

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

W.P.A. 4165 of 2018

**Himangshu Mallick & Anr.
Vs.
The State of West Bengal & Ors.**

For the Petitioner: Mr. Avijit Sarkar, Adv.,

For the KMDA: Mr. Satyajit Talukdar, Adv.
Mr. A. Sarkar, Adv.,

For the State: Mr. Ayan Banerjee, Adv.,

Hearing Concluded on: 02.02.2022

Date: 09.02.2022

SUVRA GHOSH, J. :-

1. The grievance of the petitioners is hereunder:-

Land acquisition proceedings was initiated by the sixth respondent in the year 1971 on behalf of the then requiring authority Calcutta Improvement Trust and premises no. 351, Prince Anwar Shah Road, Kolkata comprising land measuring 2 Cottah 10 Chittacks and 36 Sq.ft was acquired for widening of Prince Anwar Shah Road and award was declared on 9th January, 1979 in favour of the predecessor-in-interest of the petitioners. The said predecessor-in-interest sent a reference petition before the sixth

respondent for enhancement of compensation which was registered as C.I.T. Case No. 30 of 1989 (valuation) before the second respondent. By an order dated 3rd January, 1995 the second respondent disposed of the case by modifying the award dated 9th January, 1979. After demise of the predecessor-in-interest, the petitioners have stepped into her shoes and are therefore claimants to the modified award decided by the second respondent.

2. Learned counsel for the petitioners who was conducting the reference case before the Tribunal expired on 20th September, 2015 and the petitioners rested on assurance that they would be informed as and when the award money would be deposited by the sixth respondent before the office of the second respondent. Despite direction of the Tribunal to make payment of the award amount within three months from the date of order, no such amount was deposited. As no compensation was paid to the petitioners in terms of the award, the petitioners issued notice upon the concerned authority through their learned advocate demanding such compensation, but to no effect. Learned counsel appearing on behalf of the petitioners has submitted that non payment of compensation to the petitioners amounts to violation of fundamental rights of the petitioners and as such, the prayer of the petitioners should not be turned down merely on the ground of delay in filing the writ petition. The petitioners were prevented from taking necessary steps before the concerned authority or filing the writ petition earlier due to sufficient cause and have been deprived of their legitimate claim by the authority for about 23 years.

3. The petitioners have prayed for a direction upon the concerned respondents to disburse the compensation amount in their favour in terms of the modified award dated 3rd January, 1995 with immediate effect.
4. Learned counsel for the petitioners has relied upon the following authorities in support of his contention.
 - I. Asmaboo Kurban Hossain & Ors. v/s. Province of Bengal reported in AIR 1942 Cal 569.
 - II. Govinda Reddy & Ors. v/s. Revenue Divisional passed by the Andhra Pradesh High Court on 1st September, 1997.
 - III. Bhamidipati Annapoorna Bhavani v/s. Land Acquisition Officer, Yeteru reported in AIR 2005 AP 635.
 - IV. Tukaram Kana Joshi & Ors. thr. Power of Attorney Holder v/s. MIDC by the Hon'ble Supreme Court in Civil Appeal No. 7780 of 2012.
 - V. Smt. Sudama Devi v/s. Commissioner And Ors. reported in AIR 1983 SC 653.
 - VI. D.B. Basnett (D) Through LRs v/s. The Collector East District, Gangtok, Sikkim & Anr. passed by the Hon'ble Supreme Court in Civil Appeal No. 196 of 2011.
5. In refuting the contention of the petitioners, learned counsel for the answering respondents has submitted that as per section 77 (2) of the

Calcutta Improvement Act, 1911 the award of the Tribunal for payment of money shall be enforced by the Court of Small Causes, Calcutta as if it were a decree of that Court. According to learned counsel, no step was taken by the petitioners for execution of the award granted by the Tribunal for the last 23 years and such delay and laches on the part of the petitioners have not been properly explained. Article 136 of The Limitation Act, 1963 provides for execution of money decree within 12 years from the date thereof. The prayer of the petitioners, in substance, is for execution of the award/decreed of the Tribunal and the writ petition cannot be entertained on two fold grounds: - Firstly, as the inordinate delay in filing the writ petition has not been explained and secondly, as the petitioners have failed to take steps for execution of the award in accordance with section 77 (2) of the Act of 1911 within the stipulated period. In support of his contention, learned counsel has placed reliance on the authorities in *Banda Development Authority, Banda v/s. Motilal Agarwal and Ors.* reported in (2011) 5 SCC 394, *State of Maharashtra v/s. Digambar* reported in (1995) 4 SCC 683 and an unreported judgment passed by a coordinate Bench of this Court on 8th September, 2017 in writ petition no. 524 of 2010.

6. I have considered the submission made on behalf of the parties.
7. The sum and substance of the relief claimed by the petitioners is payment of compensation in terms of the modified award passed by the Calcutta Improvement Tribunal on 3rd January, 1995. In view of the provisions laid down under section 77(2) of the Calcutta Improvement Act, 1911 such

award shall be enforced by the Court of Small Causes, Calcutta as if it were a decree of that Court. The said proposition of law is endorsed in the judgment in Asmaboo Kurban Hossain and Ors. (supra). Admittedly no step was taken by the petitioners before the Court of Small Causes, Calcutta for execution of the award impugned.

8. The writ petition was filed in 2018, i.e. after about 23 years of the award. In explaining such inordinate delay, learned counsel for the petitioners has submitted that learned advocate who conducted the case before the Tribunal expired on 20th September, 2015 and also, the Tribunal was not functioning regularly for several months for which the petitioners were prevented from taking necessary steps before the Tribunal.
9. Record reveals that the award was passed on 3rd January, 1995 whereas learned advocate conducting the case on behalf of the petitioners before the Tribunal expired on 20th September, 2015. No reasonable explanation has been given by the petitioners as to what prevented them from pursuing the matter during the entire period of 23 years before approaching this Court under Article 226 of the Constitution of India, or even during the lifetime of learned advocate conducting the case before the Tribunal. This Court is also not convinced that the Tribunal was not functioning regularly for the entire period of 23 years.
10. As observed by the Hon'ble Supreme Court in the authority in Banda Development Authority, (supra), "It is true that no limitation has been prescribed for filing the petition under Article 226 of the Constitution but

one of the several rules of self-imposed restraint evolved by the superior Courts is that the High Court will not entertain petitions filed after long lapse of time because that may adversely affect the settled/crystallised rights of the parties. If the writ petition is filed beyond the period of limitation prescribed for filing a civil suit for similar cause, the High Court will treat the delay unreasonable and decline to entertain the grievance of the petitioner on merits. delay in filing the writ petition should be viewed seriously and relief denied to the petitioner if he fails to offer plausible explanation for the delay.” The said proposition of law has been endorsed by the Hon’ble Supreme Court in the judgment in State of Maharashtra (supra). Learned counsel for the petitioners has tried to impress upon the court that the judgments relied upon by the respondents are with regard to acquisition of property and have no bearing with the present case.

11. True, these judgments deal with facts relating to acquisition of land. But at the same time, exercise of power by the High Court vested under Article 226 of the Constitution of India with regard to disentitlement of the petitioner to grant of relief due to his blameworthy conduct of undue delay and laches in claiming the same has been dealt with in the said judgments and the ratio decidendi therein is applicable to the case in hand.
12. In a land mark judgment pertaining to Indore Development Authority v/s. Manoharlal and Ors. reported in (2020) 8 Supreme Court Cases 129, the Hon’ble Supreme Court has dealt with the issue regarding delay and laches in presenting a writ petition and has held that the writ court will not go into

stale demands after lapse of years. In the language of the Hon'ble Supreme Court, "The doctrine of laches would always preclude an indolent party, who chooses not to approach the court, or having approached the Court, allows an adverse decision to become final....."

13. In the judgment in Govinda Reddy & Ors (supra) the Andhra Pradesh High Court has declined the prayer of the petitioners as the petitioners had the option of filing execution petition for executing the award passed. In the present case such option was not utilised by the petitioners and as such, the ratio of the said judgment is not applicable in the facts and circumstances of the present case. Similarly, in the judgment of Bhamidipati Annapoorna Bhavani (supra) the Hon'ble Supreme Court has observed that though availability of alternative efficacious statutory remedy itself is not a bar in entertaining a writ petition, resort to the alternative remedy of taking out execution proceedings should be taken first and in case of any delay caused by the authorities, the writ petition can be filed. The judgments in Tukaram Kana Joshi & Ors (supra) and Smt. Sudama Devi (supra) deal with the discretionary power of the Court in condoning delay in filing writ petition. There is no quarrel with the proposition of law that delay and laches in claiming relief in a writ petition can be condoned by the Writ Court upon plausible explanation being offered by the petitioners. Unfortunately the explanation sought to be given by the petitioners in this case is far from satisfactory.

14. The law laid down by the Hon'ble Supreme Court in D.B. Basnett (D) through LRs (supra) with regard to right to property has been placed

reliance on by the petitioners. But the said judgment does not govern the case of the petitioners as the petitioners sat over the award passed in their favour on 3rd January, 1995 and woke up from slumber only after a period of 23 long years.

15. No convincing explanation being offered by the petitioners justifying the inordinate delay in preferring the writ petition, this Court is left with no alternative but to hold that the cause of action accrued to the petitioners upon grant of the award impugned has extinguished by lapse of time and as such, the stale demand of the petitioners cannot be entertained by this Court in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. In view of the above, this Court is of the view that the petitioners are not entitled to any relief in this writ petition and the writ petition is liable to be dismissed.

16. Accordingly, the writ petition being W.P.A. 4165 of 2018 is dismissed.

17. There shall however be no order as to costs.

18. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)