

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.7711 of 2023 (O&M)

Date of Decision:17.04.2023

Ravinder Singh

..... Petitioner

Versus

**Union Territory, Chandigarh
and others**

..... Respondents

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

Present: Mr.Paras Money Goyal, Advocate for the petitioner.

Mr.Anil Mehta, Senior Standing Counsel with
Ms.Aashna Gill, Advocate for the respondents –UT, Chandigarh.

HARPREET SINGH BRAR, J.

1. The petitioner has approached this Court for issuance of a writ in the nature of Certiorari seeking quashing of resumption order dated 10.07.2003 (Annexure P-6), order dated 25.03.2009 (Annexure P-10) passed by respondent No.3 and order dated 16.02.2020 passed by respondent No.6 imposing misuse charges and also the order dated 15.02.2012 (Annexure P-13) vide which the revision petition filed by the petitioner was dismissed by respondent No.2. Petitioner has further sought a writ of mandamus directing the respondents to restore the site in question to him.

2. Briefly, the facts of the case are that the grandfather of the petitioner was allotted SCF No. 21, Sector 21-C, Chandigarh vide letter of

allotment dated 10.10.1960. As per the condition of the allotment letter, the site in question was allotted for general trade. The original allottee i.e. Niranjan Singh died in the year 2001. After his death, father of the petitioner namely Gurmail Singh started using the site in question. The father of the petitioner also died in the year 2016. Pursuant to a show cause notice dated 26.07.2002 (Annexure P-5) respondent No.4 resumed the site in question vide order dated 10.07.2003 (Annexure P-6). The petitioner challenged the above order by filing Appeal No. 180 of 2004. The respondent No.3 dismissed the appeal filed by the petitioner vide order 04.05.2006 (Annexure P-7). The petitioner thereafter challenged the order of respondent No.3 before respondent No.2, who remanded the case back vide order dated 12.07.2006 (Annexure P-9) for passing a speaking order in accordance with law after giving proper hearing to the parties. Respondent No.3 accepted the appeal filed by the allottee vide order dated 25.03.2009 (Annexure P-10). The above order was subject to the condition that the misuse charges which are payable under the law, shall be paid by the allottee within 30 days from the date the same is communicated to him, failing which the resumption order passed by Estate Officer-respondent No.4 shall become operational. The misuse charges were intimated to the petitioner on 16.02.2010 (Annexure P-11). Since the order dated 25.03.2009 passed by the Chief Administrator (respondent No.3) for deposit of misuse charges was not complied with, the resumption order dated 10.07.2003 (Annexure P-6) passed by the Estate Officer-respondent No.4 came into operation. Ultimately a notice under Section 4 (i) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as 'the Act of 1971' for short) was served on the occupant of the site on 17.08.2021 calling

upon him to show cause as to why the order of eviction be not passed in respect of the site in question.

3. Learned counsel for the petitioner has vehemently argued that in the facts and circumstances of the present case the authorities below could not have imposed the misuse charges for a period which is more than six months as an outer limit is prescribed under the relevant Rules. He further argued that the order dated 16.02.2010 (Annexure P-11) imposing penalty is a non-speaking order and no reasons have been given for imposing such a huge amount of penalty and that the same has been imposed without providing any opportunity of hearing to the petitioner. All principles of natural justice have been violated. The order imposing penalty has been passed mechanically without there being any application of mind. Even the show cause notice issued in the year 2002 before the resumption proceedings did not contain a provision for imposition of penalty and it is a settled proportion of law that the authority cannot go beyond the scope of show cause notice. The petitioner has been discriminated against. As when the show cause notices were issued in the year 2002, the same were issued to the entire market, however, rest of the persons managed the inspector and continued the misuse. The petitioner has been singled out and the order of resumption has been passed. The petitioner is being compelled to run from pillar to post and a penalty of an enormous amount of Rs. 8,28,000/- on account of alleged misuse is being demanded.

4. *Per contra*, learned counsel for the respondents has asserted that the petitioner is a wilful defaulter and he has approached this Court after an inordinate delay of more than 10 years and has sought the dismissal of the

writ petition with exemplary costs.

5. We have heard counsel for the parties and have perused the case file very carefully. We do not find any merit in the writ petition and the same deserves to be dismissed on the following grounds:

6. The petitioner took a specific stand in para 14 of the writ petition that he came to know regarding the present property being resumed only after the issuance of notice under Section 4(i) of the Act of 1971 by respondent No.6 on 17.08.2021 (Annexure P-14) and thereafter he took more than one year to obtain all the necessary documents under the Right to Information Act to enable him to file the present writ petition. The above stand of the petitioner is contrary to the record of the case. A perusal of order dated 04.05.2006 (Annexure P-7) passed in Appeal No. 180 of 2004 shows that the presence of petitioner Ravinder Singh is marked for the appellant and he has categorically stated that his father Gurmail Singh was diagnosed with heart disease as is discernible from certificate dated 02.05.2006 (Annexure P-3) issued by Fortis Hospital, Mohali.

7. We find that the delay of 10 years in filing the present writ petition has not been properly explained and the ground taken for the explanation of delay lacks *bona fide*. On the other hand, we find that the explanation given by the petitioner is concocted and he has been thoroughly negligent in invoking the remedies available to him. This Court cannot be oblivious of the principle involved in condoning the delay in approaching this Court within a reasonable period, which provides that if there is a sufficient cause and reasonable explanation for the delay which is acceptable to a person of ordinary prudence, it should be condoned, but the facts of the

case are otherwise. The petitioner has miserably failed to explain any compelling or extenuating circumstance which prevented him from approaching this Court for such a long time. This Court cannot appreciate the casual explanation of the petitioner, to exercise the extra-ordinary jurisdiction under Article 226 of the Constitution of India. The present writ petition suffers from laches and undue delay. The resumption order passed on 10.07.2003 (Annexure P-6) and the order of Revisional Authority dated 15.02.2012 (Annexure P-13) are challenged in the year 2023. It would be apposite to refer to the decision of the Hon'ble Supreme Court in ***State of West Bengal vs. Debabrata Tiwari and others, 2023 SCC Online SC 219*** wherein the following was observed on the underlying principle of laches and undue delay:-

“Laches or undue delay, the blame-worthy conduct of a person in approaching a Court of Equity in England for obtaining discretionary relief which disentitled him for grant of such relief was explained succinctly by Sir Barnes Peacock, in Lindsay Petroleum Co. vs. Prosper Armstrong, (1874) 3 PC 221 as under:

“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 or 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 it relates to the remedy.” Whether the above doctrine of laches which disentitled grant of relief to a party by Equity Court of England, could disentitle the grant of relief to a person by the High Court in the exercise of its power under Article 226 of our Constitution, came up for consideration before a Constitution Bench of this Court in Moon Mills Ltd. vs. M. R. Meher, President, Industrial Court, Bombay, AIR 1967 SC 1450. In the said case, it was regarded as a principle that disentitled a party for grant of relief from a High Court in the exercise of its discretionary power under Article 226 of the Constitution.

In State of M.P. vs. Nandlal Jaiswal, (1986) 4 SCC 566 this Court restated the principle articulated in earlier pronouncements in the following words:

“9. ... the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the Petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that

this Rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.”

8. We find that the petitioner did not pursue his case with due diligence. 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. It has been reiterated by the Hon’ble Supreme Court that the discretionary jurisdiction cannot be exercised in favour of such a party who approaches the Court after an inexplicably long time. The delay and laches are relevant factors for exercising jurisdiction under Article 226 of the Constitution of India. A reference in this regard can be made to ***New Delhi Municipal Council vs. Pan Singh and others* , (2007) 9 SCC 27, Karnataka Power Corpn. Ltd. vs. K.Thangappan, (2006)4 SCC 322, Chennai Metropolitan Water Supply and Sewerage Board vs. T. T. Murali Babu, 2014(2) S.C.T. 193 and Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, Amravati AIR 1969 SC**

9. Further, the contention of counsel for the petitioner is that the petitioner has been discriminated against as he has been singled out and show cause notices issued to the other members of the market have not been taken to the logical conclusion. It is no longer *res integra* that the right to equality enshrined in Article 14 of the Constitution of India is a positive concept and it does not provide for negative equality. In ***State of Orissa vs. Mamata Mohanty, (2011)3 SCC 436*** it was held as under:-

“ It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. [Vide State (UT of Chandigarh) v. Jagjit Singh ; Yogesh Kumar v. State (NCT of Delhi); Anand Buttons Ltd. V. State of Haryana; K.K.Bhatia v. State of M.P.; Krishan Bhatt vs. State of J & K; State of Bihar v. Upendra Narayan Singh; Union of India vs. Kartick Chandra Mondal.]”

10. Similarly the Hon'ble Supreme Court in ***Union of India vs. M. K. Sarkar, (2010)2 SCC 59*** has laid down that “Article 14 is a positive concept and cannot be enforced in a negative manner. Irregularity and illegality cannot be perpetuated on the ground that illegal benefits have been extended to others”. Thus, if some similarly situated persons have been granted some benefit by mistake, such an order does not confer any legal right on the petitioner to stake claim. The site in question was allotted to the grandfather of the petitioner and as per the terms and conditions of the allotment letter, the allottee was bound to act in accordance with the same.

Moreover, the father of the petitioner namely Gurmail Singh, during the hearing of Appeal No. 180 of 2004 before respondent No.3, had undertaken to remove the misuse in the site but the report of the field staff dated 02.05.2006 indicates that the occupant has shown no inclination to comply with the terms and conditions of the allotment letter and the provisions of Capital of Punjab (Development and Regulation) Act, 1952. The authorities below were left with no other choice but to pass the orders under challenge in the writ petition even when the site allotted to the grandfather of the petitioner was restored vide order dated 25.03.2006 (Annexure P-10) passed by respondent No.3, subject to the condition that all misuse charges including penalty would be paid within 30 days from the date the same was communicated to the allottee. Vide letter dated 16.02.2010 (Annexure P-11) the amount was calculated and communicated but not even a single penny was paid pursuant to the above communication.

11. The learned counsel for the petitioner further contended that the order of resumption is an ultimate civil sanction and it must be used as a last resort. It is a trite law that if an allottee continues to violate the terms and conditions of the allotment letter, the power of resumption can be exercised by the authority concerned. Reliance in this regard is placed upon ***Dalip Singh and others vs. State of Haryana and others, 2019(11) SCC 422, Smitra Jain vs. Haryana Urban Development Authority and another, 2020 (13) SCC 465, Municipal Corporation Chandigarh vs. Shantikunj Investment (P) Ltd., (2006)4 SCC 109, UT Chandigarh Administration v. Amarjeet Singh, (2009)4 Supreme Court Cases 660 and Haryana State Agricultural Marketing Board v. Raj Pal (2011) 13 Supreme Court Cases***

12. In ***Sukhpal Singh Kang vs. Chandigarh Administration***, AIR 1999 P&H 156, the Division Bench of this Court considered a somewhat similar issue and observed:

“the petitioners cannot avoid their liability to pay the instalments of premium and ground rent. That apart, after having taken in part in the auction with full knowledge of the terms and conditions notified by the respondents and having accepted the leases of the sites on the basis of terms and conditions incorporated in the letters of allotment without any protest, the petitioners will be deemed to have agreed to pay the amount of premium along with interest and ground rent in terms of Rules 12 and 13 of the 1973 rules. In our considered opinion, the petitioners cannot seek intervention of the court for getting themselves relieved of their obligation to pay the amount due to the respondents in accordance with the terms of contract.”

13. Thus, it is clear that the petitioner was liable to pay the misuse charges in compliance of the order dated 25.03.2009 (Annexure P-10), on his failure to deposit the misuse charges, the resumption orders of the Estate Officer-respondent No.4 dated 10.07.2003 (Annexure P-6) became operational. We hold that the order of resumption has been passed as a last resort and, therefore, we are of the opinion that the order of resumption is as per the terms and conditions of the allotment letter. The authorities below have rightly refused to grant any relief to the petitioner. Therefore, we find no ground to interfere with the same.

14. Writ petition is accordingly dismissed. There shall be no order as to costs.
15. Pending application(s), if any, shall also stand disposed of.

(AUGUSTINE GEORGE MASIH)
JUDGE

(HARPREET SINGH BRAR)
JUDGE

17.04.2023

sunita

Whether Reasoned/Speaking : Yes/No

Whether Reportable : Yes/No