

**IN THE HIGH COURT AT CALCUTTA**  
***Circuit Bench at Jalpaiguri***  
**CIVIL APPELLATE JURISDICTION**  
**APPELLATE SIDE**

Present:

**The Hon'ble Justice Joymalya Bagchi**

And

**The Hon'ble Justice Ajay Kumar Gupta**

***M.A.T. 192 of 2023***  
***(CAN 1 of 2023)***  
***(CAN 2 of 2023)***

***Jogendra Nath Das***  
***-Vs-***  
***The State of West Bengal & Ors.***

**For the Appellant** : Mr. Debanjan Das, Adv.

**For the State** : Mr. Hirak Barman, Adv.  
Mr. Momenur Rahman, Adv.

**Heard on** : 14.05.2024

**Judgment on** : 14.05.2024

**Joymalya Bagchi, J. :-**

1. Appellant-writ petitioner had applied for MR Dealership at Petla, Adabari in 1992. Sub-Divisional Food Controller found the appellant-writ petitioner eligible for appointment but the local Panchayat Samity recommended in favour of the respondent no.6. On 31.08.1994 appellant-writ petitioner made a representation to

the respondent authorities to consider his candidature for the said dealership. Thereafter, there was a hiatus of about 28 years. In 2022, appellant-writ petitioner revived his claim and made a representation that he should be appointed to the aforesaid dealership. His recommendation not being acted upon, he approached this court.

2. Learned Single Judge dismissed his prayer on the ground of delay and laches. Learned Judge observed the dealership no longer existed and the ration card holders had been attached to another dealership.
3. Learned Advocate for the appellant-writ petitioner submits that the fundamental right of the appellant-writ petitioner to carry on trade and business cannot be ignored merely on the ground of delay. Sub-Divisional Officer found him to be most eligible for allotment but he was illegally denied the dealership. He relied on various authorities in support of the proposition that writ petition ought not to be dismissed on the ground of mere delay and laches.
4. Learned Advocate for the State contends the appellant-writ petitioner did not agitate the issue for 28 long years. Presently, the dealership at Petla, Adabari is no longer in existence and the ration card holders of the said dealership have been attached to another dealership.

5. Appellant-writ petitioner had applied for MR Dealership at Petla, Adabari in 1992. Though he was recommended by the Sub-Divisional Officer, respondent no.6 was recommended by the local Panchayat Samity. Appellant-writ petitioner not being the unanimous choice had not been appointed. He made a representation to the respondent authorities in 1994. Thereafter, there was stone silence for almost three decades. In the meantime, dealership at Petla, Adabari had been discontinued and the card holders had been attached to another dealership.
6. This change of circumstance extinguishes the relief sought in the writ petition viz. a direction for appointment of MR Dealership at Petla, Adabari which was no longer in existence.
7. Authorities relied on by the appellant-writ petitioner are clearly distinguishable. They relate to cases where land was illegally taken over by the State without payment of compensation. In *Tukaram Kana Joshi & Ors. thr. Power of Attorney Holder vs. M.I.D.C. & Ors.*<sup>1</sup>, the Apex Court held State under the constitutional scheme cannot be permitted to take over land without due process of law. The court also held that the land losers had been actively pursuing their claims. In such circumstances, the Court held delay and laches would not stand in the way of just compensation. However, in the

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<sup>1</sup> (2013) 1 SCC 353

said report the Court distinguished cases where delay and laches may extinguish the right as follows :-

*“11. There are authorities which state that delay and laches extinguish the right to put forth a claim. Most of these authorities pertain to service jurisprudence, grant of compensation for a wrong done to them decades ago, recovery of statutory dues, claim for educational facilities and other categories of similar cases, etc. Though, it is true that there are a few authorities that lay down that delay and laches debar a citizen from seeking remedy, even if his fundamental right has been violated, under Article 32 or 226 of the Constitution, the case at hand deals with a different scenario altogether.....”*

8. The present case falls in the latter category. The appellant-writ petitioner had made a representation with regard to non-consideration of his claim in 1994. Thereafter, he did not agitate his claim at all. In the meantime, the dealership was extinguished and card holders were attached to another dealership. Due to his indolence the factual matrix has altogether altered thereby extinguishing the right of the appellant-writ petitioner to be appointed to the dealership.
9. The other authorities namely, *Vidya Devi vs. The State of Himachal Pradesh & Ors.*<sup>2</sup> and *State of West Bengal & Ors. vs. Asit Das & Ors.*<sup>3</sup> are also distinguishable on similar lines.
10. For these reasons, I am constrained to hold delay and laches on the part of the appellant-writ petitioner has rendered his right to be considered for appointment to the dealership nugatory as the said dealership is no longer in existence.

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<sup>2</sup> (2020) 2 SCC 569

<sup>3</sup> 2023 SCC OnLine Cal 2055

11. For these reasons, I do not find any merit in the appeal.
12. MAT 192 of 2023 is accordingly, dismissed.
13. In view of dismissal of the appeal, the connected applications being CAN 1 of 2023 and CAN 2 of 2023 are also disposed of.
14. There shall be, however, no order as to costs.
15. Urgent photostat certified copy of the judgment, if applied for, be given to the parties on usual undertaking.

I agree.

**(Ajay Kumar Gupta, J.)**

**(Joymalya Bagchi, J.)**

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