

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**WP(C) No. 303/2021
CM No. 1524/2021
CM No. 3321/2024
CM No. 3334/2024**

Shrivallabh Datt

.....Appellant(s)/Petitioner(s)

Through: Mr. Ajay Vaid, Advocate &
Mr. Ayush Gupta, Advocate

Vs

UT of J&K and ors.

..... Respondent(s)

Through: Mr. Suneel Malhotra, GA for R-1 to 3
Mrs. Monika Kohli, Sr. AAG for R-4
Mr. Jatinder Choudhary, Advocate for R-5

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
02.09.2024

Oral

1. The petitioner herein has filed the instant petition under Article 226 of the Constitution for seeking the following reliefs:-

“a. To command and direct the respondents to handover the land measuring 103 kanal 15 marlas falling in khasra no. 367 and land measuring 48 kanal 15 marlas falling in khasra no. 369 in village Pouni Chak Wand Waziran Tehsil Jammu to the petitioner, by issuance of writ of mandamus.

b. In the alternative command and direct the respondents to pay the compensation to the petitioner for deemed acquisition of the aforesaid land of the petitioner at the prevailing market rate, by issuance of writ of mandamus.

c. To pay the rent to the petitioner for the utilization of the aforesaid land of the petitioner from 1962 till it is retrieved under the provisions

of SRO 239 and section 81 of the land Acquisition Rules by issuance of writ of mandamus.”

2. The facts under the shade and cover of which the aforesaid reliefs have been prayed and as are stated in the petition, are that the father of the petitioner namely, Sh. Bhanu Dutt Sharma owned two parcels of land measuring 152 Kanals 10 Marlas, (being land measuring 103 Kanals 15 Marlas and land measuring 48 Kanals 15 Marlas) falling under Survey Nos. 367 and 369 respectively situated in Village Pouni Chak, Wand Waziran, Tehsil Jammu, which land came to be inherited by the petitioner along with his brother namely, Shrish Dutt Sharma after the death of his father in the year 2001 and that the land in question have had been previously inherited by the father of the petitioner from his father (grandfather of the petitioner) namely, Pandit Sham Sunder Jotshi and that after the death of the father of the petitioner, an inheritance mutation No. 30 dated 12.03.2003 qua the land in question was attested in his favour along with his brother and the mother namely, Smt. Amba Devi who expired in the year 2009 and that the Department of Agriculture of Government of Jammu and Kashmir forcibly took the possession of a part of the land in question and got itself recorded in the relevant revenue records in cultivating possession of the same illegally and without any right, whereafter, the Agriculture Department on its own transferred the possession of the said land to Animal Husbandry Department of Government of Jammu and Kashmir and consequently, the Animal Husbandry Department of Government of Jammu and Kashmir came to be reflected in the relevant revenue record in its possession, aggrieved

whereof, the above named brother of the petitioner filed an appeal before the Deputy Commissioner, Jammu on 21.05.2008, challenging the said entries made in the revenue records qua the land in question in the name of Animal Husbandry Department, which appeal upon being transferred to the Additional Deputy Commissioner, Jammu by the Deputy Commissioner, Jammu, an Order No. 124-Agri of 2002 dated 22.03.2002 and therein the said appeal, the Agriculture Department placed on record an order whereunder sanction had been accorded to the exchange of 20 acres of land situated at Chatha belonging to the Agriculture Department with 18 acres of land belonging to Sher-e-Kashmir University of Agricultural Sciences and Technology, Jammu (SKUAST) situated at Pouni Chak along with structure existing thereon at each of the premises of Animal Husbandry Department, Jammu and the SKUAST, Jammu and besides the said order, document proof of handing over and taking over of the land in question was also produced qua the land in question between the SKUAST and Animal Husbandry Department and the said appeal came to be decided by the Additional Deputy Commissioner, Jammu on 04.02.2011 holding that the appellant is the owner of land covered under Khasra numbers reflected in the appeal and that the possession of the said land was with the Agriculture Department which stands transferred to the Animal Husbandry Department holding further that the possession of the land with Agriculture Department was as a tenant which had no legal right to transfer the possession of the land to anyone else and that the land since had been for long in possession of various departments of the Government

being used for public purposes, the appellant has right to seek compensation thereof and that since the possession of the land has been reflected on spot with the said Government Departments and not with the owner of the land, the Girdawari as such has to be corrected to the extent that in place of the Department of Agriculture, the Animal Husbandry Department is to be reflected in possession of the land.

3. In the aforesaid backdrop, it is being next stated by the petitioner in the petition that since the respondents have been in possession and occupation of the land of the petitioner being used by the respondents-departments without the consent of the petitioner and his brother inasmuch as without any legal sanction having been taken over without following due process of law depriving the petitioner and his brother of their immovable property, the respondents are liable to pay rentals to the petitioner for utilizing the land in question since 1962, till the land acquired formally or returned back to the petitioner stating further that the land in question is not being used and utilized by the respondents for any public purpose and is being in fact occupied in colorable exercise of power.
4. **Objections** to the petition have been filed by the respondents.
5. In the response filed by respondents 1 and 2, it is being inter alia stated that the land in question has been obtained from SKUAST in exchange by the answering respondents and is under the occupation of the answering respondents.

It is being further stated in the said objections that after a period of six years from the date the land came into possession of the answering

respondents, one Shrish Datt (brother of the petitioner) filed a case in the year 2008 in the court of Additional District Collector, Jammu for correction of revenue record pertaining to Khasra Nos. 367 and 369 pertaining to the land situated at Village Pounichak, Wand Waziran, Tehsil Jammu which prayer however was declined by Additional District Collector vide order dated 04.02.2011 and that the said Shrish Datt Sharma challenged the order dated 04.02.2011 before the Divisional Commissioner, Jammu.

It is being further stated in the objections that since the petitioner has admitted himself that the Agriculture Department has been in possession of the land in question since 1962, the petitioner could not have lodged a claim at this belated stage qua the land in question, more so, in presence of the order of exchange dated 22.03.2002 whereunder the possession of the land in question was exchanged between SKUAST and Animal Husbandry Department which order of exchange was as well never thrown challenge to by the petitioner.

It is being lastly stated in the objections that answering respondents got the land from SKUAST in exchange of the land possessed by the answering respondents at Chatha and as such, the answering respondents are not liable to pay either any rent or compensation to the petitioner.

6. Respondent 3 has not filed any independent objections but has adopted the objections filed by respondents 1 and 2.
7. In the objections filed by respondent 4, it is being inter alia stated while opposing the petition that the land in question stands recorded in the

Jamabandi of 1963-64 in the possession of Agriculture Production Department which fact has been concealed by the petitioner as the said land had been transferred and is in possession of the Agriculture Production Department.

It is being further stated that Jyotshi Pandit, Sham Sunder grandfather of the petitioner possessed land more than the ceiling provided under Section 4 of the Big Landed Estates Abolition Act, Svt. 2007 instead of land measuring 182 Kanals and as such, the rest of the land possessed by him being land in question got escheated to the State and thus, the petitioner has no claim either for rentals or compensation qua the land in question.

It is being also stated in the objections by respondent 4 that the land in question has been exchanged by the Agriculture Department in favour of Animal Husbandry Department and that the petitioner has no claim to retrieve the land in question in his favour or to seek compensation thereof even under the provisions of Jammu and Kashmir Agrarian Reforms Act, 1976.

8. In the objections filed by respondent 5, it is being stated that the land in question came to be transferred by the Government for the establishment of erstwhile SKUAST, J&K in terms of Notification dated 18.09.1982 and prior to coming into being the SKUAST, the land in question was under the possession of Agriculture Production Department and that SKUAST initially being one institute operating in Jammu as well as in Kashmir came to be bifurcated into two independent Universities being SKUAST, Jammu and SKUAST, Kashmir, the land in question came under the

possession of SKUAST, Jammu pursuant to order dated 22.03.2002 issued by Agriculture Department in exchange in lieu of 18 acres of land belonging to SKUAST, Jammu situated at Pounichak, Jammu.

Heard learned counsels for the parties and perused the record.

9. Mr. Ajay Vaid, appearing counsel for the petitioner while making his submissions in line with the contentions raised and grounds urged in the petition would insist that the respondents could not have taken over the proprietary land of the petitioner having vested unto the petitioner, his brother and mother upon attestation of inheritance mutation after the death of his father in terms of Mutation No. 30 dated 12.03.2003 and that right to property having been held to be a constitutional right could not have infringed by the respondents without following procedure prescribed in law. Learned counsel for the petitioner in this regard would heavily rely upon the judgment of the Apex Court passed in case titled as '**Vidya Devi vs. State of Himachal Pradesh & Ors.**' reported in **2020 SC 4709** as also the Division Bench judgment of this Court passed in case titled as '**Amina Begum vs. State of J&K & Ors.**' reported in **2023 (2) JK[HC] 201** passed in LPA No. 105/2019 decided on 2.10.2022.
10. On the contrary, the appearing counsels for the respondents would jointly raise a preliminary objection qua the maintainability of the petition on the ground of delay and laches and would contend that the land in question have had been in the possession of the respondents to the knowledge of the petitioner since 1962 and even the petitioner had the knowledge of its transfer/exchange *inter se* to the respondents in terms of order dated

22.03.2002 which order till date has not been questioned by the petitioner and as such, the petitioner cannot now under such circumstances maintain the petition more so, in view of the fact that the land in question stands escheated to the Government in terms of the provisions of the Big Landed Estates Abolition Act during the lifetime of the grandfather/father of the petitioner who did not challenged the said escheatment during the life time, as such, the petitioner cannot now lodge any claim in respect of the land in question now.

11. It is significant to mention here that as per the own showing of the petitioner the inheritance mutation No. 30 qua the land inherited by the petitioner along with his brother and mother have had been attested on 12.03.2003, a perusal of which mutation reveals that the said land in question under the possession and occupation of the official respondents has been reflected therein in exclusive terms and without any ambiguity. It is also not in dispute that the brother of the petitioner for the first time questioned the entries made in favour of the respondents-departments qua the land claimed by the petitioner along with his brother on 30.05.2008 upon filing an appeal and neither the petitioner nor his mother did join his brother in the said proceedings, so much so, the petitioner has also not joined his brother before the Divisional Commissioner before whom his brother challenged order dated 04.02.2011 passed by the Additional District Collector, which challenge as per the counsel for the respondents, has been dismissed on 01.05.2024 by the Divisional Commissioner. It is also an admitted fact that the petitioner has maintained the instant petition

in the year 2021 for seeking reliefs referred in the preceding paras for a cause which owes its origin in the year 1962 i.e. when the land came into the possession of the respondents, followed by its exchange on 22.03.2002 and thereafter on 12.03.2003 when inheritance mutation No. 30 came to be attested in favour of the petitioner, his brother and mother which mutation manifestly reflected the possession of the respondents over the land in question.

12. In view of the aforesaid facts and circumstances, the fundamental question for determination of this Court thus would be as to whether extraordinary writ jurisdiction can be invoked by the petitioner for the reliefs sought as referred in the preceding paras. The said question however is no more res integra and stands settled by a series of judgments passed by the Apex Court wherein it has been the consistent view that the powers of the High Court under Article 226 of the Constitution are discretionary in nature and though no limits can be placed upon exercise of such discretion, yet the discretion has to be exercised along recognized lines and subject to self imposed limitations, one of such limitation being delay and latches.

The petitioner indisputably has invoked extraordinary writ jurisdiction of this Court after a considerable period of time which has not been ironically explained in the petition by the petitioner in particular that the petitioner had been alive to inheritance mutation attested in his favour, in favour of his brother and mother being Mutation No. 30 dated 22.03.2003 having approached this Court in the year 2021 although his above named

brother had questioned the revenue entries in question only in the year 2008. Though there is no limitation prescribed in filing a writ petition under Article 226 of the Constitution, yet law is equally settled that delay and laches would affect the maintainability of a petition filed under Article 226 of the Constitution. A reference in this regard to the judgment of the Apex Court passed in case titled as **‘State of Madhya Pradesh and another vs. Bhailal Bhai’** reported in **AIR 1964 SC 1006** wherein at Para 17 following has been held:-

“It has been made clear more than once that the power to give relief under Article 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion is the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it. It is not easy nor is it desirable to lay down any rule for universal application. It may, however, be stated as a general rule that if there has been unreasonable delay the court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus.”

Further more the Apex Court in case titled as **‘U.P. Jal Nigam Vs. Jaswant Singh’** reported in **2016 (11) SCC 464** has also held that “when a person is not vigilant of his rights and acquiesces with the situation, his writ petition cannot be heard after a couple of years.”

The judgment relied upon by the counsel for the petitioner against plea of delay and laches passed in case titled as **‘Vidya Devi vs. State of Himachal Pradesh & Ors.’** reported in **2020 SC 4709** do not lend any support to the case of the petitioner for the simple reason that the petitioner therein the said petition have had been pursuing her claim before the respondents qua the immovable property continuously and had not slept over her claim acquiescenced. In so far as the Division Bench

judgment passed by this Court in case titled as ‘**Amina Begum vs. State of J&K & Ors.**’ reported in **2023 (2) JK[HC] 201** passed in LPA No. 105/2019 decided on 2.10.2022 also relied upon by the counsel for the petitioner is concerned, the said judgment as well is misplaced in the facts and circumstances of the case as in the said judgment, the Division Bench has relied upon the judgment passed by the Apex Court in Vidya Devi (supra) and the said judgment is also quite distinguishable on the premise that the respondents herein have not claimed adverse possession qua the land in question claimed by the petitioner.

13. Viewed thus, what has been observed, considered and analyzed hereinabove, the instant petition is held to be not maintainable on the ground of delay and latches. The petition thus is **dismissed**.



(Javed Iqbal Wani)
Judge

Jammu
02.09.2024
Neha-II

Whether the order is speaking: Yes
Whether the order is reportable: Yes