

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 8/10/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE Ms.JUSTICE P.T.ASHA

Writ Petition No.26173 of 2018

M. Kumar

...

Petitioner

Vs

1. The Government of Tamil Nadu
rep. By its Secretary
Rural Development and Panchayat Raj Department
Fort St. George
Chennai 600 009.
 2. The Director of Rural Development Department
Panagal Building
Saidapet
Chennai 600 015.
 3. The District Collector
O/o. Collectorates Office
Dharmapuri District
Dharmapuri.
 4. The Assistant Director (Panchayats)
Dharmapuri District
Dharmapuri.
- ...
- Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of certiorarified mandamus to call for the records pertaining to the clause in so far as the formation of Kadathur and Eriyur Panchayat Union shall come into effect only at that time of the next ordinary elections to local bodies mentioned in the Government Gazette Notification vide No.365 passed in G.O.Ms.No.176 dated 9/12/2013 by Rural Development and Panchayat Raj (PR-II) Department and to quash the same as illegal and arbitrary in the light of non-conducting local body election and consequently direct the respondents to bring force upon the formation of Kadathur and Erriyur Panchayat Union.

For petitioner

...

Mr.V.Govardhanan

ORDER

(Order of the Court was made by **S.MANIKUMAR, J**)

Member of Communist Party of India (Marxist) and resident of Pocharampatti Village, Erriyur Panchayat Union, has sought for a writ of certiorarified mandamus, pertaining to the clause, in so far as the formation of Kadathur and Eriyur Panchayat Union, shall come into effect only at the time of the next ordinary elections to local bodies mentioned in the Government Gazette Notification, vide No.365, passed in G.O.Ms.No.176, dated 9/12/2013, by Rural Development and Panchayat Raj (PR-II) Department, and to quash the same, as illegal and arbitrary in the light of non-conducting local body election and consequently, direct the respondents, to bring force upon the formation of Kadathur and Erriyur Panchayat Union.

2. On an earlier occasion, when the petitioner filed W.P.No.19840 of 2018, for a mandamus, directing the respondents therein, to implement the Government Order, in G.O.(Ms) No.127, Rural Development and Panchayat Raj (PR-II) Department, dated 14/9/2013, with regard to Kadathur and Erriyaur Panchayat Union, within the stipulated time, pursuant to the representation, dated 7/7/2018, this Court, after considering the contents of the said G.O., and implementation thereof, in G.O.Ms.No.176, Rural Development and Panchayat Raj (PR-II) Department, dated 9/12/2013, dismissed the writ petition.

3. G.O.Ms.No.127, Rural Development and Panchayat Raj (PR-II) Department, dated 14/9/2013, considered in W.P.No.19840 of 2018, dated 20/8/2018, reads thus:-

"APPENDIX
NOTIFICATION

In exercise of the powers conferred by sub-section (1) of section 15 of the Tamil Nadu Panchayats Act, 1994 (Tamil Nadu Act 21 of 1994), the Governor of Tamil Nadu hereby notifies his intention to declare the local areas specified in the Table below, now part of Pennagaram Panchayat Development Block, to be a separate Panchayat Development Block namely, Eriyur Panchayat Development Block and to constitute for the said Panchayat Development Block, a Panchayat Union namely, Eriyur Panchayat Union. The formation of above Panchayat Union will come into effect only at the time of the next ordinary elections to local bodies.

2. Any inhabitant of the said local area desiring to object to anything contained in this

Notification may submit his/her objection in writing to the Government within six weeks from the date of publication of this Notification in the Tamil Nadu Government Gazette, and that any objection which may be received from such inhabitant of the local area with respect thereto before the expiry of the period aforesaid will be duly considered by the Government of Tamil Nadu. Objections in writing, if any, should be addressed to the Principal Secretary to Government, Rural Development and Panchayat Raj Department, Secretariat, Chennai-600 009.

THE TABLE

Name of the Village Panchayat	Name of Revenue Villages
1	2
	Names of Revenue Village in Perumbalai Revenue Firka in Pennagaram Revenue Taluk of Dharmapuri Revenue Division.
1. Badrahalli	Badrahalli
2. Gendeyanahalli	Gendeyanahalli
3. Perumbalai	Perumbalai
	Names of Revenue Villages in Sunjalnatham Revenue Firka in Pennagaram Revenue, Taluk of Dharmapuri Revenue Division.
4. Ajjanahalli	Ajjanahalli
5. Dhonnakuttahalli	Dhonnakuttahalli Sidumabahalli
6. Kodihalli	Kodihalli
7. Manjarahalli	Jarimankurichi Manjarahalli Solapadi

<i>Name of the Village Panchayat</i>	<i>Name of Revenue Villages</i>
<i>8.Nagamarai</i>	<i>Nagamarai</i>
<i>9.Ramakondahalli</i>	<i>Ramakondahalli</i>
<i>10.Sunjalnatham</i>	<i>Sunjalnatham Dhinnabellur.</i>

*C.V.SANKAR
Principal Secretary to Government"*

4. Though in paragraph No.2 of the said G.O., any inhabitant of the said local area desiring to object to the Notification, writ petitioner and the Villagers have not made any objections and thereafter, Government have issued G.O.Ms.No.176, Rural Development and Panchayat Raj (PR-II) Department, dated 9/12/2013, reiterating the bifurcation would come into effect only at the time of by-elections of local bodies. Thus, taking note of the contents of both G.O.Ms.No.127, Rural Development and Panchayat Raj (PR-II) Department, dated 14/9/2013, and subsequent G.O. Ms.No. 176 Rural Development and Panchayat Raj (PR-II) Department, dated 9/12/2013, this Court, dismissed the writ Petition No.19840 of 2018.

5. Instant writ petition has been filed, challenging the clause in so far as formation of Kadathur and Eriyur Panchayat Union, shall come into effect only at the time of elections to local bodies.

6. In the supporting affidavit, petitioner has contended that at the time of issuing G.O.Ms.No.127, Rural Development and Panchayat Raj (PR-II) Department, dated 14/9/2013, petitioner and other local public, did not raise any objection with the fond hope that the next General Body elections would be conducted in time, which according to the learned counsel for the petitioner is 2016.

7. Learned counsel for the petitioner submitted that for some reason or the other, local body elections has not been conducted and therefore, public of Pocharampatti Village, Erriyur Panchayat Union, would be prejudiced. Learned counsel for the petitioner further submitted that earlier, when W.P.No.19840 of 2018 was filed, one of the reasons for dismissal was that Clause in G.O., has not been challenged by the petitioner, and therefore, the instant writ petition has been filed.

8. Heard Mr.V.Govardhanan, learned counsel for the petitioner and perused the materials available on record.

Rural Development and Panchayat Raj (PR-II) Department, dated 14/9/2013, stating that bifurcation will come into effect only at the time of elections to local bodies to that election to local bodies has not been conducted in time. Nevertheless that would not give rise to cause of action, to challenge the said clause, after nearly five years. Merely because the general elections could not be held, that would not preclude the petitioner from challenging the clause, within a reasonable time. What is reasonable time has not been explained.

10. Laches or reasonable time are not defined under any Statute or Rules. "Laches" or "Lashes" is an old french word for slackness or negligence or not doing. In general sense, it means neglect to do what in the law should have been done for an unreasonable or unexplained length of time. What could be the laches in one case might not constitute in another. The laches to non-suit, an aggrieved person person from challenging the acquisition proceedings should be inferred from the conduct of the land owner or an interested person and that there should be a passive inaction for a reasonable length of time. What is reasonable time has not been explained in any of the enactment. Reasonable time depends upon the facts and circumstances of each case.

11. The words "reasonable time", as explained in **Veerayeeammal v. Seeniammal** reported in **2002 (1) SCC 134**, at Paragraph 13, is as follows:

"13. The word "reasonable" has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word "reasonable". The reason varies in its conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In other words it means, as soon as circumstances permit. In *P. Ramanatha Aiyar's The Law Lexicon* it is defined to mean:

"A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstances will permit; so much

time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than 'directly'; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea."

12 . The statement of law has also been summarized in **Halsbury's Laws of England, Para 911 , pg. 395** as follows:

"In determining whether there has been such delay as to amount to laches, the chief points to be considered are:

(i) acquiescence on the claimant's part; and
ii) any change of position that has occurred on the defendant's part.

Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches."

13. In **State of M.P. v. Bhailal Bhai** reported in **AIR 1964 SC 1006**, the Hon'ble Supreme Court held that it is not either unreasonable delay denies to the petitioner the discretionary extraordinary remedy of mandamus, certiorari or any other relief.

14. In **State of M.P., v. Nandlal Jaismal** reported in **1986 (4) SCC 566**, the Hon'ble Supreme Court, at **Paragraph 24**, held as follows:

"24. Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the 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 in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs the High Court in deciding whether or not to exercise such jurisdiction. We do not think it necessary to burden this judgment with reference to various decisions of this Court where it has been emphasised time and again that where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would decline to interfere, even if the State action complained of is unconstitutional or illegal.Of course, this rule of laches or delay is not a rigid rule which can be cast in a strait jacket formula, for there may be cases where despite delay and creation of third party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But, such cases where the demand of justice is so compelling that the High Court would be inclined to interfere in spite of delay or creation of third party rights would by their very nature be few and far between. Ultimately it would be a matter within the discretion of the court; ex hypothesi every discretion must be exercised fairly and justly so as to

promote justice and not to defeat it."

(emphasis supplied)

15. In **State of Maharashtra v. Digambar** reported in **AIR 1995 SC 1991**, the Hon'ble Supreme Court, considered a case, where compensation for the acquired land was claimed belatedly and at Paragraphs 12, 18 and 21, held as follows:

"12. How a person who alleges against the State of deprivation of his legal right, can get relief of compensation from the State invoking writ jurisdiction of the High Court under article 226 of the Constitution even though, he is guilty of laches or undue delay is difficult to comprehend, when it is well settled by decision of this Court that no person, be he a citizen or otherwise, is entitled to obtain the equitable relief under Article 226 of the Constitution if his conduct is blame-worthy because of laches, undue delay, acquiescence, waiver and the like. Moreover, how a citizen claiming discretionary relief under Article 226 of the Constitution against a State, could be relieved of his obligation to establish his unblameworthy conduct for getting such relief, where the State against which relief is sought is a welfare State, is also difficult to comprehend. Where the relief sought under Article 226 of the Constitution by a person against the welfare State is founded on its alleged illegal or wrongful executive action, the need to explain laches or undue delay on his part to obtain such relief, should, if anything, be more stringent than in other cases, for the reason that the State due to laches or undue delay on the part of the person seeking relief, may not be able to show that the executive action complained of was legal or correct for want of records pertaining to the action or for the officers who were responsible for such action not being available later on. Further, where granting of relief is claimed against the State on alleged unwarranted executive action, is bound to result in loss to the public exchequer of the State or in damage to other public interest, the High Court before granting such relief is required to satisfy itself that the delay or laches on the part of a citizen or any other person in approaching for relief under Article 226 of the Constitution on the alleged violation of his legal right, was wholly

justified in the facts and circumstances, instead of ignoring the same or leniently considering it. Thus, in our view, persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot get discretionary relief obtainable thereunder unless they fully satisfy the High Court that the facts and circumstances of the case clearly justified the laches or undue delay on their part in approaching the Court for grant of such discretionary relief. Therefore, where a High Court grants relief to a citizen or any other person under Article 226 of the Constitution against any person including the State without considering his blame-worthy conduct, such as laches or undue delay, acquiescence or waiver, the relief so granted becomes unsustainable even if the relief was granted in respect of alleged deprivation of his legal right by the State.

18. Laches or undue delay, the blame-worthy conduct of a person in approaching a Court of Equity in England for obtaining discretionary relief which disentitled for grant of such relief was explained succinctly by Sir Barnes Peacock, long ago, in *Lindsay Petroleum Co. v. Prosper Armstrong* (1874) 5 PC 221) thus :

"Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation, in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute or limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of

the acts done during the interval, which might affect either party and cause a balance of Justice or injustice in taking the one course or the other, so far as it relates to the remedy."

21. Therefore, where a High Court in exercise of its power vested under Article 226 of the Constitution issues a direction, order or writ for granting relief to a person including a citizen without considering his disentitlement of such relief due to his blameworthy conduct of undue delay or laches in claiming the same, such a direction, order or writ becomes unsustainable as that not made judiciously and reasonably in exercise of its sound judicial discretion, but as that made arbitrarily."

16. In **State of Rajasthan v. D.R. Laxmi** reported in 1996 (6) SCC 445, the Hon'ble Supreme Court observed that though the order may be void, if the party does not approach the Court within a reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner.

17. In **Larsen and Toubro Ltd., v. State of Gujarat** reported in 1998 (4) SCC 387, the Hon'ble Supreme Court held that a writ petition challenging the notifications issued under Sections 4 and 6 of the Central Act is liable to be dismissed on the ground of delay and laches, if the challenge is not made within a reasonable time.

18. In the case of **Government of W.B., v. Tarun K. Roy and Ors.**, reported in (2004) 1 SCC 347, Their Lordships considered delay as a serious factor and not granted any relief.

"The respondents furthermore are not even entitled to any relief on the ground of gross delay and laches on their part in filing the writ petition. The first two writ petitions were filed in the year 1976 wherein the respondents herein approached the High Court in 1992. In between 1976 and 1992 not only two writ petitions had been decided, but one way or the other, even the matter had been considered by this Court in **Debdas Kumar**. The plea of

delay, which Mr. Krishnamani states, should be a ground for denying the relief to the other persons similarly situated would operate against the respondents. Furthermore, the other employees not being before this Court although they are ventilating their grievances before appropriate courts of law, no order should be passed which would prejudice their cause. In such a situation, we are not prepared to make any observation only for the purpose of grant of some relief to the respondents to which they are not legally entitled to so as to deprive others there from who may be found to be entitled thereto by a court of law."

19. In **Chairman, U.P. Jal Nigam and another v. Jaswant Singh** reported in **AIR 2007 SC 924**, the Supreme Court, after considering a catena of decisions on the aspect of delay, at Paragraph 13, held as follows:

"13.Therefore, whenever it appears that the claimants lost time or while away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the Court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted."

20. Merely because this Court in W.P.No.19840 of 2018, dated 20/8/2018, observed that clause has not been challenged, that would not give rise to a further cause for challenging the above said clause, belatedly.

21. Earlier, in W.P.No.19840 of 2018, this Court had already taken note of the contents of G.O.Ms.No. 127, Rural Development and Panchayat Raj (PR-II) Department, dated 14/9/2013 and G.O.Ms.No.176 Rural Development and Panchayat Raj (PR-II) Department, dated 9/12/2013, wherein the Government of Tamil Nadu have made it clear that bifurcation would come into effect only at the time of elections. Reasons for delaying the elections would be the condition otiose, which this Court had

already considered.

22. For the reasons stated supra, **writ petition is dismissed.** No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

mvs/dm

To

1. The Secretary
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+1cc to Mr.V.Govardhanan, Advocate SR.NO.69342

+1cc to Government Pleader SR.NO.69455

VGII (CO)

sm:1.11.2018

W.P.No.26173 of 2018