

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No. 4789 of 1996****Reserved on : 02/08/2019****Delivered on : 25/09/2019**

1. Rajendra Kumar Chandel S/o Shri Ramnath Chandel, Agriculturist.
2. Anil Kumar Chandel S/o Shri Ramnath Chandel, Service.
3. Naveen Kumar Chandel S/o Shri Ramnath Chandel, Shopkeeper.
4. Praveen Chandel S/o Shri Ramnath Chandel, Service.

All resident of Village - Baniyapara, Ratanpur, Tahsil-Kota, Distt. -
Bilaspur.

----- Petitioners**Vs.**

1. State of Madhya Pradesh (Now Chhattisgarh) through : Secretary,
Department of Revenue, Vallabh Bhawan, Bhopal
2. The Collector, Bilaspur.
3. Sub Divisional Officer (Revenue)- Cum- Land Acquisition Officer, Sub
Division, Kota, Bilaspur
4. The Managing Trustee/Secretary Siddha Shakti Pith, Shri Mahamaya
Mandir Trust, Ratanpur, Tahsil-Kota, District – Bilaspur.

-----Respondents

For Petitioner	:	Mr. Manish Upadhyay, Advocate
For State	:	Ms. Sunita Jain, G.A.
For Respondent No.4	:	Mr. Sourabh Sharma, Advocate

Hon'ble Shri Justice P. Sam Koshy**CAV Order**

1. The present writ petition has been filed on 19.11.1996 claiming for
following reliefs :-

- (i) This Hon. Court may be pleased to send for the entire records from the possession of the respondents leading to the issuance of the impugned notifications and notice, for its kind perusal ;
- (ii) This Hon. Court may kindly be pleased to issue a writ in the nature of certiorari quashing the impugned notifications (Annexure P/2 & P/3) and the notice (Annexure P/4) and declare the same as void and inoperative;
- (iii) This Hon. Court may kindly be pleased to issue a writ in the nature of mandamus for bearing the respondents from in any manner interfering the peaceful possession of the petitioner ;
- (iv) any other relief, though just and proper.
- (v) Costs of the petition.

2. The contention of the petitioner No. 1 & 2 is that they are joint owner of the land bearing Khasra No. 3359/4 measuring 1.50 acre area and petitioner No. 3 & 4 are the joint owner of land bearing Khasra No. 3359/3 measuring 1.50 acre area and also land bearing Khasra No. 3358/01 measuring 1.08 acre area situated at village Ratanpur, District Bilaspur. The respondent No. 1 to 3 in order to facilitate respondent No. 4 for organizing Melas and Bazar initiated proceedings for acquisition of land adjacent to the Mahamaya Devi Temple. According to the petitioners, they have the Bhoomi Swami right over the aforementioned land which also came under acquisition proceedings initiated by respondent No. 1 to 3. According to the petitioners, they came in possession of the land by virtue of a registered sale deed duly executed and petitioners came in possession of the same and on which they also were carrying on

agricultural activities and they are still in possession of the said agricultural land.

3. It is the acquisition proceedings which have been initiated by the respondents which is under challenge in the present writ petition. The writ petition was filed as early as on 19.11.1996. The matter came up for hearing before the Bench on 18.02.1997 and this Court vide its order dated 18.02.1997 directed the parties to maintain status quo until further orders. Respondent No. 4 on 16.05.1995 is said to have written a letter to the respondent No. 3 requesting respondent No. 3 for acquiring certain piece of land in public interest for the respondent No. 4 to conduct Mela and to hold Bazar. The request of the respondent No. 4 was processed by respondent No. 3 and was placed before respondent No. 2 for issuance of proper notification as is required under Land Acquisition Act, 1894. Hereinafter, referred as 'Act of 1894'. Respondent No. 2 thereafter issued a notification under Section 4(1) of the Act on 21.07.1995 which was published in the official gazette on 25.08.1995 (Annexure P-2). Later on, respondent No. 2 again issued notification under Section 6 of the Act on 23.08.1995 which was published in the official gazette on 08.09.1995.
4. Thereafter, the State published Section 9 notification on 15.11.1995 by the order of the Sub-Divisional Officer. The instant writ petition was filed on 19.11.1996 i.e. after a period of more than one year from the final publication of the award under Section 9. The challenge to these proceedings was on the ground that the Section 4(1) notification itself is bad in law for the reason that it required the specific details and the locality in its notification. According to the

petitioner in the instant case, the locality part is missing and in the absence of the locality being mentioned, the notification under Section 4(1) of the Act becomes untenable.

5. The counsel for the petitioner relied upon the judgment passed by the Hon'ble Supreme Court in the case of **“Om Prakash Sharma and Others vs. M.P. Audyogik Kendra Vikas Nigam and Others” 2005(10) SCC 306** and **“Narendrajit Singh & Anr. vs State Of U.P. & Anr.” 1970(1) SCC 125**.
6. The second ground of challenge is to the manner in which Section 6(1) notification was issued. According to the counsel for the petitioner, the Section 6(1) notification was published on 08.09.1995 i.e. in only around 14 days time, thus it is in violation to the mandatory requirement of law. According to the petitioner, before issuance of the notification under Section 6(1), the respondents ought to have granted the minimum time required after publication of Section 4 notification. According to the petitioner, in the absence of giving sufficient time for filing of an objection, the very purpose of calling for objection under Section 5(a) gets defeated. The further contention of the petitioner is that Section 9 notification has been issued by the Sub-Divisional Officer who is not competent to issue the same as the same ought to had been issued by the Collector alone and not by anybody else. There has been no delegation permissible in this regard.
7. The provisions of Section 6(1) is one which could be passed only after the report, if any, submitted under Section 5(a). Further it was

contended that the acquisition proceedings is bad for the reason that the acquisition was not for any public purpose and it was also not acquired for any public purpose of the State Government, but was being acquired at the behest of a private Trust. It was also the contention of the petitioner that even otherwise holding of a Mela or a Market by a Trust cannot be brought within the ambit of a public purpose. According to the petitioner, the purpose for which the land was being acquired does not fall within any of the categories referred to under Section 3(f) of the Land Acquisition Act. Since it is not a project of the State Government, nor does any document show any particular scheme on the basis of which the acquisition proceedings have been initiated, the acquisition proceedings deserve to be quashed.

8. According to the petitioner, the manner in which the alleged position is said to have been taken is also not, as is prescribed or required under the Land Acquisition Act and therefore, the taking of possession proceedings also is unsustainable. According to the petitioner, the entire stretch of land is still in possession of the petitioner and this Court has, as it is ordered for maintaining status-quo as early as on 18.02.1997 and therefore the proceedings may be quashed, so far as the petitioner's lands are concerned. It was further the contention of the petitioner is that as of now there is no requirement of the said land for the respondent No.4 as it is in surplus. Thus, for all the aforesaid reasons, the petitioner prayed for quashment of the acquisition proceedings particularly in respect of the land owned by the petitioner.

9. Learned counsel appearing for the respondent No.4, the beneficiary of the acquisition proceedings, opposing the petition questioned the locus of the petitioners. According to the respondent No.4, the petitioners No.1,2&4 are not the recorded land owner of the acquired land and since they were not the recorded land owners, the petitioners No.1,2 & 4 do not have any locus to file the present writ petition and the petition therefore is not maintainable. According to him, it is only the petitioner No.3 who is the recorded owner of the land and that the extent of land in his name is only 71 decimal. Therefore, since the petitioner does not have land beyond that 71 decimal, of which the recorded owner is the petitioner No.3, the remaining land would be out of the scope of the judicial review by this court in this writ petition.
10. According to respondent No.4, the petition also was not maintainable for the reason that firstly the writ petition has been filed at an inordinate late stage, inasmuch as, Section 4 notification was issued on 21.07.1995, Section 6 notification was issued on 23.08.1995 and Section 9 notice was issued on 08.09.1995 and the writ petition has been filed only in November 1996. It is also the contention that though the writ petition was filed in November, 1996 and the challenge in the writ petition was only to Sections 4,6 and 9 notification when the writ petition was filed whereas, by that time, the award under the Land Acquisition Act itself had been passed which the petitioner did not think it proper to challenge and therefore, the writ petition deserves to be rejected as the final award having been passed was not under challenge.

- 11.** It is further the contention of the respondents that since the writ petition so far as petitioners No.1,2 & 4 is not sustainable and the land belonging to the petitioner No.3 is only 71 decimal, applying the doctrine of de-minimization, the petitioner does not have grievance which could be questioned through the present writ petition, particularly when there is no other challenge by any person to the entire acquisition proceeding made in public interest. Further, the purpose for acquisition was for the convenience of the general public at large particularly the devotees who come to the famous Mahamaya Temple, a temple dedicated to Goddess Laxmi and Saraswati and is one of the 52 Shakti Peeths which was built in 12-13 Century. Large number of devotees visit this temple every day and large number of devotees gather on auspicious days and for the convenience of the devotees and for accommodating this large number of devotees the land was required for the purpose of holding Mela and Bazar.
- 12.** It was further contended that the respondent No.4 is a charitable institution and the land was being used for charitable purpose and was not with a motive of making profit.
- 13.** So far as objection of Section 9 notice being issued by the SDM is concerned, the contention of the respondents was that the State Govt. have issued a notification way back in the year 1987 itself delegating the powers of the Collector to the concerned SDM and therefore, the said objection raised by the petitioners would not be sustainable.
- 14.** The counsel for respondents together have also opposed the

application for amendment which was moved by the petitioners as late as on 22.08.2017 seeking amendment for challenging the final award dated 31.07.1996. According to respondents, the amendment application deserves to be rejected so also the petition, as firstly the amendment application is being filed after about 21 years from the date the final award was passed and secondly the very nature of the writ petition itself would get changed if the amendment application is allowed.

15. It was lastly contended by the respondents that since the possession part has never been challenged and the acquisition being for a large chunk of land, it is always a token possession which is taken and while taking the possession Panchnama have been prepared and the property stood delivered to the respondent No.4 and thus since the final award itself was passed as early as on 31.07.1996, the possession also having taken place immediately, the petitioner as such having not challenged the final award in the writ petition which was filed even after more than one year from the date of final award, the whole writ petition deserves to be rejected on this ground alone.

16. The counsel for the respondents relied upon the judgments in cases of Bandha Development Authority Vs. Motilal Agrawal, 2011(5)SCC 394, Municipal Council, Ahmednagar and Anr. Vs. Shah Hyder Beig and Ors., 2000 AIR SCW 197, Municipal Corporation, Indore and Anr. Vs. Retd. Col. Anil Kar & Anr. 2003(3)MPLJ 379, Bajirao T. Kote & Anr. Vs. State of Maharashtra & Ors. 1995 (2)SCC 442, K. Ankaiah & Ors. Vs. Government of Andhra Pradesh &

Ors., 1969 AIR AP 231 and A.P. Industrial Infrastructure Corporation Ltd. Vs. Chinthamaneni Narasimha Rao & Ors., 2011 AIR SC 3558.

17. Having heard the contentions put forth by the counsel appearing for all the parties, it would be relevant at this juncture to take note of the relief sought for by the petitioners which has been reproduced at paragraph-1 of this order. For the purpose of adjudicating upon the relief sought for by the petitioners, it would be relevant to take note of some of the relevant dates of the land acquisition proceedings.
18. The proceeding under the Land Acquisition Act started in the year 1995. Firstly, Section 4 notification was issued on 21.07.1995. Later on, Section 6 notification was issued on 23.08.1995 and the notice under Section 9 was issued on 08.09.1995. Till now, there was no objection by the petitioners to any of the land acquisition proceedings initiated neither did the petitioners challenge either Section 4 or Section 6 before any competent Court of law. Since there was no objection whatsoever on behalf of the petitioners neither was there any challenge to the proceedings at that point of time, the respondents finally passed the award on 31.07.1996. In spite of final award under Section 11 having been passed on 31.07.1996, the petitioners did not care to promptly challenge the final award before any competent court of law.
19. The present writ petition was filed on 19.11.1996. If we read the relief clause of the writ petition, it would clearly reflect that the final award is not under challenge in the present writ petition. The High Court having entertained the writ petition and the respondent State

having been issued with notice, they entered appearance and filed their reply as early as on 28.04.1998. After the final award was passed, the respondent no.4 has also deposited the entire amount of compensation awarded by the Land Acquisition Officer.

20. The State counsel in a very categorical terms has taken an objection that the final award itself having been passed, the writ petition challenging Sections 4, 6 & 9 notifications is not maintainable. Respondent no.4 i.e. the beneficiary from the land acquisition proceedings had in fact filed reply earlier to the reply filed by the State and in the said reply also respondent no.4 had taken the ground that it is not maintainable as the final award passed on 31.07.1996, by efflux of time, has attained finality and has become conclusive. In spite of the specific objection being raised by the State as well as the beneficiary, the petitioners did not think it fit to challenge the final award and now at the final hearing stage, the petitioners, after 21 years, have filed the application for amendment of the petition to the extent of challenging the final award dated 31.07.1996.

21. It would be relevant at this juncture to take note of a few decisions under the land acquisition proceedings dealing on the aspect of limitation. The Supreme Court in the case of **Municipal Council, Ahmednagar and another Vs. Shah Hyder Beig and others** reported in (2000) 2 SCC 48 in paragraph-14 held as under:

“14.It is now a well-settled principle of law and we need not dilate on this score to the effect that while no period of limitation is fixed but in the normal course of events, the period the party is required for filing a civil proceeding ought to be the guiding factor. While it is true

that this extraordinary jurisdiction is available to mitigate the sufferings of the people in general but it is not out of place to mention that this extraordinary jurisdiction has been conferred on to the law courts under Article 226 of the Constitution on a very sound equitable principle. Hence, the equitable doctrine, namely, “delay defeats equity” has its fullest application in the matter of grant of relief under Article 226 of the Constitution. The discretionary relief can be had provided one has not by his act or conduct given a go-by to his rights. Equity favours a vigilant rather than an indolent litigant and this being the basic tenet of law, the question of grant of an order as has been passed in the matter as regards restoration of possession upon cancellation of the notification does not and cannot arise.”

22. Similar view was taken by the Supreme Court in the case of **Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. Pvt. Ltd. & others** reported in (1996) 11 SCC 501 where in paragraph-29 it has been held as under:

“It is thus well settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification under Section 4(1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. 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 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. ”

23. In **2011 AIR SCW 5047** in the case of **A. P. Industrial Infrastructure Corporation Ltd. Vs. Chinthamaneni Narasimha Rao and others**, the Supreme Court in paragraphs 10 to 12 has held as under:

“10. We see no reason for the land owners to wait for a few years for challenging the declaration made under Section 6 of the Act on the ground of delay. If the land owners had been really aggrieved, they ought to have challenged the proceedings immediately after declaration made under Section 6 of the Act.

11. This Court has held in several judgments that if the land owners are aggrieved by the acquisition proceedings, they must challenge the same at least before an award is made and the possession of the land in question is taken by the government authorities.

It has been held in *Swaika Properties (P) Ltd. & Another vs. State of Rajasthan & Others* [(2008) 4 SCC 695] as under:

"6. This Court has repeatedly held that a writ petition challenging the notification for acquisition of land, if filed after the possession having been taken, is not maintainable. In *Municipal Corpn. of Greater Bombay v. Industrial Development Investment Co. (P) Ltd.* (1996) 11 SCC 501 where K. Ramaswamy, J. speaking for a Bench consisting of His Lordship and S.B. Majmudar, J. held: (SCC p. 520, para 29)

"29. It is thus well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt,

discretionary powers under Article 226 of the Constitution to quash the notification under Section 4(1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. 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."

Similarly, in the case of *State of Rajasthan & Ors. vs. D.R. Laxmi & Ors.* [(1996) 6 SCC 445] following the decision of this Court in the case of *Municipal Corporation of Greater Bombay (supra)* it was held :

".... 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."

To the similar effect is the judgment of this Court in *Municipal Council, Ahmednagar & Another vs. Shah Hyder Beig & Ors.* [(2000) 2 SCC 48] wherein this Court, following the decision of this Court in *C. Padma and Others vs. Dy. Secy. to the*

Govt. of T.N. and Others [(1997)2 SCC 627] held: (Shah Hyder case SCC p. 55, para 17)

"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. Dy. Secy. to the Govt. of T.N. [(1997) 2 SCC 627]...."

12. Therefore, we are not referring to the other judgments, which have been cited by the learned counsel on the subject of validity of declaration made under Section 6 of the Act for the reasons that we are convinced that there was gross delay in challenging the validity of the acquisition proceedings."

24. In view of the aforesaid legal pronouncements as it stands so far as the proceedings of land acquisition under the Land Acquisition Act, 1894 when these legal pronouncements are taken note of keeping in view the relevant dates which have been mentioned in the preceding paragraphs so far as the initiation of the land acquisition proceedings in the year 1995, Section 4 notification being issued on 21.07.1995, Section 6 notification also being issued on 23.08.1995 and the writ petition being filed on 09.11.1996 i.e. after more than a year coupled with the fact that in the writ petition the challenge is only to Sections 4 & 6 notification and by the time the writ petition was filed, the final award under Section 11 was already passed but for reason best known the same was not challenged, at the final hearing stage the petitioners cannot after 21 years be granted permission to amend the petition. Since the right was available to the petitioners since

November, 1996 onwards and the petitioners also did not take prompt step in spite of specific objection being raised by the contesting respondents in their reply which itself was filed about 20 years back, the amendment application deserves to be rejected and it is ordered accordingly.

25. At the same time, the writ petition preferred by the petitioners also deserves to be and is accordingly rejected on the ground of delay laches.

26. The writ petition accordingly stands dismissed.

**Sd/-
P. Sam Koshy
Judge**