

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.11029 of 2023 (O&M)
Date of Decision:24.05.2023

Ashutosh Jain

..... Petitioner

Versus

The Assistant Estate Officer, U.T.
Chandigarh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr.Sumeet Goel, Senior Advocate with
Mr. Paras Money Goel, Advocate for the petitioner.

Mr.Anil Mehta, Senior Standing Counsel with
Mr.Sanjiv Ghai, Additional Standing Counsel
for the respondents-UT, Chandigarh.

HARPREET SINGH BRAR, J.

1. The petitioner has approached this Court under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of the order dated 09.06.1978 (Annexure P-4) passed by respondent No.1, ordering cancellation of the allotment of House No. 3307, Sector 15-D, Chandigarh along with order dated 05.01.1980 (Annexure P-8) passed by respondent No.3 and order dated 14.12.1994 (Annexure P-17) passed by respondent No.3, whereby the review petition filed by the petitioner has been ordered to be dismissed on the ground of delay and review being not maintainable.

FACTUAL BACKGROUND

2. The facts of the case as emanating from the record as well as

from the arguments of both the parties, *en seriatim*, are as under:-

3. On 28.10.1974, Mohan Lal Jain was allotted the site of House No. 3307, Sector 15-D, Chandigarh on lease hold basis for a period of 99 years. A show cause notice was issued to him on 26.12.1977 under Rule 20 of the Chandigarh Lease-Hold of Sites and Building Rules, 1973 Rules for non-payment of 2nd and 3rd instalment. The site was ordered to be cancelled by the Estate Officer on 09.06.1978. Vide order dated 24.05.1979, the appeal filed by the allottee against the said cancellation was decided by the Chief Administrator, UT, Chandigarh and the site was restored subject to conditions of payment up to 31.07.1979, failing which order of Estate Officer was to become operative. A revision petition filed against the order of Chief Administrator dated 24.05.1979 was allowed and the site was restored subject to conditions of payment by 06.02.1980, failing which the site was ordered to be resumed. Considering the amount in default, the forfeiture amount was reduced to Rs. 2250/- and the outstanding dues amounted to Rs. 4500/-. On 24.06.1981 the Estate Officer communicated that the orders of the Chief Administrator have not been complied with. On 17.11.1993 eviction proceedings were launched under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the 'the Act' for short). On 03.01.1994, original allottee Mohan Lal Jain died. Thereafter, on 09.05.1994 an eviction order was passed by the Estate Officer under Section 5(i) of the Act. A review petition was filed on 14.12.1994 by son of the original allottee namely Udey Jain for review of order dated 05.01.1980 passed by the Chief Commissioner, Chandigarh which was dismissed by the Advisor to the Administrator, UT, Chandigarh.

4. On 20.02.1995, learned District Judge issued a direction to conduct fresh proceedings for eviction of the occupants including Udey Jain. Thereafter on 07.09.1997 an application was moved for transfer of site in question by the present petitioner Ashutosh Jain and Maya Devi, son and widow of deceased original allottee Mohan Lal Jain respectively, on the basis of Will dated 23.04.1993. On 09.05.2023 a notice under Section 4 (1) of the Act was issued by the concerned SDM for 17.05.2023 to the legal heirs of deceased Mohan Lal Jain, on which date the SDM (Central)-cum-Estate Officer under the Act passed a detailed order of eviction under Section 5(i) of the Act.

CONTENTIONS

5. Learned Senior Counsel for the petitioner contended that on an appeal filed by the father of the petitioner, the site was restored subject to the condition of payment up to 31.07.1979. The father of the petitioner developed multiple complications and was also operated upon for cardiac problems and his treatment continued from 1979 till his death in the year 1994 as is discernible from his medical record (Annexure P-6).

6. Learned Senior Counsel for the petitioner further argued that since the orders of the Chief Administrator-respondent No.2 could not be complied with, therefore, a revision petition was filed before respondent No.3 and vide order dated 05.01.1980, the site was restored subject to the condition that all outstanding dues would be deposited by 06.02.1980, failing which the site would stand resumed. However, the father of the petitioner, on wrong understanding, paid less amount than due but finally deposited the outstanding amount on 06.07.1981 and further deposited

arrears on 17.08.1992. The petitioner claimed to have been only 29 years of age at the time of death of his father in the year 1994. He was under the impression that after passing of the orders by learned District Judge on 20.02.1995 (Annexure P-18), nothing more was due and the property had become free from all sorts of encumbrances. Now the petitioner is in the receipt of a show cause notice dated 10.03.2023 (Annexure P-19) issued under Section 4 (1) of the Act.

7. Learned Senior Counsel has pleaded equity inasmuch as that it is the only residential house of the petitioner and that he was unaware of the property having been resumed and that he is willing to make the payment of outstanding dues along with interest. He further asserted that the order of resumption is to be used as a weapon of last resort and the delay in challenging the order of cancellation of lease is *bona fide* and unintentional and the petitioner is not going to gain anything by approaching this Court after a delay.

8. Per contra, learned Senior Standing Counsel for the respondents-UT, Chandigarh has sought dismissal of the writ petition on the ground of delay and laches. He pointed out that the cancellation of lease order was passed on 09.06.1978 which had become operative on 24.06.1981/02.07.1981 due to non-compliance of the order dated 05.01.1980 by the allottee who was alive at that time and he expired much later on 03.01.1994. As such, the resumption proceedings had attained finality 42 years before the filing of the writ petition. As such, the instant writ petition is hopelessly barred by laches.

ANALYSIS AND OBSERVATION

9. A perusal of the record indicates that the petitioner in the instant writ petition is Ashutosh Jain i.e son of the original allottee who had applied for transfer along with his mother Maya Devi on 07.09.1997 on the basis of Will, whereas the review petition was filed by Udey Jain, other son of allottee, before the Advisor for review of order dated 05.01.1980 of the Chief Commissioner, UT, Chandgiarh, which was dismissed vide order dated 14.12.1994. The said order dated 14.12.1994 cannot be challenged by petitioner Ashutosh Jain who had not filed the said review petition and Udey Jain, who had filed the said review petition, is not the petitioner in the present writ petition. Further, as per application dated 07.09.1997 submitted for transfer of the site, only two persons had applied on the basis of Will i.e. Ashutosh Jain and his mother Maya Devi. Even the appeal before the learned District Judge against the order dated 09.05.1994 had been filed by Udey Jain who had not applied for transfer of the said property on the basis of Will. Udey Jain is not the beneficiary of the Will dated 23.04.1993. The order of eviction dated 17.05.2023 is not under challenge in the instant writ petition and the remedy of appeal against the said order lies under Section 9 of the Act before the District Judge.

10. A reference in this regard can be made to **New Delhi Municipal Council Vs. Pan Singh and Others, (2007) 9 SCC 27** and **Karnataka Power Corpn. Ltd. Vs. K. Thangappan, (2006)4 SCC 322**. The Hon'ble Supreme Court in **Chennai Metropolitan Water Supply and Sewerage Board Vs. T.T. Murali Babu, 2014(2) S.C.T.193**, held as under:-

“First, we shall deal with the facet of delay. In Maharashtra

State Road Transport Corporation Vs. Balwant Regular Motor Service, Amravati [AIR 1969 SC 329] the Court referred to the principle that has been stated by Sir Barnes Peacock in Lindsay Petroleum Co. V. Prosper Armstrong Hurd, Abram Farewall, and John Kemp [1874 (5) PC 221], which is as follows:

“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 of 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 relates to the remedy.”

11. A three-Judge Bench of the Hon’ble Supreme Court, has further articulated the doctrine of laches in **Chairman/ Managing Director, U.P. Power Corporation Limited & Others Vs. Ram Gopal, 2020 SCC Online SC 101** and held as under:

“Whilst it is true that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution of

*India, nevertheless, such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in writ actions, and writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence-sitters cannot be allowed to barge into Courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which writ remedies can be enforced. In **SS Balu Vs. State of Kerala**, this Court observed thus:*

“17. It is also well settled principle of law that “delay defeats equity”. ... It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment. “ (emphasis supplied)

12. Similarly, a two-Judge Bench of the Hon’ble Supreme Court, in **Vijay Kumar Kaul V. Union of India, (2012) 7 SCC 610**, speaking through Justice Dipak Misra, while considering the claim of candidates who, despite being higher in merit, exercised their right to parity much after those who were though lower in merit but were diligently agitating their rights, observed that:

“27. ... It becomes an obligation to take into consideration the balance of justice or injustice in entertaining the petition or declining it on the ground of delay and laches. It is a matter of great significance that at one point of time equity that existed in favour of one melts into total insignificance and paves the path

of extinction with the passage of time.”

CONCLUSION

13. We find that the petitioner has been extremely negligent in invoking the writ jurisdiction of this Court. The present writ petition suffers from laches and undue delay. The orders dated 09.06.1978 (Annexure P-4), 05.01.1980 (Annexure P-8) and 14.12.1994 (Annexure P-17) are challenged in the present writ petition in the year 2023. Such an inordinate delay of 42 years has not been explained. Rather, we find that the petitioner has been grossly indolent and lethargic in invoking the remedies available to him under law in time. The conduct of the petitioner in sleeping over his rights for such a long period, would disentitle him to the discretionary relief under Article 226 of the Constitution of India. Further, even the equitable jurisdiction of this Court cannot be exercised in the favour of a party who approaches the Court after an inexplicably long time. Delay and laches are relevant factors for exercising jurisdiction under Article 226 of the Constitution of India and in the absence of any compelling or extenuating circumstances which prevented the petitioner from approaching this Court for such a long time, this Court has no other option but to dismiss the writ petition on the ground of delay and laches.

14. Accordingly, the writ petition is dismissed. However, there is no order as to costs.

15. Pending application(s), if any, shall also stand disposed of.

(AUGUSTINE GEORGE MASIH)
JUDGE

(HARPREET SINGH BRAR)
JUDGE

24.05.2023

sunita

Whether Reasoned/Speaking : Yes/No

Whether Reportable : Yes/No