

114 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.4675 of 2023 (O&M)

Date of Decision:03.05.2023

Som Nath and Others

..... Petitioners

V/s.

State of U.T. and Others

.....Respondents

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

Present: Mr. Maninder Singh Saini, Advocate for the petitioners.

Ms. Amrita Garg, Advocate and

Mr. Madhu Dayal, Advocate for the respondent(s)-U.T.

Harpreet Singh Brar, J.

1. The petitioners have approached this Court for issuance of a writ in the nature of *certiorari* for quashing the order dated 15.05.2003 (**Annexure P-6**) passed by Chief Administrator, U.T., Chandigarh-respondent No.1 whereby the appeal against the order dated 28.02.1996 (**Annexure P-4**) directing cancellation of license in respect of allotment bearing SCR No.88, Karsan, Phase II, Chandigarh was dismissed and the order of eviction dated 17.05.1999 (**Annexure P-5**), passed by the Estate Officer, Chandigarh-respondent No.2 under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, were upheld. The petitioners have prayed for setting aside the above orders impugned in the present writ petition in view of the

liberty granted by the learned District Judge on 02.05.2022 (**Annexure P-8**) while disposing of the Civil Appeal No.349 of 2017.

2. The facts of the case are that one Faquir Chand was allotted the site i.e. SCR No.88, Karsan Colony, Phase-II, Ram Darbar, Chandigarh by respondent No.2 and a licence was issued on 04.07.1985 (**Annexure P-I**). Faquir Chand had executed a Registered Will dated 19.02.1996 and he had bequeathed his estate to the petitioners in equal shares. Faquir Chand after raising construction started his business in the said plot. Vide partnership agreement dated 05.01.1988, one Devki Nandan joined his business as a partner. After gaining confidence of Faquir Chand, Devki Nandan obtained the thumb impression of Faquir Chand on certain documents/ blank papers. Faquir Chand found out that Devki Nandan had treacherously got executed Power of Attorney in his favour on 30.12.1988. Accordingly, on 25.09.1989, Faquir Chand revoked the Power of Attorney in the favour of Devki Nandan. Ultimately, when Devki Nandan died in the month of December, 1995, Faquir Chand tried to take possession of the premises but the wife of Devki Nandan refused to vacate the site.

3. On 03.04.1996, the competent Authority under the Licensing of Tenement and Sites and Services in Chandigarh Scheme, 1979, issued a show cause notice to the allottee on the allegation of under-hand sale in the contravention of the condition No.5 of the allotment letter. The order of cancellation was passed on 28.02.1996 (**Annexure P-4**) by the competent Authority. After the death of Faquir Chand on 17.10.1998, the petitioners claimed to have become the owner of the property on the basis of the

registered Will dated 19.02.1996 and immediately thereafter, the petitioners applied to respondent No.2 for the transfer of the ownership in their names.

4. The petitioners, on attaining majority, impugned the order dated 28.02.1996 (**Annexure P-4**) by filing an appeal bearing No.367 of 2002 and also challenged the order dated 17.05.1999 passed by respondent No.2 under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The respondent No.1 dismissed the appeal filed by the petitioners vide order dated 15.05.2003 (**Annexure P-6**).

5. Thereafter, the petitioners filed a Civil Suit bearing C.S. No.376 of 2000 titled as “**Mothu Ram and others Vs. Pushpa Devi and others**”, seeking a declaration that they are owners of the site in question. The learned trial Court dismissed the suit filed by the petitioners vide judgment dated 31.08.2015. Subsequently, the petitioners challenged the same in the Court of learned Additional District Judge, Chandigarh by filing appeal bearing CA No.349 of 2017. Vide order dated 02.05.2022 (**Annexure P-8**), the learned Additional District Judge, Chandigarh permitted the petitioners to withdraw the appeal with liberty to approach the revenue Authority.

6. The learned counsel for the petitioners contended that the petitioners were minor when the cancellation order dated 28.02.1996 (**Annexure P-4**) was passed and Faquir Chand, the original allottee died on 17.10.1998 and that the petitioners, on attaining the majority, impugned the order dated 28.02.1996 by filing an appeal No.367 of 2002. He further asserted that all the impugned orders are illegal and arbitrary and are against the principles of natural justice as none of the orders were communicated to the original allottee. All the orders were passed on the back of the original

allottee as well as the petitioners which caused them to file a Civil Suit for declaration and that the learned Additional District Judge has granted them liberty vide order dated 02.05.2022 (**Annexure P-8**) to approach the revenue Authorities. Learned counsel for the petitioners has further assailed the order dated 15.05.2003 (**Annexure P-6**) on the ground that the rights of the petitioners, as successors of the allottee, had not extinguished on the death of the allottee and merely because the original allottee i.e. Faquir Chand had entered into a partnership on 05.01.1988 with Devki Nandan, it would not constitute a violation of clause 24 of the 1979 Scheme and condition no.5 of the allotment letter.

7. We have heard the learned counsel for the parties at length and have carefully examined the record of the case. We do not find any merit in the writ petition and the same deserves to be dismissed.

8. We find that the petitioners have been extremely negligent in invoking the writ jurisdiction of this Court. The present writ petition suffers from laches and undue delay. The order of the cancellation dated 28.02.1996 (**Annexure P-4**), the order of eviction dated 17.05.1999 (**Annexure P-5**) passed by respondent No.2 under Sub section (i) of Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and the order of the Appellate authority dated 15.05.2003 (**Annexure P-6**) are challenged in the year 2023 by filing the present writ petition. Such an inordinate delay has not been explained, rather, we find that the petitioners have been grossly indolent and lethargic in invoking the extra-ordinary writ jurisdiction of this Court. The conduct of the petitioners in sleeping over their rights for such a long period, would disentitle them 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 petitioners 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.

9. 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. “

10. 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)

17. Similarly, in **Vijay Kumar Kaul V. Union of India** this Court 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, this Court 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.”

11. The petitioners had earlier approached the learned Civil Judge (Junior Division), Chandigarh by filing a Civil Suit bearing C.S. No.376 of 2000 titled as “**Mothu Ram and others Vs. Pushpa Devi and others**”. The Estate Officer-respondent No.2 was impleaded as defendant No.5 in the above suit. The learned Civil Judge (Junior Division), Chandigarh had already returned his findings with regard to the claim of the petitioners which had attained finality; even the appeal against the judgment and decree dated 31.08.2015 was withdrawn by the petitioners vide order dated 02.05.2022 (**Annexure P-8**). In view of the principle of constructive *res judicata*, which is also applicable to writ proceedings, the dismissal of the civil suit filed by the petitioners would amount to finality of the dispute with regard to the rights of the petitioners to arrogate any claim to the site in question. The petitioners are precluded from assailing the same by filing the present writ petition. This Court finds that an issue as to right of the petitioners to claim ownership of the site in question was directly and substantially decided by the

learned Civil Judge (Junior Division), Chandigarh in the earlier suit filed by the petitioners in which the Estate Officer-respondent No.2 was duly impleaded as defendant No.5. Such finding, in our opinion, would operate as *res judicata* in the present writ petition filed against the official respondents including the Estate Officer-respondent No.2. The principle of constructive *res judicata* prohibits this Court from examining the same issue which has been substantially decided in the Civil Suit bearing C.S. No.376 of 2000 between the parties. The following finding was returned by the learned Civil Judge (Junior Division), Chandigarh:

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10. *After hearing both the counsels at length and after careful perusal of the evidence placed on file, I am of the considered opinion that the present case has been filed by plaintiff for declaration of ownership on the basis of a registered Will dated 19.02.1996. Here in the present case, this is an admitted fact that the SCF No.88 was allotted to late Sh.Faquir Chand vide letter dated 4.7.1985. It is also not in dispute that according to condition no.5 of the allotment letter the licensee shall not sublet/ assign or part with possession of the site on any part thereof in favour of any person but Faquir Chand has issued a power of attorney in favour of one Devki Nandan. Show cause notice to both was issued vide dated 20.10.1995 and thereafter, cancellation order was passed on 28.2.1996 which were issued on 3.4.1996. These facts were not disputed. The order dated 28.2.1996 clearly shows that Faquir Chand was present at the time but he has failed to explain the sufficient reason for parting with the said SCF, therefore, the licence of Faquir Chand was cancelled in SCF No.88, Karson Colony, Ram Darbar, Chandigarh. It is worthwhile to mention that when the licence to the allottee was cancelled on 28.2.1996 and admittedly, Faquir Chand was died in the year 1998. When the licence was*

cancelled and the property did not remain in possession or ownership of Faquir Chand, then how on the basis of Will now the property can be transferred in the names of present plaintiffs. As per settled law, the person who pleads his case the first burden is on him to prove his case. Here, it was for plaintiffs to prove that Faquir Chand has not violated any terms and conditions of allotment letter and the order dated 28.2.1996 by the Estate office was illegal or unlawful. There is nothing on record which can suggest that the present order of the Estate officer was ever been challenged by Faquir Chand or by the present plaintiffs. When the order was passed Faquir Chand was present and he was failed to explain his defence before the Estate officer. As far as the contention of the learned counsel for plaintiff that DW-1 in her cross examination has admitted whole case of the plaintiff, is concerned, it is worthwhile to mention that as per settled law the plaintiff has to prove his case and has to stand on his own legs and from the record which is placed on file, this fact is admitted that vide order dated 28.2.1996 licence of late Sh.Faquir Chand was cancelled and if the licence is cancelled on the basis of subletting , then it is for the plaintiff to prove that the order was illegally passed but here the plaintiff has failed to do so. Accordingly, this issue is decided against the plaintiffs and in favour of defendants.

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12. The Hon’ble Supreme Court in **Home Plantations Ltd. Vs. Talaku Land Board, Peermada and another (1999) 5 SCC 590** in the context of principles of *res judicata* has held as under:

‘An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject matter of the litigations and every matter coming within the legitimate purview of the original action both in respect of the matter of

claim or defence. The principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as if the matter had been actually controverted and decided. It is true that where a matter has been constructively in issue it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and decided. The first reason, therefore, has absolutely no force.'

13. To us, therefore, it is palpably clear that the right of the petitioners to claim ownership of the site in question came to be negated by a competent Court of law in earlier proceedings and a decree has been passed wherein specific findings of fact had been recorded that the petitioners had failed to prove that the order dated 28.02.1996 (**Annexure P-4**) impugned in the present writ petition was illegally passed by the Estate Officer-respondent No.2 and the same has ever been challenged by the original allottee-Faquir Chand or by the petitioners. As such, the finding as to the right of the petitioners to assert any claim to the site in question had attained 'finality' in the earlier proceedings in the decree passed by the Civil Court. Such finding, in our opinion would operate as *res judicata* against the petitioners in the present proceedings.

14. The doctrine of constructive *res judicata* applies to the facts of the case. A perusal of order dated 15.05.2013 (**Annexure P-6**) indicates that the original allottee-Faquir Chand never challenged the cancellation order dated 28.02.1996 but Pushpa Devi, wife of Devki Nandan, the tenant, filed an appeal bearing No.157 of 1996 before the respondent No.1 in 1996, which was dismissed vide order dated 14.07.1997. The order (**Annexure P-6**) referred to above, has been passed in the appeal filed by none other than Sh.

Mothu Ram who is petitioner No.3 in the present writ petition. As such, the petitioners were well aware of the order of cancellation dated 28.02.1996 (**Annexure P-4**) and the eviction order dated 17.05.1999 (**Annexure P-5**) but they chose not to challenge these orders in the Civil Suit seeking declaration to be owners of the site in question. All the orders impugned in the writ petition were well within the knowledge of the petitioners when they decided to file Civil Suit No.376 of 2000. Rather, vide order dated 02.05.2022 (**Annexure P-8**), the petitioners have withdrawn the appeal against the judgment and decree passed by the learned Civil Judge (Junior Division), Chandigarh dated 31.08.2015 (**Annexure P-7**), whereby the suit filed by the petitioners was dismissed. The challenge to the orders (**Annexures P-4 to P-6**) could have been made by the petitioners in the earlier proceedings in the Civil Suit. The rule of constructive *res judicata* precludes the petitioners to take this plea against the same party now, with reference to the same subject matter which has been expressly and conclusively decided by the learned Civil Judge (Junior Division), Chandigarh in the judgment and decree dated 31.08.2015 (**Annexure P-7**), in the subsequent proceedings under the writ jurisdiction, and the petitioners in the present writ petition cannot agitate the same issue which has already attained finality on dismissal of the Civil Suit bearing C.S. No.376 of 2000 and withdrawal of the Appeal No.349 of 2017 by the petitioners against the findings recorded by the learned Civil Judge (Junior Division), Chandigarh.

15. Keeping in view the above discussion, we find that the present writ petition is liable to be dismissed and we hold that the respondent No.2 has cancelled the allotment of the site in question on valid grounds. The terms

and conditions of the allotment letter are binding on the allottee and the allottee cannot sublet or part with the possession of the site in favour of any person as stipulated under condition No.5 of the allotment letter. Therefore, we find no ground to interfere with the orders (**Annexures P4 to P6**) passed by the official respondents. The writ petition is accordingly, dismissed. There shall be no orders as to costs.

16. Pending applications, if any, shall also stand disposed of.

(Augustine George Masih)
JUDGE

(Harpreet Singh Brar)
JUDGE

3rd May, 2023

Sonia Puri

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No