



W.P.(MD) No.4595 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	24.06.2024
Delivered on	09.07.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.4595 of 2023

and

W.M.P.(MD) No.4301 of 2023

V.M.Jeganathan

... Petitioner

Vs.

- 1.The Secretary of Government,
Transport Department,
Secretariat, Chennai.
- 2.The Transport Commissioner,
Department of Transport,
Chepauk, Chennai.
- 3.The District Collector cum
Regional Transport Authority,
Pudukkottai City & District.
- 4.The Regional Transport Officer,
Pudukkottai City & District.
- 5.The Director,
Department of Archive,
Government of Tamil Nadu,
Egmore, Chennai.



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6.K.K.M.Kader Husain,

7.A.V.M.Nallaiah

8.A.V.M.Selvaraj

9.A.V.M.Natarajan

10.A.V.M.Murugaiah

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings of the first and second respondents in G.O.MS.No.2217 dated 11.05.1955 and quashing the same as illegal and consequently to issue a permit in the name of the petitioner.

For Petitioner : Mr.V.M.Jeganathan
Party-in-Person

For R1 to R5 : Mrs.S.Jeya Priya
Government Advocate

For R7 to R10 : Mr.P.Ganapathi Subramanian

ORDER

This case was argued by the petitioner in his capacity as a party-in-person. In this Writ Petition, the petitioner has challenged the impugned Government Order in G.O.M.S.No.2217 dated 11.08.1955 issued by the



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first and second respondents herein. The impugned order passed by the

first and second respondents reads as under:-

“GOMS 2217 DATED 11/08/1955

*M.Vs.____ stage carriages _____ RTA
Tiruchirappalli Transfer of permit of bus No.MDY
437 now running on the rute Pudukkottai to
Karambakudi from the name of V.Manickam to the
name of Mr.V.Malaya Pillai refused by RTA
revision petition to Govt.____allowed.*

READ

*From Sri V.Malaya Pillai revision petition
dated 27/11/54 from Sri.V. Manickam
representation dated 17/12/1954 from the CRT BD
letter 51587 A2 54/ 25/12/1954.*

*Reference CRT BD Egmore with renumbered
at petitioner Tiruchirappalli V Malaya Pillai,
Thiru. Sri. Krishna lyengar Advocate 95 T/P kovil
Triplicane, Madras. Manickam petitioner
Narayanasamy motor service, Pudukkottai.*

ORDER:

*At its meeting held on 30/10/1954 the RTA,
Tiruchirappalli refused to transfer the permit of
bus MDY 437 running on the route Pudukkottai to
Karambakudi from the name of Sri.V.Manickam to
the name of Sri. V.Malaya Pillai on the ground
that Sri. Manickam objected to the transfer against
this order petitioner the revision has come to Govt
in revision.*

*Govt. have examined the case with reference
to the revision petition cited the connected record
and the representation of Sri. V.Manickam and his*



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history that Govt. considered that RTA should not have given weight to the objection of Sri.Manickam in view of the fact that in the joint application submitted to the RTA both the transferor and transferee had stated specially that no consideration or premium had been passed or to pass between them regarding the transfer. Govt. after considering that according to the rules that existed at the time when the order under revision was passed it was open to the transport authority to dispose of the application on merits independent of any objection that might be raised by either of the signatories to the joint application.

The Governor of Madras therefore sets aside order as improper the order of the RTA Tiruchirappalli passed at his meeting held on 30/10/1954 and directed that permit of bus MDY 437 be transferred from the name of Sri. V.Manickam to the name of Sri. V.Malaya Pillai the petitioner herein.

/S.d./

11.08.1955”

2. By the impugned Government Order, the permit, which stood in the name of the petitioner's father late.V.Manickam had been transferred to one Malaiya Pillai @ Malaiyappa Pillai.

3. According to the petitioner, although the petitioner's father late V.Manickam had signed an application for transfer of permit, the said



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V.Malaiya Pillai had failed to pay consideration and therefore, the petitioner's father had objected for transfer of permit.

4. It is submitted that the then Collector as the Transport Authority had rightly rejected the request of the said V.Malaiya Pillai on 30.10.1954. It is submitted that the said Malaiya Pillai however filed a revision before the Government of Madras which was allowed on 11.08.1955 in the impugned G.O.M.S.No.2217.

5. It is submitted that as per the prevailing Rules, the then Government was required to pass orders on merits. Despite the same, the respondents have issued the aforesaid Government Order.

6. Though this Writ Petition has been filed on 27.02.2023, it is submitted by the petitioner that since the constitutional rights of the petitioner's father were involved, the petitioner as his "legal representative" was entitled to maintain this Writ Petition and that the doctrine of laches will not come in the way of the petitioner to espouse the rights of the petitioner's father.



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7. It is admitted by the petitioner that the petitioner's father late.V.Manickam died in the year 1970. It is however submitted that at the time the petitioner was merely a college going student and that with great difficulty, the petitioner has now obtained information under RTI and therefore, has thus filed this Writ Petition and submits that the petitioner is entitled to the relief as sought for.

8. The learned counsel for the petitioner has placed reliance on the following decisions:-

- i. **Sukh Dutt Ratra & Another Vs. State of Himachal Pradesh & others**, (2022) 7 SCC 508;
- ii. **State of Himachal Pradesh & Others Vs. Rajiv and another**, dated 24.02.2023 passed by the Hon'ble Supreme Court in Civil Appeal No.1278 of 2023;
- iii. **Sh. Rajiv and another Vs.State of Himachal Pradesh and others**, 2018 SCC OnLine HP 2279;
- iv. **Veerasamy Vs. Jayanthi @ Jayalakshmi**, (2018) 1 MLJ 485; and
- v. **Delhi Development Authority Vs. Skipper Construction Company (P) Ltd., and another**, AIR 1996 SC 2005.

9. It is submitted that the Hon'ble Supreme Court by several verdicts has held that an act of transfer of "Permit" is an exercise of a quasi judicial power which can be exercised only by the Regional Transport Authority. It is submitted that this was the position under



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Section 59(1) of the Motor Vehicles Act, 1939. It is submitted that even under Section 82 of the Motor Vehicles Act, 1988, a permit is not transferable from one person to another person except with the permission of Transport Authority. In this connection, the petitioner has relied on the decision of the Hon'ble Supreme Court in **MC.Mehta Vs. Union of India**, 1998 (1) SCC 676. It is submitted that the Government has no power to issue executive instruction to the Regional Transport Authority.

10. It is further submitted that Central Act No.IV of 1939 also empowers only Regional Transport Authority as the Competent Authority to deal with the transfer of permit. It is submitted that in the context of Motor Vehicles Act, 1939 also, the Hon'ble Supreme Court's decisions are to the effect that the Government has no power to issue executive instruction contrary to decision of Regional Transport Authority, as the Regional Transport Authority was the only statutory authority to deal with the Transfer of Permits. Therefore, according to the Motor Vehicles Act, 1939, as also under the Motor Vehicles Act, 1988, only the Regional Transport Authority is/was empowered to deal with the Transfer of Permits.



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11. It is submitted that in this case, the Regional Transport Authority Thiruchirapalli had rightly rejected the Joint Application for transfer moved by Mr.V.Malaya Pillai. As such the said V.Malaya Pillai had no *locus standi* to move Revision Petition before Government to revise the order of the Regional Transport Authority.

12. It is further submitted that the orders of the respondents right from the seizure of vehicles to forfeiture of buses are illegal, grossly inequitable and unjust. In the course of pleadings, the petitioner has specifically raised the plea that nowhere in the world and particularly in India after the constitution came into force, property, whether movable or immovable can be transferred from one person to another person when there is a lack of consideration for such transfer.

13. It is submitted that there is no rule or any section in Act IV of the Motor Vehicles Act, 1939 which is relevant and applicable for the disposal of the revision moved by Malayappapillai. There is a reference to "According to rules that existed then the permit may be transferred



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although there may be no passing consideration". Such an observation found in the Government order is against Good Conscience, Equity and Justice".

14. It is further submitted that the petitioner's father as the holder of the permit was denied the right to hold the permit according to law. There is a total lack of observance of any fairness in the impugned G.O. It is further submitted that, although property right was originally envisaged in Part-III of the Constitution as a fundamental right, later by way of amendment, it was re-grafted into Article 300A of the Constitution of India.

15. It is submitted that the language embodied in Article 300A of the Constitution of India holds the law that no person shall be deprived of his property except by Authority of law. It is submitted that it is apparent from the tenor of G.O.M.S.No.2217 dated 11.08.1955, it was without any authority of law.

16. It is further submitted that no government order exists in favor of AV.Malaya Pillai that complies with legal requirements. Such an order,



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lacking any fundamental legal basis concerning the transfer of a vehicle, fails to align with Act IV of the Motor Vehicles Act, 1939, as well as the provisions under the Motor Vehicles Act, 1988.

17. It is submitted that as per Article 300A of the Constitution of India, no person shall be deprived of his property except by procedure established by law. Such recognition of the right to property has continued to be pronounced from Kings Bench from 1700's. Hence, the petitioner prayed for quashing the impugned Government Order.

18. This Writ Petition is opposed by the learned Government Advocate for the respondents 1 to 5, on the ground that this Writ Petition is liable to be dismissed on account of laches. That apart, it is submitted that there shall be no liberty under the limitation.

19. It is submitted that the permit, that was transferred to V. Malaiya Pillai, has been further transferred to three more persons and therefore, this Writ Petition is devoid of merits. Relevant portion of the counter affidavit of the official respondents reads as under:



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“9) I further submit that the petitioner has relied on Section 82 of Motor Vehicles Act, 1988, which empowers only the Transport Authority to transfer the permit, whereas, the alleged incident claimed by the petitioner was happened even prior to this piece of legislation, hence such a ground of the petitioner is also not sustainable. Moreover, the petitioner has relied on the corresponding Act of 1939 and his statements in Para 14 makes it clear that the case of the petitioner is fully out of his presumptions and of concocted version.

10) I further submit that the first permit transfer was made from V.Manickam to Malaiyappa Pillai vide G.O.No.2217, Home Department dated 11.08.1955. Thereafter, the permit was transferred from Malaiyappa Pillai to M/s A.V.M.Transports (Firm) vide R.No.3503/A4/1981 dated 17.07.1981. Subsequently, the permit was transferred from A.V.M.Transports to A.V.M.Natarajan vide R.No. 14446/A2/1987 dated 24.12.1987. On 05.05.2008, the permit was transferred from A.V.M.Natarajan to Raja Bus Service (Firm) vide R.No.9959/2008. Thereafter the permit was transferred from Raja Bus Service (Firm) to KKM.Kadher Hussain vide R.No. 4193/B2/2011 dated 08.09.2011. Finally, on 07.09.2022 the permit was transferred from Thiru. K.K.M.KadherHussain, S/o. MuhamedGuthoos, No. 77, Vanniya Street, Karambakudi, Pudukkottai District to M/S. Raja Bus Service (Firm), TS. No. 4141.Guthoose Building, East Main Street, Pudukkottai w.e.f 07.09.2022 and till date the permit stands in the name of M/S. Raja Bus Service (Firm) and they are operating this bus.

11) I further submit that the averments in Para 20 of the petitioner's affidavit clearly reveals that the case of the petitioner is purely out of some personal grudge between the other private respondents herein



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and the petitioner is trying to make use of this forum to settle his personal scores with the private respondents and trying to waste this Hon'ble Court's precious time.”

20. By way of rejoinder, the learned counsel for the petitioner would submit that Section 82 of the Motor Vehicle Act, 1988 is *pari materia* with Section 59 of Motor Vehicle Act, 1939.

21. It is further submitted that there is no embargo on the petitioner to work out his remedy under Section 82 of the Motor Vehicle Act, 1988.

“82. Transfer of permit.—*(1) Save as provided in subsection (2), a permit shall not be transferable from one person to another except with the permission of the transport authority which granted the permit and shall not, without such permission, operate to confer on any person to whom a vehicle covered by the permit is transferred any right to use that vehicle in the manner authorised by the permit.*

(2) Where the holder of a permit dies, the person succeeding to the possession of the vehicle covered by the permit may, for a period of three months, use the permit as if it had been granted to himself: Provided that such person has, within thirty days of the death of the holder, informed the transport authority which granted the permit of the death of the holder and of his own intention to use the permit: Provided further that no permit shall be so used after the date on



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which it would have ceased to be effective without renewal in the hands of the deceased holder.

(3) The transport authority may, on application made to it within three months of the death of the holder of a permit, transfer the permit to the person succeeding to the p

Provided that the transport authority may entertain an application made after the expiry of the said period of three months if it is satisfied that the applicant was prevented by good and sufficient cause from making an application within the time specified.”

22. I have considered the arguments advanced by the petitioner and the learned Government Advocate for the first to fifth respondents and the learned counsel for the seventh to tenth respondents.

23. The issue that arises for consideration is whether the petitioner as a legal representative of his father late Mr.V.Manickam is entitled to maintain this Writ Petition to undo the impugned Government Order in G.O.MS.No.2217 dated 11.08.1955.

24. This Writ Petition has been filed only on 27.02.2023. The High Court under Article 226 of the Constitution of India is strictly not



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governed by the limitation under the Act. However, Writ Courts are governed by well settled principles of laches. This Writ Petition has been filed long after the cause of action arose on 11.08.1955. Therefore, ordinarily it is liable to be dismissed on the ground of *laches*.

25. In the present case, the petitioner is espousing a right which predates the adoption of Constitution which was bestowed on the petitioner's father and later deprived in 1955. In **Tukaram Kana Joshi and others Vs. Maharashtra Industrial Development Corporation and others**, (2013) 1 SCC 353, the Hon'ble Supreme Court held that abuse of power or use of muscle power by a state will not defeat the rights on account of delay and laches. It was further observed that 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. Para 11 of the said decision reads as under:-

“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



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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. The functionaries of the State took over possession of the land belonging to the appellants without any sanction of law. The appellants had asked repeatedly for grant of the benefit of compensation. The State must either comply with the procedure laid down for acquisition, or requisition, or any other permissible statutory mode. There is a distinction, a true and concrete distinction, between the principle of “eminent domain” and “police power” of the State. Under certain circumstances, the police power of the State may be used temporarily, to take possession of property but the present case clearly shows that neither of the said powers have been exercised. A question then arises with respect to the authority or power under which the State entered upon the land. It is evident that the act of the State amounts to encroachment, in exercise of “absolute power” which in common parlance is also called abuse of power or use of muscle power. To further clarify this position, it must be noted that the authorities have treated the landowner as a “subject” of medieval India, but not as a “citizen” under our Constitution.”

26. In ***Vidya Devi v. State of H.P.***, (2020) 2 SCC 569, the Hon'ble Supreme Court held in a case where the demand for justice is so compelling, a constitutional court would exercise its jurisdiction with a view to promote justice, and not defeat it. The Court held that delay and



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laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice..

27. Following the above views, the Hon'ble Supreme Court held as under in **Sukh Dutt Ratra vs. State of Himachal Pradesh** (2022) 7 SCC 508 case referred to *supra*:-

“25. Concluding that the forcible dispossession of a person of their private property without following due process of law, was violative [Relying on Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai, (2005) 7 SCC 627 : 2005 Supp (3) SCR 388; N. Padmamma v. S. Ramakrishna Reddy, (2008) 15 SCC 517; Delhi Airtech Services (P) Ltd. v. State of U.P., (2011) 9 SCC 354 : (2011) 4 SCC (Civ) 673 : (2011) 12 SCR 191 and Jilubhai Nanbhai Khachar v. State of Gujarat, 1995 Supp (1) SCC 596 : 1994 Supp (1) SCR 807.] of both their human right, and constitutional right under Article 300-A, this Court allowed the appeal. We find that the approach taken by this Court in Vidya Devi [Vidya Devi v. State of



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H.P., (2020) 2 SCC 569 : (2020) 1 SCC (Civ) 799] is squarely applicable to the nearly identical facts before us in the present case.

26. In view of the above discussion, in view of this Court's extraordinary jurisdiction under Articles 136 and 142 of the Constitution, the State is hereby directed to treat the subject lands as a deemed acquisition and appropriately disburse compensation to the appellants in the same terms as the order of the Reference Court dated 4-10-2005 in Land Ref. Petition No. 10-LAC/4 of 2004 (and consolidated matters). The respondent State is directed, consequently to ensure that the appropriate Land Acquisition Collector computes the compensation, and disburses it to the appellants, within four months from today. The appellants would also be entitled to consequential benefits of solatium, and interest on all sums payable under law w.e.f. 16-10-2001 (i.e. date of issuance of notification under Section 4 of the Act), till the date of the impugned judgment [Sukh Dutt Ratra v. State of H.P., 2013 SCC OnLine HP 3773] i.e. 12-9-2013.

27. For the above reasons, the appeal is allowed and the impugned order [Sukh Dutt Ratra v. State of H.P., 2013 SCC OnLine HP 3773] of the High Court is hereby set aside. Given the disregard for the appellants' fundamental rights which has caused them to approach this Court and receive remedy decades after the act of dispossession, we also deem it appropriate to direct the respondent State to pay legal costs and expenses of Rs 50,000 to the appellants. Pending applications, if any, are hereby disposed of."



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28. The above view was followed by the Hon'ble Supreme Court in **State of Himachal Pradesh & Others Vs. Rajiv and another**, vide order dated 24.02.2023 passed in Civil Appeal No.1278 of 2023. Thus, there is no limitation acting against writ courts. Courts can do justice, even if there is a delay.

29. In **Delhi Development Authority Vs. Skipper Construction Co. (P) Ltd. and another**, AIR 1996 SC 2005, the Hon'ble Supreme Court dealt with Article 142 of the Constitution of India and held as under:-

“15. Article 142(1) of the Constitution of India reads:

“142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.—(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.”

16. In Vinay Chandra Mishra, Re [(1995) 2 SCC



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584] *this Court dealt with the scope and width of the power of this Court under Article 142. After referring to the earlier decisions of the Court in extenso, it is held that: (SCC p. 623, para 48)*

“... statutory provisions cannot override the constitutional provisions and Article 142(1) being a constitutional power it cannot be limited or conditioned by any statutory provision”.

It is also held that: (SCC p. 624, para 51)

“... the jurisdiction and powers of this Court under Article 142 which are supplementary in nature and are provided to do complete justice in any matter”

In other words, the power under Article 142 is meant to supplement the existing legal framework — to do complete justice between the parties — and not to supplant it. It is conceived to meet situations which cannot be effectively and appropriately tackled by the existing provisions of law. As a matter of fact, we think it advisable to leave this power undefined and uncatalogued so that it remains elastic enough to be moulded to suit the given situation. The very fact that this power is conferred only upon this Court, and on no one else, is itself an assurance that it will be used with due restraint and circumspection, keeping in view the ultimate object of doing complete justice between the parties. Now, coming to the facts of the case before us, the question is not what can be done, but what should be done? We are of the opinion that even while acting under Article 142 of the Constitution of India, we ought not to reopen the orders and decisions of the courts which have become final. We do not think that for doing complete justice between the parties before us, it is necessary to resort to this extraordinary step. We are



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saying this in view of the contention urged by S/Shri Salve and Dhavan that since the DDA has taken over not only the plot but also the construction raised by Skipper thereon (free from all encumbrances) in addition to the sum of Rs 15.89 crores (said to have been paid by Skipper towards the sale consideration of the said plot), the monies required for paying the persons defrauded should come out of the kitty of DDA. It must be remembered that the plot, the construction raised thereon and the monies already paid towards the sale consideration of the said plot have all vested absolutely in the DDA free from all encumbrances under and by virtue of the decision of the Delhi High Court dated 21-12-1990/14-1-1991, which decision has indeed been affirmed by this Court by dismissing the special leave petition preferred against it. It may not be open to us to ignore the said decisions and orders, including the orders of this Court, and/or to go behind those decisions/orders and say that the amount received by DDA towards sale consideration from Skipper or the value of the construction raised by Skipper on the said plot should be made available for paying out the persons defrauded by Skipper. We must treat those decisions and orders as final and yet devise ways and means of doing complete justice between the parties before us.

...

32. *We are of the opinion that the holding in Amratlal Prajivandas [(1994) 5 SCC 54 : 1994 SCC (Cri) 1325] and in Reid [(1993) 3 WLR 1143 : (1994) 1 All ER 1] should guide us while exercising the extraordinary powers of this Court under Article 142 of the Constitution. The absence of a statutory provision will not inhibit this Court while acting under the said Article from making appropriate orders for doing complete justice between the parties*



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[In other words, while acting under Article 142 of the Constitution, this Court will respect a statute, the absence of a statute or statutory provision will not inhibit her from making orders necessary for doing complete justice between the parties.] . The fiduciary relationship may not exist in the present case nor is it a case of a holder of public office, yet if it is found that someone has acquired properties by defrauding the people and if it is found that the persons defrauded should be restored to the position in which they would have been but for the said fraud, the court can make all necessary orders. This is what equity means and in India the courts are not only courts of law but also courts of equity.”

30. In **Maharashtra State Road Transport Corporation Vs. Shri. Balwant Regular Motor Service, Amravati and others**, 1968 SCC OnLine SC 54 : AIR 1969 SC 329, the Hon'ble Supreme Court held that acquiescence in the RTA's order dated September 10/11, 1965 on the part of Respondent 1 and other private operators as to disentitle them to a grant of a writ under Article 226 of the Constitution. There the Hon'ble Supreme Court referred to the principles laid down by Sir Barnes Peacock in **Lindsay Petroleum Co. Vs. Prosper Armstrong Hurd. Abram Farewall, and John Kemp**, (1874) 5 PC 221. Paragraph 11 of the said decision reads as under:-



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“11. In any event, we are satisfied that it is not open to the private operators including Respondent 1 to apply for a writ in the nature of certiorari for quashing the order of the RTA dated September 10/11, 1965 in view of their conduct. It is not disputed that the private operators including Respondent 1 were present in the meeting of the RTA held on September 10/11, 1965 either personally or through duly appointed Counsel. Respondent 1 and the other private operators assured the RTA at the hearing that they would withdraw the writ petitions pending in the High Court. On such assurances, and subject to the actual withdrawal of the writ petitions in terms of the assurance, the RTA considered the matter in the said meeting and after hearing the parties, made an order giving effect to the compromise. It is obvious that the private operators including Respondent 1 were parties to the order dated September 10/11, 1965, had accepted that order, acted upon it and derived benefits and advantages from it for nearly one year and 9 months. But for the said order which suspended the operation of the permit of the appellant till July 1, 1967 the private operators including Respondent 1 could not have got temporary permits to operate on the same routes as no stage carriage permits could be issued under Section 62 of the Act during the subsistence of substantive permits. In these circumstances we consider that there was such acquiescence in the RTA's order dated September 10/11, 1965 on the part of Respondent 1 and other private operators as to disentitle them to a grant of a writ under Article 226 of the Constitution. It is well-established that the writ of certiorari will not be granted in a case where 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 adverse party. The principle is to a great extent, similar to though



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not identical with the exercise of discretion in the Court of Chancery. The principle has been clearly stated by Sir Barnes Peacock in *Lindsay Petroleum Co. v. Prosper Armstrong Hurd. Abram Farewall, and John Kemp* [(1874) 5 PC 221 at p 239] as follows:-

“Now the doctrine of latches 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.”

This passage was cited with approval by this Court in a recent case — Moon Mills Ltd. v. M.R. Mehar,



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President, Industrial court, Bombay [AIR 1967 S.C. 1450, 1454.] . In our opinion, the principle of this decision applies to the present case and since Respondent 1 and the other private operators had not even pleaded any circumstances justifying the delay or their conduct, the High Court was in error in granting a writ of certiorari in their favour.”

31. The 44th Amendment to the Constitution of India was made in the year 1978. Prior to 44th Amendment to the Constitution of India property rights were fundamental right under Article 19(1)(f). After the 44th Amendment to the Constitution of India, it transformed into a constitutional right under Article 300-A of the Constitution of India . Whereas as a fundamental right or statutory right, a person cannot be deprived of property, except with the authority of law.

32. In **K.T. Plantation Private Limited and another Vs. State of Karnataka**, AIR 2011 SC 3430, the Hon'ble Supreme Court held that *Any law, which deprives a person of his private property for private interest, will be unlawful and unfair and undermines the rule of law and can be subjected to judicial review. But the question as to whether the purpose is primarily public or private, has to be decided by the legislature, which of course should be made known.”.*



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WEB COPY 33. The Hon'ble Supreme Court further observed as under :-

“Deprivation of property within the meaning of Article 300-A, generally speaking, must take place for public purpose or public interest. The concept of eminent domain which applies when a person is deprived of his property postulates that the purpose must be primarily public and not primarily of private interest and merely incidentally beneficial to the public.

34. Till 44th Amendment to the Constitution of India, a citizen was entitled to protection to his property as a fundamental right under Article 19(1)(f) of the Constitution of India. By virtue of 44th Amendment to the Constitution of India, the said rights was no longer a fundamental right. The property transformed itself into a constitutional rights under Article 300-A of the Constitution of India. This was also very succinctly by the Hon'ble Supreme Court in **State of U.P. and others Vs. Manohar**, (2005) 2 SCC 126 in the following passages:-

“7. Ours is a constitutional democracy and the rights available to the citizens are declared by the Constitution. Although Article 19(1)(f) was deleted by the Forty-fourth Amendment to the Constitution, Article 300-A has been placed in the Constitution, which reads as follows:



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“300-A. Persons not to be deprived of property save by authority of law.—No person shall be deprived of his property save by authority of law.”

35. In my view, these decisions will not come to the rescue of the petitioner whether on account of denial of fundamental right of the petitioner's father under Article 19(1)(f) as it stood then or on account alleged violation of Constitutional Rights under Article 300A of the Constitution of India after 44th Amendment to the Constitution of India.

36. Section 59 of the Motor Vehicles Act, 1939 dealt with transfer of permit. A permit could be transferred with permission of the “transport authority” which granted the permit in the manner authorised under the permit. Section 82 of the Motor Vehicles Act, 1988 also deals with transfer of permits.

37. Section 59 of the Motor Vehicles Act, 1939 and Section 82 of the Motor Vehicles Act, 1988 are reproduced below for comparison:-

<i>Section 59 of the Motor Vehicles Act, 1939</i>	<i>Section 82 of the Motor Vehicles Act, 1988</i>
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59.General Conditions attaching to all permits-

(1) Save as provided in section 61, a permit shall not be transferable from one person to another except with the permission of the transport authority which granted the permit and shall not without such permission operate to confer on any person to whom a vehicle covered by the permit is transferred any right to use that vehicle in the manner authorised by the permit.

(2) The holder of a permit may, with the permission of the authority by which the permit was granted, [replace any vehicle covered by the permit by any other vehicle of the same nature] *[Substituted for the words 'replace by another vehicles of the same nature and capacity any vehicle covered by the permit' by Act 56 of 1969, (w.e.f. 2-3-1970).]*

(3) The following shall be conditions of every permit-

(a) that the vehicle or vehicles to which the [permit relates carry valid certificates of fitness issued under section 38 and] *[Substituted for the words 'permit relates' by Act 56 of 1969, (w.e.f. 2-3-1970).]* are at all times so maintained as to comply with the requirements of Chapter V and the rules made

82. Transfer of permit.—(1) Save as provided in sub-section (2), a permit shall not be transferable from one person to another except with the permission of the transport authority which granted the permit and shall not, without such permission, operate to confer on any person to whom a vehicle covered by the permit is transferred any right to use that vehicle in the manner authorised by the permit.

(2) Where the holder of a permit dies, the person succeeding to the possession of the vehicle covered by the permit may, for a period of three months, use the permit as if it had been granted to himself: Provided that such person has, within thirty days of the death of the holder, informed the transport authority which granted the permit of the death of the holder and of his own intention to use the permit: Provided further that no permit shall be so used after the date on which it would have ceased to be effective without renewal in the hands of the deceased holder.

(3) The transport authority may, on application made to it within three months of the death of the holder of a permit, transfer the permit to the person succeeding to the possession of the vehicles covered by the permit: Provided that the transport authority may entertain an application made after the expiry of



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38. Motor Vehicles Act, 1939 was amended vide Motor Vehicles (Madras Amendment) Act, 1948. By the said amendment Section 64-A was inserted to Motor Vehicles Act, 1939. Amendment to Motor Vehicles Act, 1939 received the assent of the Governor General on 16.12.1948. Section 64-A of the Motor Vehicles Act, 1939 reads as under:-

“64-A Revision- The Provincial Government* may, of its own motion or on application made to it, call for the records of any order passed or proceeding taken under this Chapter by any authority or officer subordinate to it, for the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceeding after examining such records, may pass such order in reference thereto as it thinks fit.”

*State Government -as substituted by Adaptation Order,1950

39. Vide Section 3 of the Motor Vehicles (Madras Amendment) Act, 1954, Section 64 (2) of the Motor Vehicles Act, 1939 was inserted. Vide Section 4 of the Motor Vehicles (Madras Amendment) Act, 1954, Section 64-A of the Motor Vehicles Act, 1939 was deleted. However, a transitory provision was also inserted in Section 5 of the Motor Vehicles (Madras Amendment) Act,1954. They read as under:-



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3.Amendment of section 64, Central Act IV of 1939,- Section 64 of the principal Act shall be renumbered as sub-section (1) of that section, and after sub-section (1) as so renumbered, the following sub-section shall be added, namely:-

"(2) The authority prescribed under sub-section (1) for the purpose of hearing appeals may,"either of its own motion or on application made to it, call for the records of any Regional Transport Authority or the State Transport Authority, as the case may be, for the purpose of satisfying itself as to the legality, regularity or propriety of any order made by such Transport Authority against which **no appeal is provided for under sub-section (1)** and after examining such records, pass such orders in reference thereto as it thinks fit".

4. Omission of Section 64-A, Central Act IV of 1939-
Section 64-A of the principal Act shall be **omitted**.

5.Transitory provisions.- All proceedings pending with the State Government on the date on which this Act comes into force shall stand transferred to the prescribed authority referred to in Section 64 of the principal Act and be proceeded with from the stage which had been reached immediately before such date.

40. The Motor Vehicles (Madras Amendment) Act, 1954 received its assent on 22.01.1955 and came into force only on **01.01.1956**.
Whereas, the impugned G.O.Ms.No.2217 was passed on 11.08.1955



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itself. Thus, there is no merit in the challenge to the impugned

G.O.MS.No.2217 dated 11.08.1955.

41. Thus, the Government was the Competent Authority to pass order under Section 64-A of the Motor Vehicles Act, 1939 for revision of order passed under Section 59(1) of the Motor Vehicles Act, 1939 when the Impugned G.O.MS.No.2217 dated 11.08.1955 was passed by the Government on 11.08.1955.

42. That apart, there could be several disputed questions of fact as to what was the stated reason for allowing the revision petition filed by the said late Malaiya Pillai on **27.11.1954** for transferring the permit from the petitioner's father.

43. The said impugned G.O.Ms.No.2217 dated 11.08.1955 reveals that the Government has examined the case with respect to revision petition, connected records and the representation of the petitioner's father. Whether the sale consideration was paid or not cannot be decided in this proceeding long after the dispute arose in the year 1954. Therefore, this Writ Petition is liable to be dismissed.



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WEB COPY 44. Further, the order in impugned G.O.MS.No.2217 dated 11.08.1955 was well within the knowledge of the petitioner's father during his lifetime and thereafter, within the knowledge of the petitioner and therefore, it was incumbent on the part of the petitioner's father to have challenged the same then and there. That apart rights have crystallized thereafter in favour of the third parties. Therefore, they cannot be disturbed. Therefore, there is no merits in the present Writ Petition at this distant point of time.

45. Further, the petitioner has failed to produce any evidence demonstrating that the government lacked the authority to issue the impugned G.O.MS.No.2217 dated 11.08.1955. Consequently, the presumption also operates against the petitioner both under Indian Evidence Act, 1882 and Bharatiya Sakshya Adhiniyam Act, 2023.

46. Since the petitioner has allowed the right over the permit to crystallize, which was transferred in favor of late Malaiya Pillai who in turn transferred in favor of the private respondents, this Writ Petition to quash the impugned G.O.MS.No.2217 dated 11.08.1955 after lapse of 68



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years cannot be countenanced. It is liable to be dismissed with exemplary cost. However, I am refraining from imposing exemplary cost as this writ petition was argued by the petitioner as party in person.

47. Accordingly, this Writ Petition stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

09.07.2024

Index: Yes / No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order
JEN/KKD

To:

- 1.The Secretary,
Transport Department,
Government of Tamil Nadu,
Secretariat, Chennai.
- 2.The Transport Commissioner,
Department of Transport,
Chepauk, Chennai.
- 3.The District Collector cum
Regional Transport Authority,
Pudukkottai City,
Pudukkottai District.
- 4.The Regional Transport Officer,
Pudukkottai City,



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Pudukkottai District.

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5. The Director,
Department of Archive,
Government of Tamil Nadu,
Egmore, Chennai.



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C.SARAVANAN, J.

JEN/KKD

Pre-Delivery order made in
W.P.(MD) No.4595 of 2023
and
W.M.P.(MD) No.4301 of 2023

09.07.2024