

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.562 of 2023

In

CIVIL MISCELLANEOUS JURISDICTION No.1069 of 2017

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1. The Union of India represented through the General Manager, E.C. Railway, Hajipur (Bihar).
2. The Deputy Chief Engineer (Construction), E.C. Railway, Mughalsarai.
- Petitioner/s
- Versus
1. Fulpati Kunwar W/o Late Rajdeo Pandey, Resident of Village Dharupur, P.S. Bikramganj, District- Rohtas.
2. Sarvesh Pandey S/o Late Rajdeo Pandey, Resident of Village Dharupur, P.S. Bikramganj, District- Rohtas.
3. The State of Bihar through Collector, Rohtas at Sasaram.
- Respondent/s
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Appearance :

For the Petitioners	:	Mr. Bindyachal Rai, Advocate Mr. Manoj Kumar Singh, CGC
For the State	:	Mr. Sajid Salim khan SC-25
For the Respondent no. 1	:	Mr. Amit Shrivastawa, Advocate Mr. Girish Pandey, Advocate Mr. Abhay Pandey, Advocate
For the Respondent No. 2:	:	Mr. Om Prakash Upadhyay, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT

Date : 05-10-2024

Heard Mr. Bindyachal Rai learned counsel for the petitioners (Railway), learned counsel for the Respondent Nos. 1 & 2 as well as learned counsel for the State.

2. The present writ petition has been filed by the petitioners (Railway) for quashing the order and award dated 23.11.2013 passed by the National Lok Adalat, Sasaram in LA Case No. 278 of 2013 arising out of Land Acquisition Case No. 13 of 2007 whereby the Learned Lok Adalat has directed the petitioners (Railway) to pay the compensation to



the husband and father of the Respondents at the rate of Rs. 51,000.00/- (fifty one thousand) per decimal along with solatium at the rate of 30% and interest as mentioned in the award.

3. Learned counsel for the petitioners submits that the railway acquire piece of land having an area of 0.9325 acres under the Land Acquisition Act in which award was prepared by the Respondent No. 3 fixing the rate of land at Rs.20,00,000/-(Rupees twenty lakhs) and Rs. 12,16,000 /-(Rupees twelve lakhs sixteen thousands) per acre (Rs. 20,000/- and Rs. 12,160/- per decimal respectively) and on that basis an award No.40 was prepared, the land in question was acquired in connection with construction for Ara, Sasaram railway line.

4. The husband and father of the private Respondents objected to the award prepared by the Respondent No. 3 and the matter was referred to the Reference Court of Sub Judge III, Sasaram. Husband and father of the private Respondents had claimed the enhanced compensation with regard to an area of 0.9325 acres. The petitioners railway took objection to the claim of husband and father of private Respondents for enhancement of the compensation. The reference case bearing LA No. 13 of 2007 filed before Sub-Judge III, Sasaram proceeded as per law and on various dates parties of the reference case appeared and filed their



petition and documents in support of their claim and the case was proceeded for final adjudication based upon the respective case of the parties.

5. Learned counsel for the petitioners submits that suddenly the matter was referred to the Lok Adalat, the Lok Adalat can take cognizance of cases for compromise or settlement only when the case has been referred to the Lok Adalat in accordance with the provision prescribed under Section 20(1) and section 20(2) of the Lok Adalat Act and not otherwise. Learned counsel for the petitioners further submits that from a bare perusal of Section 26 of Act, it is mentioned that section 20 of act deals with the cases in respect of which Lok Adalat can take cognizance including the procedure and manner how the cases to be brought before it and how they can be disposed by Lok Adalat. Sub-section(1)of section-20 stipulates that where in any cases referred to in clause 1 of the sub-section 5 of section 19 i.e. in pending case before any court (a)the parties thereof agree for (b) one of the parties thereof makes an application to the court of referring the case to the Lok Adalat for settlement and if such court is prima facie satisfied that there are chances of such settlement (ii) the court is satisfied that the matter is an appropriate one to be taken cognizance or by the Lok Adalat. The court shall refer the case to



the Lok Adalat provided that no case shall be referred to the Lok Adalat under sub-clause(b)of clause (i)or clause(ii)of sub- clause-I of section-20 by such court except after giving a reasonable opportunity or being heard to the parties. Learned counsel for the petitioners submits that in other words, “Lok Adalat can take cognizance of a pending cases before any court, only where the parties are either agree to refer the dispute to it or the court refers the dispute by its own after hearing the parties or at instance of anyone of the parties after hearing other parties and not otherwise.” Learned counsel for the petitioners further submits that from bare perusal of the plaint of LA Case No.13 of 2007 it transpired that the State of Bihar was also a party but no one has signed on award as a party on behalf of the State of Bihar. A counter affidavit has been filed on behalf of the State of Bihar in paragraph 14 of the counter affidavit, it is stated that the award prepared in the National Lok Adalat clearly shows that there is a direction to pay compensation although there is no acceptance at nature of this respondent on the award nor the settlement has been made on the part of the award.

6. Learned counsel for the petitioners submits that from a bare perusal of the entire order sheet pertaining to the aforesaid Lok Adalat Case it is evident that an application by the private



respondent was filed on 22.11.2013 to refer the matter in Lok Adalat and next day i.e. on 23.11.2013 the matter was listed before Lok Adalat and award was passed on the same date. The compromise/settlement has been signed by the person who was not competent and the detailed facts has been mentioned in para 13 of the writ petition which is as follows :-

“ That it is respectfully stated by the Petitioners that the Lok Adalat can dispose off matters by way of compromise or settlement between the parties. The crucial terms in sub-section 3 of Section 20 of the Legal Services Act are "compromise", "settlement" and "parties". Therefore, it is apparent that consent of both the “parties” was a condition-precedent for any lawful order or award which could be passed by Lok Adalat so as to bind the parties. In the present matter, the contesting parties of LA Case No. 13 of 2007 are (a) the State of Bihar, through the Collector of Rohtas (b) Union of India, through ECR, Hajipur and (c) Deputy Chief Engineer (Construction), East Central Railway, Dehri on Sone. Therefore, before arriving at a settlement by the Lok Adalat, it was mandatory to have consent of all the parties mentioned in the cause title, including the State of Bihar. The award dated 23.11.2013 does not bear the



signature of the opposite parties inasmuch as none of the parties in the Reference Case 13/07 including the State of Bihar through the Collector, Rohtas has signed the award. The award bears the signature of Jr. Engineer Shri V. N. Mishra J.E. (W)/Construction as opposite party for the Railway, whereas the Shri V. N. Mishra was not authorized to enter into compromise for settlement by the General Manager or the opposite party no. 3, Deputy Chief Engineer (Construction), East Central Railway. In this regard, it is relevant to state here that as per Railway Board circular bearing no. RBE No. 91/92 and RBE No. 622 dated 04.05.1992, only the specified officers of the rank of Junior Administrative Grade (JAG) and above can enter into a compromise/settlement on behalf of Union of India and not any other officer. Thus, it is clear that only the opposite parties mentioned in the cause title of the Reference Case No. 13/07 could have entered into compromise or the other officers authorized, as per the circular of the Railway Board, could have signed the compromise on behalf of opposite parties Railway. But in the present matter, the compromise / settlement has been signed by the person who is neither the Opposite



Parties in the Reference Case nor a gazetted officer who could have been authorized for signing the compromise / settlement on behalf of the Railways.”

7. Learned counsel for the petitioners further submits that the Deputy Chief Engineer (Construction) by his letter dated 20.11.2013, requested the District Land Acquisition Officer to communicate with cost to be paid by the Railway to land losers as per his acceptance in Lok Adalat taking into consideration the Government rates and rules and it appears that Sri V.N Mishra is neither a party to the case nor he was authorized to enter into compromise on behalf of the Railway and it appears from the award that he has signed on behalf of the Railway.

8. Learned counsel for the Respondent Nos. 1 and 2 has filed a counter affidavit stating there in that the present writ petition has been filed after lapse of ten years which suggests that petitioners without giving any proper explanation in the writ petition have filed the writ petition after delay of ten years although, the law of limitation does not operate in writ jurisdiction but, it does not extended/liberty to infinity period of time (i.e. ten years) to approach the writ court which is an expeditious remedy.

9. Learned counsel for the respondent No. 1 and 2 submits that a core issue which is involved in the present writ, whether the person who has signed the award on behalf of the



railway was authorized to attend the National Lok Adalat held on 23.11.2013 on behalf of the Railway or not. As bare perusal of Annexure-9 of the writ petition it is evidently apparent that the authority has authorized his representatives to attend the National Lok Adalat to be held on 23.11.2013 and the writ petitioners after thought has filed the present writ petition after delay of ten years only to harass the Respondent Nos. 1 and 2 and despite of specific direction vide order dated 12.05.2023 to railway to file reply to the counter affidavit of respondent No. 2 and specially to the averments made in paragraph 5 of the counter affidavit read with the letter of the authorization dated 20.11.2013 but the petitioners(Railway) while replying have not made any averments regarding aforesaid direction which is very much evident from perusal of the reply filed by the petitioners (Railway) that the ground taken by the petitioners in the writ petition that the award has been passed without jurisdiction on the basis that award is in violation of Section 20 of the Legal Services Authority Act 1987. Learned counsel for the Respondents Nos. 1 and 2 submits that from bare perusal of the section 19 read with section 20 of the Legal Services Authority Act, it is crystal clear that the National Lok Adalat on reference have received the LA Case No. 13 of 2007, which is evident from Annexure-5 of the writ petition and



thereafter the National Lok Adalat on 23.11.2013 in presence of the parties and due conciliation have passed the award which is under challenge in the present writ petition.

10. Learned counsel for the respondents submits that from a bare perusal of Sections 19 and 20 of the Legal Services Authorities Act, 1987, chapter VI, deals with Lok Adalats, which reads as follows:-

“19. Organisation of Lok Adalats. (1) Every State Authority or District Authority or the Supreme Court Legal Services Committee or every High Court Legal Services Committee or, as the case may be, Taluk Legal Services Committee may organise Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit.

(2) Every Lok Adalat organised for an area shall consist of such number of -

(a) serving or retired judicial officers; and

(b) other persons,

of the area as may be specified by the State Authority or the District Authority or the Supreme Court Legal Services Committee or the High Court Legal Services Committee, or as the case may be, the Taluk Legal Services Committee, organising such Lok Adalat.

(3) The experience and qualifications of other persons referred to in clause (b) of sub-section (2) for Lok Adalats organised by the Supreme Court Legal Services Committee shall be such as may be prescribed by the Central Government in consultation with the Chief Justice of India.



(4) The experience and qualifications of other persons referred to in clause(b) of sub-section (2) for Lok Adalats other than referred to in sub-section (3) shall be such as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(5) A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of-

(i) any case pending before; or

(ii) any matter which is falling within the jurisdiction of, and is not brought before,

any court for which the Lok Adalat is organised:

Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.”

“20. Cognizance of cases by Lok Adalats.- *(1) Where in any case referred to in clause (i) of sub-section (5) of section 19-*

(i) (a) the parties thereof agree; or

(b) one of the parties thereof makes an application to the court, for referring the case to the Lok Adalat for settlement and if such court is prima facie satisfied that there are chances of such settlement; or

(ii) the court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat,

the court shall refer the case to the Lok Adalat:

Provided that no case shall be referred to the Lok Adalat under sub-clause (b) of clause (i) or clause (ii) by such court except after giving a reasonable opportunity of being heard to the parties.

(2) Notwithstanding anything contained in any other law for the time being in force, the Authority or Committee



organising the Lok Adalat under sub. section (1) of section 19 may, on receipt of an application from any one of the parties to any matter referred to in clause (ii) of sub-section (5) of section 19 that such matter needs to be determined by a Lok Adalat, refer such matter to the Lok Adalat, for determination:

Provided that no matter shall be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the other party.

(3) Where any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties.

(4) Every Lok Adalat shall, while determining any reference before it under this Act, act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity, fair play and other legal principles.

(5) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the court, from which the reference has been received under sub-section (1) for disposal in accordance with law.

(6) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, in a matter referred to in sub-section (2), that Lok Adalat shall advice the parties to seek remedy in a court.

(7) Where the record of the case is returned under sub-section (5) to the court, such court shall proceed to deal with such case from the stage which was reached before such reference under sub-section. (1).”



11. Learned counsel for the respondent No.1 & 2 submits that representative of the petitioners(Railway) has attended the Lok Adalat, which was held on 23.11.2013 and he has every opportunity to agree or disagree thus, he cannot approbate and disapprobate at the same time.

12. Learned counsel for the respondent No.1 & 2 submits that from bare perusal of the writ petition it appears that the petitioners have challenged the award on another ground that the State of Bihar through DLAO has been impleaded as already defendant in Court below including the contesting (Railway) petitioners herein, who had acquired the land in question of the Respondent Nos. 1 & 2 thus, the State of Bihar through DLAO was a Government Party and as such he has not filed any written argument in the Court below. The petitioners(Railway) have made further objection regarding constitutions/representations of DLAO in the proceeding Lok Adalat. The DLAO was very much present as one of the presiding member of Lok Adalat constituted under Legal Services Authorities Act thus, the objection of the petitioners that with regard to the State of Bihar through DLAO happens to be defendants in the LA Case No. 13 of 2007 as they are required to be represented the presence of DLAO representing the State of



Bihar has within the proceeding of the conciliation before the Lok Adalat which was held on 23.11.2023.

13. Learned counsel for the respondent No.1 & 2 submits that to recall a compromise that has been recorded would call for strong reasons. This is because a compromise would result ultimately in a decree of a Court which cannot be enforced just as a decree passed on an adjudication of a case. This is also true in the case of compromise recorded before the Learned Lok Adalat. In this regard, it may be appropriate to refer to Section 21 of the Legal Services Authorities Act, 1987. The award of the Lok Adalat cannot be reversed or set-aside without setting-aside the facts recorded in such award is being fraudulent arrived at. Learned counsel for the respondents has relied upon a judgment rendered by the Hon'ble Apex Court in Civil Appeal No.3486-3488 of 2022 **(K. SRINIVASAPPA & ORS. VS. M. MALLAMMA & ORS.)** They have referred the paragraph No. 27, 28, 33, 34, and 35 as follows:-

“27. At the outset, we observe that we do not find any reason forthcoming from the judgment of the High court while setting aside the order of the Lok Adalat dated 07th July, 2012 whereby the terms of the compromise were recorded. To recall a compromise that has been recorded would call for strong reasons. This is because a compromise would result ultimately into a decree of a Court which can be enforced just as a decree



passed on an adjudication of a case. This is also true in the case of a compromise recorded before a Lok Adalat. In this regard, it may be apposite to refer to Section 21 of the Legal Services Authorities Act, 1987, which is extracted as under:

“21. Award of Lok Adalat.- (1) Every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section (1) of section 20, the court-fee paid in such case shall be refunded in the manner provided under the Court-fees Act, 1870 (7 of 1870). (2) Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award.”

“28. Section 21 of the Legal Services Authorities Act, 1987 equates an award of the Lok Adalat, to a decree of a Civil Court and imputes an element of finality to an award of compromise passed by the Lok Adalat. When the Lok Adalat disposes cases in terms of a compromise arrived at between the parties to a suit, after following principles of equity and natural justice, every such award of the Lok Adalat shall be deemed to be a decree of a Civil Court and such decree shall be final and binding upon the parties. Given the element of finality attached to an award of the Lok Adalat, it also follows that no appeal would lie, under Section 96 of the CPC against such award, vide **P.T. Thomas vs. Thomas Job - [(2005) 6 SCC 478].”**

“33. This Court in *Ruby Sales and Services Pvt. Ltd. vs. State of Maharashtra- [(1994) 1 SCC 531]*



observed that a consent decree is a creature of an agreement and is liable to be set aside on any of the grounds which will invalidate an agreement. Therefore, it would follow that the level of circumspection, which a Court of law ought to exercise while setting aside a consent decree or a decree based on a memo of compromise, would be atleast of the same degree, which is to be observed while declaring an agreement as invalid.”

“34. In *Pushpa Devi Bhagat (dead) through LR. Sadhna Rai vs. Rajinder Singh and Ors. [(2006) 5 SCC 566]*, this Court held that since no appeal would lie against a compromise decree, the only option available to a party seeking to avoid such a decree would be to challenge the consent decree before the Court that passed the same and to prove that the agreement forming the basis for the decree was invalid. It is therefore, impervative that a party seeking to avoid the terms of a consent decree has to establish, before the Court that passed the same, that the agreement on which the consent decree is based, is invalid or illegal.”

“35. It is a settled position of law that where an allegation of fraud is made against a party to an agreement, the said allegation would have to be proved strictly, in order to avoid the agreement on the ground that fraud was practiced on a party in order to induce such party to enter into the agreement. Similarly, the terms of a compromise decree, cannot be avoided, unless the allegation of fraud has been proved. In the absence of any conclusive proof as to fraud on the part of the objectors, the High Court could not have set aside the compromise decree in the instant case.”



14. Learned counsel for the respondents relied upon the judgment of the Hon'ble Apex Court in the case of **Bichitrananda Behera Versus State of Orissa and Others reported in 2023 SCC OnLine SC 1307**, with regard to delay and laches, paragraph-21 of the said judgment which is being reproduced herein below:-

“ 21. Profitably, we may reproduce relevant passages from certain decisions of this Court:

(A) Union of India v. Tarsem Singh, (2008) 8 SCC 648:

“To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to



recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

(emphasis supplied)

(B) Union of India v N Murugesan, (2022) 2 SCC 25:

"Delay, laches and acquiescence

20. The principles governing delay, laches, and acquiescence are overlapping and interconnected on many occasions. However, they have their distinct characters and distinct elements. One can say that delay is the genus to which laches and acquiescence are species. Similarly, laches might be called a genus to a species by name acquiescence. However, there may be a case where acquiescence is involved, but not laches. These principles are common law principles, and perhaps one could identify that these principles find place in various statutes which restrict the period of limitation and create non-consideration of condonation in certain circumstances. They are bound to be applied by way of practice requiring prudence of the court than of a strict application of law. The underlying principle governing these concepts would be one of estoppel. The question of prejudice is also an important issue to be taken note of by the court.

Laches

21. The word “laches” is derived from the French language meaning “remissness and slackness”. It thus involves unreasonable delay or negligence in pursuing a claim involving an equitable relief while causing



prejudice to the other party. It is neglect on the part of a party to do an act which law requires while asserting a right, and therefore, must stand in the way of the party getting relief or remedy.

22. Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a Court of Equity to confer a remedy on a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a particular position, and therefore, it would be unreasonable to facilitate a challenge before the court. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.

23. A defence of laches can only be allowed when there is no statutory bar. The question as to whether there exists a clear case of laches on the part of a person seeking a remedy is one of fact and so also that of prejudice. The said principle may not have any application when the existence of fraud is pleaded and proved by the other side. To determine the difference between the concept of laches and acquiescence is that, in a case involving mere laches, the principle of estoppel would apply to all the defences that are available to a party. Therefore, a defendant can succeed on the various grounds raised by the plaintiff, while an issue concerned alone would be amenable to acquiescence.

Acquiescence



24. We have already discussed the relationship between acquiescence on the one hand and delay and laches on the other.

25. Acquiescence would mean a tacit or passive acceptance. It is implied and reluctant consent to an act. In other words, such an action would qualify a passive assent. Thus, when acquiescence takes place, it presupposes knowledge against a particular act. From the knowledge comes passive acceptance, therefore instead of taking any action against any alleged refusal to perform the original contract, despite adequate knowledge of its terms, and instead being allowed to continue by consciously ignoring it and thereafter proceeding further, acquiescence does take place. As a consequence, it reintroduces a new implied agreement between the parties. Once such a situation arises, it is not open to the party that acquiesced itself to insist upon the compliance of the original terms. Hence, what is essential, is the conduct of the parties. We only dealt with the distinction involving a mere acquiescence. When acquiescence is followed by delay, it may become laches. Here again, we are inclined to hold that the concept of acquiescence is to be seen on a case-to-case basis."

(emphasis supplied)

(C) *Chairman, State Bank of India v M J James*, (2022) 2 SCC 301:

"36. What is a reasonable time is not to be put in a straitjacket formula or judicially codified in the form of days, etc. as it depends upon the facts and circumstances of each case. A right not exercised for a long time is non-existent. Doctrine of delay and laches as well as acquiescence are applied to non-suit the litigants who



approach the court/appellate authorities belatedly without any justifiable explanation for bringing action after unreasonable delay. In the present case, challenge to the order of dismissal from service by way of appeal was after four years and five months, which is certainly highly belated and beyond justifiable time. Without satisfactory explanation justifying the delay, it is difficult to hold that the appeal was preferred within a reasonable time. Pertinently, the challenge was primarily on the ground that the respondent was not allowed to be represented by a representative of his choice. The respondent knew that even if he were to succeed on this ground, as has happened in the writ proceedings, fresh inquiry would not be prohibited as finality is not attached unless there is a legal or statutory bar, an aspect which has been also noticed in the impugned judgment. This is highlighted to show the prejudice caused to the appellants by the delayed challenge. We would, subsequently, examine the question of acquiescence and its judicial effect in the context of the present case.

38. *In Ram Chand v. Union of India [Ram Chand v. Union of India, (1994) 1 SCC 44] and State of U.P. v. Manohar [State of U.P. v. Manohar, (2005) 2 SCC 126] this Court observed that if the statutory authority has not performed its duty within a reasonable time, it cannot justify the same by taking the plea that the person who has been deprived of his rights has not approached the appropriate forum for relief. If a statutory authority does not pass any orders and thereby fails to comply with the statutory mandate within reasonable time, they normally should not be permitted to take the defence of laches and*



delay. If at all, in such cases, the delay furnishes a cause of action, which in some cases as elucidated in Union of India v. Tarsem Singh [Union of India v. Tarsem Singh, (2008) 8 SCC 648 : (2008) 2 SCC (L&S) 765] may be continuing cause of action. The State being a virtuous litigant should meet the genuine claims and not deny them for want of action on their part. However, this general principle would not apply when, on consideration of the facts, the court concludes that the respondent had abandoned his rights, which may be either express or implied from his conduct. Abandonment implies intentional act to acknowledge, as has been held in para 6 of Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P. [Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P., (1979) 2 SCC 409 : 1979 SCC (Tax) 144] Applying this principle of acquiescence to the precept of delay and laches, this Court in U.P. Jal Nigam v. Jaswant Singh [U.P. Jal Nigam v. Jaswant Singh, (2006) 11 SCC 464 : (2007) 1 SCC (L&S) 500] after referring to several judgments, has accepted the following elucidation in Halsbury's Laws of England : (Jaswant Singh case [U.P. Jal Nigam v. Jaswant Singh, (2006) 11 SCC 464 : (2007) 1 SCC (L&S) 500] , SCC pp. 470-71, paras 12-13)

“12. The statement of law has also been summarised in Halsbury's Laws of England, Para 911, p. 395 as follows:

'In determining whether there has been such delay as to amount to laches, the chief points to be considered are:

- (i) acquiescence on the claimant's part; and*
- (ii) any change of position that has occurred on the defendant's part.*



Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches.'

13. In view of the statement of law as summarised above, the respondents are guilty since the respondents have acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or whiled it away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial



repercussions on the financial management of the Nigam. Why should the court come to the rescue of such persons when they themselves are guilty of waiver and acquiescence?”

39. Before proceeding further, it is important to clarify distinction between “acquiescence” and “delay and laches”. Doctrine of acquiescence is an equitable doctrine which applies when a party having a right stands by and sees another dealing in a manner inconsistent with that right, while the act is in progress and after violation is completed, which conduct reflects his assent or accord. He cannot afterwards complain. [See Prabhakar v. Sericulture Deptt., (2015) 15 SCC 1 : (2016) 2 SCC (L&S) 149. Also, see Gobinda Ramanuj Das Mohanta v. Ram Charan Das, 1925 SCC OnLine Cal 30 : AIR 1925 Cal 1107] In literal sense, the term acquiescence means silent assent, tacit consent, concurrence, or acceptance. [See Vidyavathi Kapoor Trust v. CIT, 1991 SCC OnLine Kar 331 : (1992) 194 ITR 584] which denotes conduct that is evidence of an intention of a party to abandon an equitable right and also to denote conduct from which another party will be justified in inferring such an intention. [See Krishan Dev v. Ram Piari, 1964 SCC OnLine HP 5 : AIR 1964 HP 34] Acquiescence can be either direct with full knowledge and express approbation, or indirect where a person having the right to set aside the action stands by and sees another dealing in a manner inconsistent with that right and in spite of the infringement takes no action mirroring acceptance. [See “Introduction”, U.N. Mitra, Tagore Law Lectures — Law of Limitation and Prescription, Vol. I, 14th Edn., 2016.] However, acquiescence will not apply if lapse of time is of no importance or consequence.



40. Laches unlike limitation is flexible. However, both limitation and laches destroy the remedy but not the right. Laches like acquiescence is based upon equitable considerations, but laches unlike acquiescence imports even simple passivity. On the other hand, acquiescence implies active assent and is based upon the rule of estoppel in pais. As a form of estoppel, it bars a party afterwards from complaining of the violation of the right. Even indirect acquiescence implies almost active consent, which is not to be inferred by mere silence or inaction which is involved in laches. Acquiescence in this manner is quite distinct from delay. Acquiescence virtually destroys the right of the person. [See Vidyavathi Kapoor Trust v. CIT, 1991 SCC OnLine Kar 331 : (1992) 194 ITR 584] Given the aforesaid legal position, inactive acquiescence on the part of the respondent can be inferred till the filing of the appeal, and not for the period post filing of the appeal. Nevertheless, this acquiescence being in the nature of estoppel bars the respondent from claiming violation of the right of fair representation.”

(emphasis supplied)

15. Learned counsel for the respondents further relied upon the judgment of the **Hon'ble Apex Court in the case of Mrinmoy Maity v. Chhanda Koley and Others reported in [2024] 4 S.C.R. 506;** paragraph nos. 11, 12 and 13 of the said judgment which are being reproduced herein below:-

“ 11. For filing of a writ petition, there is no doubt that no fixed period of limitation is prescribed. However, when the extraordinary jurisdiction of the writ court is invoked, it has to be seen as to whether within a reasonable time same has been invoked and even submitting of memorials would not revive the dead cause of action or resurrect the cause of action which has had a natural death. In such circumstances



*on the ground of delay and laches alone, the appeal ought to be dismissed or the applicant ought to be non-suited. If it is found that the writ petitioner is guilty of delay and laches, the High Court ought to dismiss the petition on that sole ground itself, in as much as the writ courts are not to indulge in permitting such indolent litigant to take advantage of his own wrong. It is true that there cannot be any waiver of fundamental right but while exercising discretionary jurisdiction under Article 226, the High Court will have to necessarily take into consideration the delay and laches on the part of the applicant in approaching a writ court. This Court in the case of **Tridip Kumar Dingal and others v. State of W.B and others., (2009) 1 SCC 768** has held to the following effect:*

“56. We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches.

57. If the petitioner wants to invoke jurisdiction of a writ court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhumed matters which have already been disposed of or settled or where the rights of third parties



have accrued in the meantime (vide State of M.P. v. Bhailal Bhai [AIR 1964 SC 1006 : (1964) 6 SCR 261], Moon Mills Ltd. v. Industrial Court [AIR 1967 SC 1450] and Bhoop Singh v. Union of India [(1992) 3 SCC 136 : (1992) 21 ATC 675 : (1992) 2 SCR 969]). This principle applies even in case of an infringement of fundamental right (vide Tilokchand Motichand v. H.B. Munshi [(1969) 1 SCC 110] , Durga Prashad v. Chief Controller of Imports & Exports [(1969) 1 SCC 185] and Rabindranath Bose v. Union of India [(1970) 1 SCC 84]).

58. There is no upper limit and there is no lower limit as to when a person can approach a court. The question is one of discretion and has to be decided on the basis of facts before the court depending on and varying from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose.”

*12. It is apposite to take note of the dicta laid down by this Court in **Karnataka Power Corporation Ltd. and another v. K. Thangappan and another, (2006) 4 SCC 322** whereunder it has been held that the High Court may refuse to exercise extraordinary jurisdiction if there is negligence or omissions on the part of the applicant to assert his right. It has been further held thereunder:*

“6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even



where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prashad v. Chief Controller of Imports and Exports [(1969) 1 SCC 185 : AIR 1970 SC 769] . Of course, the discretion has to be exercised judicially and reasonably.

7. What was stated in this regard by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd [(1874) 5 PC 221 : 22 WR 492] (PC at p. 239) was approved by this Court in Moon Mills Ltd. v. M.R. Meher [AIR 1967 SC 1450] and Maharashtra SRTC v. Shri Balwant Regular Motor Service [(1969) 1 SCR 808 : AIR 1969 SC 329] . Sir Barnes had stated:

“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 limitation, 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.”



8. *It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation to Article 32 of the Constitution. It is apparent that what has been stated as regards that article would apply, a fortiori, to Article 226. It was observed in Rabindranath Bose v. Union of India [(1970) 1 SCC 84 : AIR 1970 SC 470] that no relief can be given to the petitioner who without any reasonable explanation approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution-makers that this Court should disregard all principles and grant relief in petitions filed after inordinate delay.*

9. *It was stated in State of M.P. v. Nandlal Jaiswal [(1986) 4 SCC 566 : AIR 1987 SC 251] that 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.”*



13. Reiterating the aspect of delay and laches would disentitle the discretionary relief being granted, this Court in the case of Chennai Metropolitan Water Supply & Sewerage Board and others v. T.T. Murali Babu, (2014) 4 SCC 108 has held:

“16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant — a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.”

16. Having heard the counsel of the parties and perused the material available on record, this court comes to the conclusion that the petitioners have filed the present writ petition after lapses of ten years although, the law of limitation does not operate in this writ petition. The petitioners should have approached this Court



within a reasonable period of time with reference to Limitation Act i.e. three years since there is no time limit for filing the writ petition. At the same time, it is necessary to take note of laches on their part as decided by Hon’ble Supreme Court in the case of *Mrinmoy Maity vs. Chhanda Koley and Others (supra)* as well as in the case of *Tridip Kumar Dingal and Otheres vs. State of W.B and Others (supra)*.

17. In view of the aforesaid, the present writ petition is dismissed on the ground of delay and laches, which is one of the factors which is to be considered while exercising of power under Article 226 of the Constitution of India.

(Rajesh Kumar Verma, J)

Harshita/-

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