Chief Justice's Court
Serial No. 46

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

***

WRIT – C No. 9642 of 2022

Ved Prakash Chauhan .... Petitioner

Through:- Mr. V.K. Jaiswal, Advocate

Vs.

State of U.P. and others .... Respondents

Through:- Mr. Ramanand Pandey, Additional Chief Standing Counsel for respondent Nos. 1 and 4 and Ms. Anjali Upadhya, Advocate for respondent Nos. 2 and 3

CORAM : HON'BLE RAJESH BINDAL, CHIEF JUSTICE
HON'BLE PIYUSH AGRAWAL, JUDGE

ORDER

RAJESH BINDAL, C.J.

1. The present writ petition has been filed by the petitioner praying for quashing of the order dated April 29, 2019 passed by respondent No.1, by which the application filed by the petitioner for release of his land, in exercise of power under Section 48 of the Land Acquisition Act, 1894[1] was rejected. Further prayer has been made in the alternative to provide benefits to the petitioner in terms of the Full Bench judgment of this Court in **Gajraj and others Vs. State of U.P. and others**[2].

THE FACT

2. Briefly, the pleaded facts are that the petitioner claims that he was the owner of land measuring 0.9960 hectare, forming part of Khasra No. 649 situated in Village Gulistanpur, Pargana Dadri, Tehsil Sadar, District Gautam Budh Nagar. The notification under Section 4 of the Act proposing to acquire the aforesaid land was issued on September 5, 2007. It was

1 Act
2 2011 (11) ADJ 1

followed by a notification issued under Section 6 of the Act invoking powers under Section 17 of the Act, on February 27, 2008. Challenging the aforesaid acquisition, the petitioner filed Civil Misc. Writ Petition No. 15845 of 2008. The aforesaid writ petition along with a bunch of writ petitions led by **Civil Misc. Writ Petition No. 20156 of 2009**, titled as **Smt. Rajni and others Vs. State of U.P. and others** were decided by a common judgment by this Court, dated May 30, 2011. The acquisition was quashed with reference to the landowners, who had not accepted the compensation with liberty to the State to follow the procedure in terms of Section 5-A of the Act. As far as the landowners, who had accepted the compensation, liberty was granted to them to file representations to the State Government for release of their land under Section 48 of the Act. Such representations, if filed within one month, were to be decided expeditiously. It is claimed that the petitioner filed the representation dated June 24, 2011. As the same was not decided, the petitioner filed a fresh writ petition bearing Writ-C No. 21192 of 2016 which was disposed of vide order dated May 10, 2016 with a direction to respondents therein to decide the representation filed by the petitioner. The petitioner again submitted a reminder dated June 4, 2016 for decision of his earlier representation. Vide impugned order dated April 29, 2019, the claim of the petitioner for release of land in terms of Section 48 of the Act was rejected. Further reference was made to the judgment of the Full Bench of this Court in **Gajraj's case (supra)**, as confirmed by Hon'ble the Supreme Court, wherein the landowners were directed to be given certain benefits in addition to the compensation as assessed by the Land Acquisition Officer.

SUBMISSIONS

3. In the aforesaid factual matrix, the argument raised by learned counsel for the petitioner was that the land having not been utilised and there being violation of the procedural aspect with reference to the acquisition of land whereby the petitioner had not been given opportunity to file objections and the land having not been utilised, the same should have been released by the State in exercise of powers under Section 48 of the Act.

4. It was further argued that, in the alternative, the petitioner being similarly situated as were the landowners in **Gajraj's case (supra)**, he should be given the benefits as were extended to the landowners in the aforesaid Full Bench judgment of this Court.

5. On the other hand, learned counsel for the State submitted that release of land or exercise of power under Section 48 of the Act is not a matter of right vested with the landowners. It is merely a power given to the State. In the case in hand, the claim of the petitioner was examined. He had never been aggrieved of the acquisition as he had received the entire compensation without any objection. It is even evident from the representation filed by the petitioner where he undertook to return the compensation received by him. The land having vested in the State free from all encumbrances, cannot be released.

6. As far as the claim of the petitioner regarding grant of benefits as were given to the landowners in the **Gajraj's case (supra)** is concerned, the same are not admissible to the petitioner for the reason that in his case, the acquisition stood upheld vide judgment of this Court in **Civil Misc. Writ Petition No. 15845 of 2008**, titled as **Ved Prakash Vs. State of U.P. and others**, and he was and could not be a party to the litigation in **Gajraj's case (supra)**. He was never aggrieved by the judgment in his case upholding the acquisition as the same was not challenged any further.

7. It was further argued that for challenge to the order passed by respondent No.1 – the Principal Secretary dated April 29, 2019, is otherwise also highly belated, as the writ petition was filed nearly three years thereafter.

8. Heard learned counsel for the parties and perused the paper book.

ANALYSIS OF SUBMISSIONS AND PRECEDENTS

9. After hearing learned counsel for the parties, we do not find any case is made out for interference in the present writ petition. Firstly, the same deserves to be dismissed on account of delay and laches. The

impugned order was passed by the Principal Secretary on April 29, 2019. The writ petition was filed in this Court nearly three years thereafter on March 5, 2022.

10. As to whether a litigant is entitled for any relief in case he invokes the jurisdiction of this Court after a huge delay is now well settled. The consistent view is that the writ petition is liable to be dismissed on account of delay and laches.

11. In **P. S. Sadasivasway Vs. State of Tamil Nadu**[3], wherein it has been laid down that a person aggrieved by an order of promoting a junior over his head should approach the court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time, but it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for the relief.

12. In **New Delhi Municipal Council Vs. Pan Singh and others**[4], the Court has opined that though there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, yet ordinarily a writ petition should be filed within a reasonable time. In the said case the respondents had filed the writ petition after seventeen years and the court, as stated earlier, took note of the delay and laches as relevant factors and set aside the order passed by the High Court which had exercised the discretionary jurisdiction.

13. In **State of Uttaranchal and another Vs. Sri Shiv Charan Singh Bhandari and others**[5], Hon'ble the Supreme Court, while considering the issue regarding delay and laches observed that even if there is no period prescribed for filing the writ petition under Article 226 of the Constitution of India, yet it should be filed within a reasonable time. Relief to a person, who

3 (1975) 1 SCC 152
4 (2007) 9 SCC 278
5 2013 (6) SLR 629

puts forward a stale claim can certainly be refused on account of delay and laches. Anyone who sleeps over his rights is bound to suffer.

14. In **Chennai Metropolitan Water Supply and Sewerage Board and others Vs. T. T. Murali Babu**[6], Hon'ble the Supreme Court opined as under:-

> "13. First, we shall deal with the facet of delay. In Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, Amravati and others, AIR 1969 SC 329, the Court referred to the principle that has been stated by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd, Abram Farewall, and John Kemp, (1874) 5 PC 221, which is as follows:-
>
> > "Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of

6 (2014) 4 SCC 108

justice or injustice in taking the one course or the other, so far as relates to the remedy."

15. In State of M. P. and others etc. etc. vs. Nandlal Jaiswal and others etc. etc., AIR 1987 SC 251, the Court observed that it is well settled that power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. It has been further stated therein that if there is inordinate delay on the part of the petitioner in filing a petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. Emphasis was laid on the principle of delay and laches stating that resort to the extraordinary remedy under the writ jurisdiction at a belated stage is likely to cause confusion and public inconvenience and bring in injustice.

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 scrutinize 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. ... A court is not expected to give indulgence to such indolent persons who compete with `Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold."

15. In **State of Jammu & Kashmir vs. R. K. Zalpuri and others**[7], Hon'ble the Supreme Court considered the issue regarding delay and laches in raising the dispute before the Court. It was opined that the issue sought to be raised by the petitioners therein was not required to be addressed on merits on account of delay and laches. The relevant paras thereof are extracted below:-

> "27. The grievance agitated by the respondent did not deserve to be addressed on merits, for doctrine of delay and laches had already visited his claim like the chill of death which does not spare anyone even the one who fosters the idea and nurtures the attitude that he can sleep to avoid death and eventually proclaim "Deo gratias - thanks to God".
>
> 28. Another aspect needs to be stated. A writ court while deciding a writ petition is required to remain alive to the nature of the claim and the unexplained delay on the part of the writ petitioner. Stale claims are not to be adjudicated unless non-interference would cause grave injustice. The present case, need less to emphasise, did not justify adjudication. It deserves to be thrown overboard at the very threshold, for the writ petitioner had accepted the order of dismissal for half a decade and cultivated the feeling that he could freeze time and forever remain in the realm of constant present."

---

7 (2015) 15 SCC 602

16. The aforesaid view was followed by Hon'ble the Supreme Court in **Union of India and others Vs. Chaman Rana**[8].

17. Subsequently, a Constitution Bench of Hon'ble the Supreme Court in **Senior Divisional Manager, Life Insurance Corporation Vs. Shree Lal Meena**[9], considering the principle of delay and laches, opined as under:-

> "36. We may also find that the appellant remained silent for years together and that this Court, taking a particular view subsequently, in Sheel Kumar Jain v. New India Assurance Company Limited, (2011) 12 SCC 197 would not entitle stale claims to be raised on this behalf, like that of the appellant. In fact the appellant slept over the matter for almost a little over two years even after the pronouncement of the judgment.
>
> 37. Thus, the endeavour of the appellant, to approach this Court seeking the relief, as prayed for, is clearly a misadventure, which is liable to be rejected, and the appeal is dismissed."

18. Recently, in **Bharat Coking Coal Ltd. and others Vs. Shyam Kishore Singh**[10], the issue regarding the delay and laches, was considered by Hon'ble the Supreme Court and a petition filed belatedly, seeking change in the date of birth in the service record, was dismissed.

19. Relying on **T. T. Murali Babu's case (supra)** and **R. K. Zalpuri's case (supra)**, same view has been expressed by Hon'ble the Supreme Court in **Union of India and others Vs. N. Murugesan and others**[11], observing:

> "We have already dealt with the principles of law that may have a bearing on this case. … there was an unexplained and studied reluctance to raise the issue .... Hence, on the principle governing delay, laches … Respondent No. 1 ought not to have been granted any relief by invoking Article 226 of the Constitution of India."

---

8 (2018) 5 SCC 798
9 (2019) 4 SCC 479
10 (2020) 3 SCC 411
11 (2022) 2 SCC 25

20. As far as the claim of the petitioner for grant of benefits in terms of the Full Bench judgment of this Court in **Gajraj's case (supra)** is concerned, in our opinion, the same also deserves to be rejected. It is a case in which, after the process of acquisition was complete and the award had also been announced by the Land Acquisition Officer, challenge to the acquisition was made. The issues were gone into by the Division Bench of this Court vide judgment dated May 30, 2011 in **Smt. Rajni and others' case (supra)** and a bunch of writ petitions including the writ petition filed by the petitioner, was decided. In the case of landowners who had not accepted the compensation, the acquisition was quashed. However, for those who had received the compensation, merely liberty was granted to them to file representation to the State for release of the land under Section 48 of the Act. It is undisputed case of the petitioner that he had received the compensation. The judgment of this Court was not challenged any further. Meaning thereby, it attained finality. Rather, the case set up by the petitioner is that in pursuance of the aforesaid judgment, he filed representation to the State for release of the land.

21. The notification vide which the land of the petitioner was acquired, was not subject matter of consideration by the Full Bench of this Court in **Gajraj's case (supra)**. Meaning thereby, neither the petitioner was party to the litigation in **Gajraj's case (supra)** nor the acquisition in question was under consideration therein. The petitioner is merely seeking the benefits as were given to the landowners in **Gajraj's case (supra)**. As to whether the petitioner is entitled to the benefits given by the Full Bench in **Gajraj's case (supra)** was considered by a Division Bench of this Court in **Runwell India Pvt. Ltd. Vs. State of U.P. and others**[12], and it was opined that the same is not to be taken as a precedent in terms of the observations made by Hon'ble the Supreme Court in **Savitri Devi Vs. State of U.P.**[13]. The relevant paragraphs therefrom is extracted below:-

> "**35.** The grounds urged on behalf of petitioners for claiming 10% developed land subject to ceiling limit of 2,500 square

12 Writ-C No. 14113 of 2017, decided on May 31, 2022
13 (2015) 7 SCC 21

meters, though appears to be attractive at the first flush, but are devoid of substance. The submission is that subsequent to the Full Bench judgement of this Court in **Gajraj's case (supra)**, some of the land owners/tenure holders challenged the same before the Supreme Court. All the Civil Appeals/Special Leave Petitions were clubbed together and decided by a common judgement dated 14.02.2015, as **Savitri Devi's case (supra)**, wherein, in paragraph no. 50, it has been held that in view of the peculiar circumstances, the order passed by the High Court would not form precedent for future cases. The observation made in paragraph no. 50 in **Savitri Devi's case (supra)** reads as under:-

> "50. Keeping in view all these peculiar circumstances, we are of the opinion that these are not the cases where this Court should interfere under Article 136 of the Constitution. However, we make it clear that directions of the High Court are given in the aforesaid unique and peculiar/specific background and, therefore, it would not form precedent for future cases." *(emphasis supplied)*

36. Subsequent to the judgment in **Savitri Devi's case (supra)**, the Supreme Court in **Khatoon's case (supra)**[14], while considering the question as to whether the appellants therein are entitled to claim additional abadi land in lieu of their acquired land in terms of the judgement in **Gajraj's case (supra)** and upheld in **Savitri Devi's case (supra)**, has held as under:-

> "49. That apart, there is no basis for the appellants to press in service the principle underlined in Article 14 in such cases for the simple reason that firstly, Article 14 does not apply to such cases; and secondly, there is no similarity between the case of those landowners, who filed the writ petitions and the present appellants, who

14 (2018) 14 SCC 346

did not file the writ petitions. Though the High Court, in Gajraj's case (supra) decided the rights of both categories of landowners but the cases of both stood on a different footing. It is for these reasons, the appellants were not held entitled to take benefit of condition No. 3 (a) and (b) of the case of Gajraj (supra) which was meant for the writ petitioners therein but not for the appellants. However, the appellants were held entitled to take the benefit of only condition No. 4 (a) and (b) of the said judgment and which they did take by accepting the additional compensation payable at the rate of 64.70%.

50. In our view, therefore substantial justice was done to all the landowners including the appellants, as observed in para 49 of Savitri Devi's case (supra)."

22. For the reasons mentioned above, the petitioner is not even entitled to the benefits as were extended to the landowners in **Gajraj's case (supra)**.

23. As far as challenge to the order dated April 29, 2019 passed by the Principal Secretary, rejecting the claim of the petitioner for release of land under Section 48 of the Act is concerned, the provisions of Section 48 of the Act are extracted below:-

"**48. Completion of acquisition not compulsory, but compensation to be awarded when not completed. -** (1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all

costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section."

24. A perusal of the aforesaid provision shows that the Government is at liberty to withdraw from acquisition any land of which possession has not been taken. In the case in hand, the notification under Section 4 of the Act was issued on September 5, 2007, which was followed by a notification issued under Section 6 of the Act invoking powers under Section 17 of the Act, on February 27, 2008. It is evident from the impugned order that after the process of acquisition was complete, the possession thereof was taken by the State and was handed to the Greater Noida Development Authority on March 19, 2008. It is further mentioned in the impugned order that the land in question is situated in the middle of the acquired land and is part of the planning. The challenge to the acquisition was made before this Court and the acquisition was upheld by this Court. In terms of Section 16 of the Act, the land stood vested in the State free from all encumbrances. It is the undisputed case of the petitioner himself that he had received the compensation of land, which he offered to return in case the land is released from acquisition. The possession of the land was taken by the State immediately after the process of acquisition was complete. Once the possession of the land is taken, the release thereof in exercise of powers under Section 48 of the Act may not be possible.

25. The issue as to what is meant by "possession of the land by the State after its acquisition" has also been considered by a Constitution Bench of Hon'ble the Supreme Court in **Indore Development Authority Vs. Manoharlal and others**[15]. It is opined therein that after the acquisition of land and passing of award, the land vests in the State free from all encumbrances. The vesting of land with the State is with possession. Any person retaining the possession thereafter has to be treated trespasser. When large chunk of

15 AIR 2020 SC 1496

land is acquired, the State is not supposed to put some person or police force to retain the possession and start cultivating on the land till it is utilized. The Government is also not supposed to start residing or physically occupying the same once process of the acquisition is complete. If after the process of acquisition is complete and land vests in the State free from all encumbrances with possession, any person retaining the land or any re-entry made by any person is nothing else but trespass on the State land. Relevant paragraphs 244, 245 and 256 are extracted below:

> "**244.** Section 16 of the Act of 1894 provided that possession of land may be taken by the State Government after passing of an award and thereupon land vest free from all encumbrances in the State Government. Similar are the provisions made in the case of urgency in Section 17(1). The word "possession" has been used in the Act of 1894, whereas in Section 24(2) of Act of 2013, the expression "physical possession" is used. It is submitted that drawing of panchnama for taking over the possession is not enough when the actual physical possession remained with the landowner and Section 24(2) requires actual physical possession to be taken, not the possession in any other form. When the State has acquired the land and award has been passed, land vests in the State Government free from all encumbrances. The act of vesting of the land in the State is with possession, any person retaining the possession, thereafter, has to be treated as trespasser and has no right to possess the land which vests in the State free from all encumbrances.
>
> **245.** The question which arises whether there is any difference between taking possession under the Act of 1894 and the expression "physical possession" used in Section 24(2). As a matter of fact, what was contemplated under the Act of 1894, by taking the possession meant

only physical possession of the land. Taking over the possession under the Act of 2013 always amounted to taking over physical possession of the land. When the State Government acquires land and drawns up a memorandum of taking possession, that amounts to taking the physical possession of the land. On the large chunk of property or otherwise which is acquired, the Government is not supposed to put some other person or the police force in possession to retain it and start cultivating it till the land is used by it for the purpose for which it has been acquired. The Government is not supposed to start residing or to physically occupy it once possession has been taken by drawing the inquest proceedings for obtaining possession thereof. Thereafter, if any further retaining of land or any re-entry is made on the land or someone starts cultivation on the open land or starts residing in the outhouse, etc., is deemed to be the trespasser on land which in possession of the State. The possession of trespasser always inures for the benefit of the real owner that is the State Government in the case.

xxxx

256. Thus, it is apparent that vesting is with possession and the statute has provided under Sections 16 and 17 of the Act of 1894 that once possession is taken, absolute vesting occurred. It is an indefeasible right and vesting is with possession thereafter. The vesting specified under Section 16, takes place after various steps, such as, notification under Section 4, declaration under Section 6, notice under Section 9, award under Section 11 and then possession. The statutory provision of vesting of property absolutely free from all encumbrances has to be accorded full effect. Not only the possession vests in the State but all other encumbrances are also removed forthwith. The

> title of the landholder ceases and the state becomes the absolute owner and in possession of the property. Thereafter there is no control of the landowner over the property. He cannot have any animus to take the property and to control it. Even if he has retained the possession or otherwise trespassed upon it after possession has been taken by the State, he is a trespasser and such possession of trespasser enures for his benefit and on behalf of the owner." *(emphasis supplied)*

26. Keeping in view the above enunciation of law by Hon'ble the Supreme Court in **Indore Development Authority's case (supra)**, in the case in hand, on the undisputed facts on record, it can safely be opined that in the present case, the acquisition proceedings stood completed. The award was announced, the compensation was received by petitioner, possession was taken by the State, hence the land vested in the State free from all encumbrances. Hence, no occasion arises for invocation of Section 48 of the Act for release of the land.

Conclusion

27. For the reasons mentioned above, the writ petition lacks merit and is, accordingly, **dismissed**.

(Piyush Agrawal, J.) (Rajesh Bindal, C.J.)

Allahabad
May 4, 2022
AHA

Whether the order is speaking : Yes/No
Whether the order is reportable : Yes√/No