

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 28980 of 2017
Date of decision: 19.03.2018

Khalil and others

....Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Ashok Kaushik, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

The petitioner seeks quashing of order dated 24.05.2017 (Annexure P-5) whereby, the Collector has held that the case is 55 years old and there was absence of record as to whether the land was acquired or not and it is possible that by negligence or mischief record was no longer available. The burden of proof that the land was not acquired was on the persons making the allegation and resultantly, the representation was rejected.

It is pertinent to notice that the relief claimed in the present writ petition under Articles 226 and 227 of the Constitution India is for grant of exemplary damages and mesne profits on account of illegal possession on the land of the petitioners for the last more than 45 years without adopting the procedure of acquisition and without giving compensation. It is alleged that the father of the petitioner being a land owner as well as *gair marusi* and in such case directions are sought for.

It is not disputed that it is the case of the petitioners themselves that the Irrigation Department of Haryana had constructed a minor/drain in

the year 1962-63 and taken alleged illegal possession at that point of time. Nothing has been placed on record that from 1962 onwards any representation was ever filed with the respondents. For the first time, CWP No. 24467 of 2016 came to be filed before this Court wherein also, this fact was noticed that the competent authority had not been approached. However, a concession as such was granted to the petitioners that they could file an appropriate representation within a period of 3 weeks and the Collector would decide the same. It is in such circumstances, the Collector has rejected the claim. The petitioner has relied upon the judgment in ***CWP No. 10221 of 2011, Rashid and others vs. State of Haryana and others***, decided on 05.08.2011 to submit that in similar circumstances, directions were issued to pass an award and even costs were imposed in absence of the award. A perusal of the judgment would go on to show that it is a case where the land had been put to public use and the proceedings initiated under Sections 4 and 6 of the Act were allowed to lapse and no award was passed.

In the present case, the Collector has noticed that the record could not be received from the office of the Land Acquisition Officer at Patiala, Ambala and Bhiwani from Irrigation Department. It is in such circumstances, he came to the conclusion that it could be possible that the record could have been not made available on account of negligence or by mischief. The fact that there was such old infrastructure in place and on that basis land had been utilized and whether it was with consent at that point of time on account of infrastructure being put in place and it would be beneficial to the land owners that the representation has been rejected. It is settled principle that the law is for the vigilant and not for those who sleep

over their rights. A period of more than half a century has gone by. As noticed, at no point of time the petitioners or the predecessors-in-interest agitated their cause which has now been alleged.

The Hon'ble Apex Court in ***Pundlik Jalam Patil (D) by LRs. vs. Exe. Eng. Jalgaon Medium Project and another, 2009 (1) PLR 128*** has observed as under:-

“14.....The applicant having set the machinery in motion cannot abandon it to resume it after number of years because the authority with whom it had entered into correspondence did not heed to its request to file appeals. The question is : Can the respondent/applicant in this case take advantage of its negligence, after lapse of number of years, of the decision of Government? It knew the exact grounds on which appeals could have been preferred. The law will presume that it knew of its right to file appeal against the award. Everybody is presumed to know law. It was its duty to prefer appeals before the court for consideration which it did not. There is no explanation forthcoming in this regard. The evidence on record suggest neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and `do not slumber over their rights.’

xxx xxx xxx xxx

18. Shri Mohta, learned senior counsel relying on the decision of this court in *N. Balakrishnan vs. M. Krishnamurthy* [(1998) 7 SCC 123] submitted that length of delay is no matter, acceptability of explanation is the only criterion. It was submitted that if the explanation offered does not smack of mala fides or it is not put forth as part of dilatory tactics the court must

show utmost consideration to the suitor. The very said decision upon which reliance has been placed holds that the law of limitation fixes a life span for every legal remedy for the redress of the legal injury suffered. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of Limitation is thus founded on public policy. The decision does not lay down that a lethargic litigant can leisurely choose his own time in preferring appeal or application as the case may be. On the other hand, in the said judgment it is said that court should not forget the opposite party altogether. It is observed:

It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.”

Though the State should not take the plea of adverse possession but even under The Limitation Act, 1963 a period is prescribed of 30 years by which they can claim a right of possession becoming absolute.

In such circumstances, merely by serving a representation and approaching this Court and getting a direction that the respondents were to decide the representation would not revive a cause of action.

In ***State of Orissa v. Arun Kumar Patnaik*, (1976) 3 SCC 579**, it has been opined that making of repeated representations is not a satisfactory explanation of delay and the said principle was reiterated in ***State of Orissa v. Pyarimohan Samantaray* (1977) 3 SCC 396**

In Bharat Sanchar Nigam Limited v. Ghanshyam Dass (2)

and others, 2011 (2) S.C.T. 712 : (2011) 4 SCC 374, a three-Judge Bench Court reiterated the principle stated in *Jagdish Lal v. State of Haryana, 1998 (1) S.C.T. 26 : (1997) 6 SCC 538*, and proceeded to observe that as the respondents therein preferred to sleep over their rights and approached the tribunal in 1997, they would not get the benefit of the order dated 7.7.1992.

In *State of T.N. v. Seshachalam, 2007 (4) S.C.T. 472 : (2007) 10 SCC 137*, this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus:-

“...filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.”

Though there is no period of limitation for the Courts to exercise their powers under [Article 226](#) nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be sound and wise exercise of discretion to refuse to exercise its extraordinary powers under [Article 226](#) in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters.

It is further to be noticed that the land falls in Palwal and in the year 1962, it was one of the most backward areas and was not even a district and the market value of the land in question at that point of time would have been paltry. These are sufficient reasons for this Court to hold that the attempt to raise a dispute at this point of time is totally misconceived and an effort to enrich at the costs of the State and to get award at the prevalent rate

in view of the developments which have taken place around the National Capital Region.

Accordingly, keeping in view the cumulative factors, this Court is of the opinion that no cause of action as such arises to call upon the other side for the payment of compensation in the peculiar facts and circumstances and the writ petition is dismissed in limine.

19.03.2018 shivani	(G.S. SANDHAWALIA) JUDGE
Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No