



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 3078/2020

- PETITIONERS:**
- 1] Mohd. Vali s/o Sadiqbhai Vali,
Aged about 75 years, Occu: Business,
R/o 6, Mount Road, Sadar, Nagpur.
 - 2] Nargis Shakir Vali d/o Sadiqbhai Vali,
Occu: Business, Aged about 84 years,
R/o Shanti Nagar, Kangi House
Chowk, Nagpur.
 - 3] Zulekha Iqbal Daud w/o Iqbal Daud,
Aged about 83 years, Occu: Business,
R/o Shantinagar, Kangi House Chowk,
Nagpur.
 - 4] Fatima Shamoon Mamnoon w/o
Shamoon Mamnoon,
Aged about 77 years, Occu: Business,
R/o 6 Mount Road, Shantinagar, Kangi
House Chowk, Nagpur.
 - 5] Zoheb s/o Sadiqbhai Vali,
Aged about 67 years, Occu: Business,
R/o 6 Mount Road, Sadar, Nagpur.

...V E R S U S...

- RESPONDENTS**
- 1] Western Coalfields Ltd., through its
Managing Director, Coal Estate, Civil
Lines, Nagpur.

- 2] Sub Area Manager, Bhanegaon
Singhori Project, Sub-Area,
Post Sillewada Project Tah. Saoner,
District Nagpur.
- 3] Chief General Manager,
Western Coalfields Ltd., Nagpur Area,
Jaripatka, Nagpur.

Mr. Prakash D. Meghe, counsel for the petitioners.

Mr. C.S. Kaptan, Senior Counsel assisted by Mr. R.H.
Chandurkar, counsel for respondent Nos. 1 to 3.

CORAM : **AVINASH G. GHAROTE &**
URMILA JOSHI-PHALKE, JJ
DATE OF DECISION : **13/09/2023**

JUDGMENT : (PER : URMILA JOSHI-PHALKE, J)

1. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties.

2. The challenge is to the impugned communication dated 29/02/2020 issued by the Respondent No.2/Sub-Area Manager, Bhanegaon Singhori Project, rejecting the claim of enhanced compensation to the petitioners and seeking directions to pay compensation. The petitioners were the owners of agricultural lands as follows:

Sr. No.	Land Survey No./Khasra	Admeasuring
a)	11	0.81 H.R. of Land
b)	14	4.17 H.R. of Land
c)	16	1.02 H.R. of Land
d)	17	1.96 H.R. of Land.

The total area admeasuring 7.96 H.R. land is situated in Mouza Beena, Tah. Kamptee, District Nagpur. The Government of India issued a notification on 01/07/2000 under Section 4 of the Coal Bearing Areas Acquisition and Development Act 1957 (for short 'the Act of 1957') for the acquisition of lands.

3. By the said notification, the total area of land admeasuring 4.66 Hectors of land of village Mouza Beena and Bhanegaon were intended to be acquired for the purpose of Bhanegaon Open Cast Project. On 14/05/2004, a notification under Section 9 of the Act of 1957 for acquisition of land was issued, which was published in the Government Gazette on 29/05/2004. By the said notification under Section 9, the land was vested with the Central Government under the provision of Section-11 of the Act of 1957, and consequently the land was vested with Western Coalfields Limited i.e. the Respondent No.2/Sub-Area Manager, Bhanegaon. At the relevant time, the Rehabilitation and Resettlement Policy, 2002 was in force. The Policy, permitted

one employment against the land, if acquired area is 1.21 H.R. land, however, the petitioners opted for compensation in lieu of employment. In view of the Policy, the petitioners were entitled for compensation of Rs. 1,00,000/- for the first acre of land, for the second and third acres of land amount of Rs. 75,000/- per acre, and Rs. 50,000/- per acre for fourth acre onwards. The petitioners had accepted the amount of compensation under protest of Rs. 10,83,450/-. Petitioner No.5, who was the power of attorney holder for all the petitioners issued the letter on 28/09/2006, while handing over the possession and accepted the amount under protest. Subsequently, respondent No.1 adopted the Rehabilitation and Resettlement Policy of Coal India Ltd. 2012 (for short, 'the R. and R. Policy, 2012') published by Coal India Limited.

4. On the basis of the said Policy, the respondents calculated the amount of compensation, in lieu of employment against the number of land holders in the year 2015, and compensation was paid to them. The adjacent land owner of the petitioners, who were residents of Mouza-Beena received compensation as per the R. and R. Policy, 2012. The villagers, who received the compensation under the Policy of 2002, in view of the R. and R. Policy, 2012 received enhanced compensation, whose land was acquired by the same notification by which the land of the petitioners was acquired. Though the petitioners approached to the respondents and claimed compensation, being similarly

situated but respondents have not paid any heed to it, and have not paid the compensation. The claim of some of the villagers for grant of enhanced compensation as per the R. and R. Policy, 2012 was not considered by the respondents therefore, they approached this Court, and this Court allowed the petition and directed the respondents to pay the compensation. The respondents challenge the same by preferring the Special Leave Petition bearing Stamp No. 11499-11500/2017 which was dismissed by the Apex Court on 23/10/2019.

5. As per the contention of the petitioners, the petitioners are similarly situated and entitled for compensation, in view of the R. and R. Policy, 2012. The respondents refused the claim of the petitioners by issuing the impugned communication dated 29/02/2020 and immediately thereafter, the petitioners approached this Court. By this petition, the petitioners contended that refusal by the respondents to grant compensation at the enhanced rate to the petitioners is illegal and liable to be quashed and set aside.

6. The respondents opposed the petition on the ground that the petitioners had accepted the compensation amount as per the prevailing Rehabilitation and Resettlement Policy-2002, as the said Policy was applicable to all the land oustees of Bhanegaon Open Caste Mine. The petitioners, as

per the said policy had accepted the monetary compensation in lieu of employment and now the petitioners cannot dispute the amount of compensation and cannot claim the compensation at the higher rate. The claims of the other villagers, who are paid a higher amount are on different footing, as the said compensation amount is calculated as per the R. and R. Policy, 2012 and prayed for dismissal of the petition.

7. Heard Mr. P.D. Meghe, learned counsel for the petitioners. He submitted that there is no dispute as far as the acquisition of land of the petitioners are concerned, and there is no dispute as to the ownership of the land. The notifications were issued and the petitioners have accepted the compensation under protest. The communication made by petitioner No.5 to the respondents clearly shows that the amount was accepted under protest. It is specifically mentioned in the said communication that the petitioners are accepting the amount under protest. The similarly situated persons received the compensation under the R. and R. Policy, 2012. In view of that the petitioners being similarly situated, are entitled to receive enhanced compensation. This issue is already dealt by this Court in Writ Petition No. 5896/2016 and 5458/2017, whereby this Court directed the respondents to pay compensation in view of the R and R Policy 2012, whose claims are refused by the respondents. In view of the previous judgment of this Court, and in the light,

that the respondents challenged the said order before the Hon'ble Apex Court by preferring the Special Leave Petition which was already rejected, the petitioners are also entitled for the enhanced amount of compensation and claim compensation with interest.

8. Per contra, Mr. C.S. Kaptan, learned Senior Counsel, submitted that there is an inordinate delay to prefer this petition. The petition is affected by delay and laches which is always fatal. He further submitted that the petitioners have already accepted the amount of compensation and therefore, now the petitioners cannot claim compensation at the enhanced rate as other land owners received the compensation. He further submitted that the petitioners have never made a grievance as to the amount of compensation prior to preferring this petition, and as there is inordinate delay in preferring the petition, which is fatal to the petitioners and liable to be dismissed.

9. We have heard learned counsels for the petitioners and the respondents. The issue that arises for determination is whether the petitioners are entitled for enhanced compensation and whether the petition is affected by delay and laches. The ownership of the petitioners as regards to acquisition of the above mentioned lands are not in dispute. It is also not in dispute that the said lands were acquired by the Government and in view of the provisions of

Section-11 of the Act of 1957, the lands were vested with the Western Coalfields Limited. It is also not disputed that in view of the Policy of 2002, the petitioners received the compensation at the rate of Rs. 1,00,000/- for the first acre of land, for second and third acres of land of Rs. 75,000/- per acre, and Rs. 50,000/- per acre for fourth acre and onwards. The petitioners accepted the said compensation of Rs. 10,83,450/-. As per the contention of the petitioners, the said amount was accepted by them under protest, whereas as per the respondents, as the petitioners have accepted the said compensation and have not made any grievances regarding the inadequate compensation, now they are not entitled for any compensation in view of the R. and R. Policy, 2012.

10. This issue is already dealt by this Court in Writ Petition No. 5896/2016 and Writ Petition No. 5458/2017, wherein the petitioners therein whose lands had been acquired and who were covered by the R and R Policy of 2002 challenged the refusal by the respondents to grant the compensation in the light of R and R Policy of 2012. This Court considered this aspect and held that the persons who were given benefits of the revised Policy had lost their lands as acquisition was under the very same Section-9 notification dated 14/05/2004. If compensation is in lieu of employment, whether the said amount is withdrawn or not, cannot be a decisive factor. The petitioners have been given the compensation in lieu of employment as per the earlier Policy

while in the later policy the amount offered is much more. Those who did not withdraw that amount of compensation in lieu of employment under the old policy are being paid under the new policy. It is not the case of the respondents that their lands were already acquired and the compensation was being worked out, and therefore, the benefit of the new policy came to be extended to them. Thus, the benefits of revised Policy is also extended to those whose lands were already acquired and held that the petitioners are entitled to grant compensation in lieu of employment as per the R and R Policy-2012.

11. Against the said decision, the respondents preferred Special Leave Petition bearing No. 11499-11500/2017 which was dismissed by the Hon'ble Apex Court by observing that the enhanced compensation amount, as provided for in the circular dated 22/08/2012, must be paid to the respondents along with interest at the rate of Rs. 5% within four weeks from the date of the impugned order. In subsequent, Writ Petition No. 5458/2017 also, the benefit of the R and R Policy-2012 was granted to the petitioners therein. The present petitioners are also similarly situated, and they are also entitled for additional compensation in lieu of employment as per the Policy declared by respondent No.1/Western Coalfields Limited in 2012. That some of the land owners have received the compensation, whose lands are acquired by the same notification, is not controverted by

the respondent Nos. 1 to 3. The necessary clause of R and R Policy – 2012 is also on record.

12. As observed earlier, the issue of entitlement of the persons, whose lands have been acquired as per the Government Resolution dated 22/8/2012 was the subject matter of consideration before this Court in ***W.P. No. 5896/2016 (Smt. Anubai Binekar and others V/s Western Coalfields Limited and others)***, ***Writ Petition No. 4722/2014 (Sau. Sunitabai Bhaurao Chikankar V/s Western Coalfields Limited and others)*** and ***Writ Petition No. 4819/2014*** which were decided by the Division Bench of this Court by the judgment dated 08/06/2015 and 22/02/2017, by which this Court held that the persons whose lands were acquired under the Act of 1957 were entitled for compensation as per the Government Resolution dated 22/08/2012. This judgment was challenged by the Western Coalfields Limited and others before the Hon'ble Apex Court which were dismissed by the order dated 23/10/2019. The petitioners also prayed that respondent Nos.1 to 3 be directed to pay enhanced compensation in lieu of employment as per the Policy declared by respondent No.1/Western Coalfield Limited in 2012. This Court has upheld such right of persons, whose lands came to be acquired under the Act of 1957. The order passed by this Court in Writ Petition No. 5896/2016 is not challenged by Western Coalfield Limited and has attained the finality. The petitioners are also entitled for the additional

compensation in lieu of employment as per the Policy declared by the respondent No.1/ Western Coalfield Limited in 2012. The contention of the respondents that the petitioners have accepted the amount and not made any grievance, at the relevant time is not sustainable as the communication dated 28/09/2006 issued by petitioner No.5 to the respondents clearly shows that the amount was accepted by the petitioners under protest.

13. The next ground raised by the respondents are that the writ petition deserves to be dismissed on the ground of delay and laches. Learned Senior Counsel for the respondents placed reliance of ***Rajesh Kumar Tandon V/s State of U.P [2021 (6) All WC 5260]*** wherein the Allahabad High Court has considered the aspect of delay and laches and held that the delay and laches in challenging the seniority is always fatal. The issue of delay and laches is time and again considered by the Hon'ble Apex Court and held that delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment.

14. The Hon'ble Apex Court in the case of ***Tukaram Kana Joshi and others thr. Power of Attorney Holder V/s M.I.D.C. and others [AIR 2013 SC 565]*** held that delay and laches is one of the facets to deny exercise of discretion, however it is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart,

if the whole thing shocks the judicial conscience, then the Court should exercise the discretion. More so, when no third party interest is involved. Thus analysed, the petition is not hit by the doctrine of delay and laches and the same is not a constitutional limitation, the cause of action is continuous, and further, the situation certainly shocks the judicial conscience. The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case in hand, as the same varies from case to case. It will depend upon what the breach of fundamental rights and the remedy claimed are and when and how the delay arose. It is not that there is any 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. There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such discretion, must be exercised fairly and judicially so as to promote justice and not to defeat it. In the event that the claim made by the applicant is legally sustainable, delay should be condoned.

15. Thus, in view of the above-mentioned judgment of the Hon'ble Apex Court where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial

justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done because of non-deliberate delay.

16. Here in the present case, the petitioners, who are similarly situated applied for the enhanced compensation as the benefit of enhanced compensation was granted to some of the land owners, whose lands are acquired by the same notification. The impugned communication of refusing the enhanced compensation was communicated to the present petitioners on 29/02/2022, and immediately thereafter they approached this Court for grant of enhanced compensation. The act of the respondents refusing the compensation though the petitioners are similarly situated shows the manifest illegality on the part of the respondents, and therefore, there is a cause of substantial justice which deserves to be preferred and therefore, delay would not deprive the present petitioners for granting enhanced compensation.

17. In the above facts, the writ petition deserves to be **allowed**. In view of that, we proceed to pass following order:

- a) The respondent Nos. 1 to 3 are directed to pay enhanced compensation in the light of the R. and R. Policy-2012 to the present petitioners.

- b) Respondent Nos. 1 to 3 are directed to pay enhanced compensation in lieu of employment as per the Policy declared by Respondent No.1/Western Coal Field Limited in 2012 along with the interest at the rate of Rs. 5% from the date of the Policy.
- c) The amount of difference receivable by them shall be worked out within the next six weeks, and thereafter shall be paid to the claimants as per the R. and R. Policy 2012 within next eight weeks.
- d) The writ petition is **allowed** and disposed of with no order as to costs.

18. Rule is made absolute in the aforesaid terms.

(URMILA JOSHI-PHALKE, J)

(AVINASH G. GHAROTE, J.)