant again prayed for grant of compensation or to pass appropriate orders.

8. The learned Single Judge after considering entire material placed on record by the respective parties and considering all the submissions made by the parties recorded the following findings :-

“8. The record of the State would clearly demonstrate that the area in question was acquired way back in the year 1944-45 during the second world war and was recorded in the name of Central Government, Department of Home Affairs, therefore, when the land was not needed by the Government of India, a communication dated 02/12/1987 was sent to the erstwhile State of Madhya Pradesh for recording the name of Department of Revenue, State of Madhya Pradesh, in the revenue records. It is also recorded in Annexure P/4 that the land holders did not receive the compensation. The recital in column 5 of Annexure P/4 would clearly indicate that the land was acquired during the Second World War. The agriculturists probably refused to receive the compensation, as the land was acquired in the interest of the nation. To succeed in this petition, the petitioner is required to challenge the acquisition proceeding which was finalised in the year 1944-45, however, there is no whisper about the said acquisition proceedings.

9. This writ petition was filed in the year 2010 for recording the petitioner's name in the revenue record, thus, the petition has been filed after 65 years, therefore, it hopelessly suffers from delay and laches.

10. The Supreme Court in **Yunus (Baboobhai) A Hamid Padvekar v. State of Maharashtra, [JT 2009 (3) SC 487]** has held that :

“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. 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.”

9. The record also shows that the certified copies of the revenue records of year 1990-91 to 1994-95 was also placed on records, in which, it has been mentioned as Khasra No. 189/1 recorded in the name of Brijrani Bai (*Samilat Charagan*) admeasuring 8.358 hectares of land and Khasra No. 189/2 admeasuring 7.27 hectares of land recorded in the name of Government of Madhya Pradesh, Department of Revenue. Similarly, land bearing Khasra No. 191/1 recorded in the name of Brijrani

Bai and others (*Samilat Charagan*) admeasuring 8.658 hectares and land bearing Khasra No. 191/2 admeasuring 0.951 hectares recorded in the name of Government of Madhya Pradesh, Department of Revenue.

10. The land acquisition proceedings initiated by the Land Acquisition Officer for Chhattisgarh Housing Board, Raipur against the appellant and other 72 villagers of village Dumartarai shows that the lands bearing Khasra Nos. 189/1 and 191/1 admeasuring 10.353 hectares of land recorded as '*Samilat Charagan*' have already been acquired and alongwith other villagers, appellant also received handsome compensation of Rs.2,02,95,930/- after deduction of T.D.S. (Annexure R-2).

11. The appellant has only claimed a relief with respect to the lands acquired in the year 1944-45 and the records also shows that the compensation was not taken by the owners of the land. The reason for doing so was best known to the owners of that time. Perusal of document Annexure P-4 and certified copy of Kharsa Panchshala would show that the area of land shown in Annexure P-4 to have been acquired are numbered as Khasra Nos.189/2 and 191/2, which are recorded in the name of State Government as evident from certified copies of Khasra Panchshala available on record.

12. From perusal of the document Annexure P-4, it has nowhere mentioned that the acquisition of the land in the year 1944-45 was temporary in nature. The appellant has not filed any document or copy of award passed in the land acquisition proceedings bearing Land Acquisition Case No. 21/1944-45 to support his arguments and therefore, mere pleadings and oral submissions without any evidence cannot be accepted more so when the land acquired in the year 1944-45 had been recorded in the name of State Government by virtue of order passed by the Collector in pursuance to the letter written by Ministry of Home Affairs, Government of India, which was never challenged at any point of time.

13. In view of the above facts and circumstances of the case and the documents available on record, Khasra No. 189/2 admeasuring 7.27 acres and the land bearing Khasra No. 191/2 admeasuring 2.3 acres have been recorded in the name of the State Government and not as '*Samilat Charagan*' (common grazing land of the village). Paragraph-11 of the impugned order wherein the observation made by learned Single Judge to that extent are set aside and as stated above that the land bearing Khasra No. 189/2 admeasuring 7.27 acres and Khasra No. 191/2 admeasuring 2.3 acres are recorded as Government land in the revenue records, which are part of acquisition proceedings in the year 1944-45.

14. We are of the considered view that the land acquisition proceedings which was already concluded in the year 1944-45 cannot be questioned after lapse of about 65 years. The case law relied upon by the learned counsel for the appellant is on different set of facts. No other grounds was raised.

15. In view of the above discussions, we do not find any good ground to interfere with the impugned order dismissing the writ petition. The appeal being devoid of any substance, is liable to be and is hereby dismissed with observation made in afore para.

Sd/-

(Ajay Kumar Tripathi)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge