HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE
W.P. No.2537/2018
Bhandari Metal and Industrial Works v/s State of M.P. & Others
Indore, dated 07.02.2018

Shri A.K. Sethi, learned senior counsel with Shri Rishabh Sethi, learned counsel for the petitioner.

Ms. Bhakti Vyas, learned Government Advocate for the respondent/State.

The petitioner before this Court has filed the present petition claiming the following reliefs:-

(A) The respondents be directed to pay compensation to the petitioner's land acquired along with interest solicium etc. in accordance with law.

(B) The respondents be directed to allot the alternative land to the petitioner in lieu of compensation, free of cost.

(C) To award costs of this petition from the respondents.

(D) Any other reliefs, which this Hon'ble Court deems fit in the facts and circumstances of the case in favour of the petitioner and against the respondents.

The facts, as stated in the writ petition reflects that the petitioner has allegedly purchased the property in question on 28.05.1928 by a registered sale deed.

The petitioner has further stated that on 01.06.1928, the property was mutated in the name of *'Bhandari Metal and Industrial Works'* and on 06.08.1934 by a letter of Deputy Commissioner, the petitioner was informed that the land is being acquired for establishing a police station. The petitioner on 06.09.1934 has stated that the land of the petitioner be not

acquired and on 11.09.1934, the petitioner has suggested alternative land for some other purpose. The petitioner's further contention is that on 08.12.1934, the Cabinet has rejected the petitioner's objection and it was resolved to acquire the petitioner's land.

On 10.01.1935, the petitioner wrote a letter to the authority, and thereafter, the petitioner has represented the matter to the authorities from time to time. The petitioner has filed letters right from 1935 onward and has submitted before this Court that he was repeatedly writing letters for delivery of the land in lieu of land acquired from the petitioner in the year 1934 or for payment of compensation.

This Court is of the considered opinion that such a belated request on the part of the petitioner, doesn't warrant any interference. Nothing prevented the petitioner to take steps with quite promptitude in the year 1934 itself at the time when the land of the petitioner was acquired.

The apex Court in the case of ***Mutha Associates & others v/s State of Maharashtra & Others reported in 2013 Volume 14 SCC 904,*** which was a case under the Land Acquisition Act, 1984 has dealt with the issue of delay and laches in filing the writ petition and challenging the acquisition. Para-16 to 21 of aforesaid judgments reads as under:-

> "16. Having said that we do not intend to neglect the contentions that were urged on merits at considerable length by learned counsel for the parties. The challenge to the acquisition proceedings was, as seen earlier, negatived by the High Court not only on the ground of unexplained delay and laches but also on merits. The High Court was in our opinion perfectly justified in doing so.
> 17. The challenge to the acquisition proceedings was indeed highly belated having regard to the fact that

Planning Authority had declared its intention to revise the development plan for Pune city, and invited objections to the proposal as early as in May, 1976. The Special Officer authorized by the Government to discharge the functions of the Planning Authority then issued a notification under Section 26(1) of the MRTP Act publishing the Revised Development Plan and inviting objections in September, 1982. It is also not disputed that the land in question was reserved in the Revised Development Plan for extension of Market Yard and the Appropriate Authority for acquisition of the same was shown to be the APMC. The land owners did not file any objections to the proposed reservation of their land in the Revised Development Plan. In April 1984 the Special Officer submitted a revised development Plan under Section 28 of the MRTP Act for approval. The draft plan was sanctioned and published in the official gazette on 29th January, 1987 in which the land in question continued to be reserved though the designated purpose was shown to be 'Bamboo Trade and Flea Market'. The process for acquisition of the land was then started under Section 126(2) of the MRTP Act read with Section 6 of the Land Acquisition Act. This declaration was made on 13th November, 1987. Not only that, specific notices were sent to the land owners as well as to M/s Mutha Associates Developers on different dates of hearing. Despite the publication and the service of notices no objections were filed by the land owners or M/s Mutha Associates Developers.

18. In the absence of any objections or opposition to the proposed acquisition the Land Acquisition Officer was free to make an award which he did on 9th November, 1989. It was only after the Collector (Land Acquisition) initiated the proceedings for taking over the possession of the land in question that the land owners filed a civil suit in which they challenged the award made by the Collector without raising any question regarding the validity of the declaration made under Section 126(2) of the MRTP Act read with Section 6 of the Land Acquisition Act. That suit remained pending for nearly six years before the same was withdrawn to challenge the acquisition proceedings in Writ Petition No.670 of 1996 filed before the High Court. This challenge was on the face of it barred by inordinate delay and laches. The High Court was fully justified in declining to interfere with the acquisition proceedings on that ground.

19. The High Court while doing so, rightly observed:

> "43. That apart, the gross delay and laches are most fatal to this petition.

The planning process started in the year 1976. The draft development plan dated 18.9.1982 was published on 7th October, 1982 under which this particular parcel of land was reserved in favour of one APMC for extension of market yard. It was permissible to the petitioners to lodge their objections under Section 28 of the MRTP Act. Subsequently the plan was sanctioned and published in the official gazette on 29.1.1987 though with one change that the designated purpose was to be bamboo trade and flea market. Thereafter when the process of acquisition started, the declaration under Section 126(2) of the MRTP Act read with Section 6 of the Land Acquisition Act was made on 13th of November 1987. Not only that but specific notices to the land owners as well as developers were issued on 15.10.1988 and 31.12.1988. On 15.10.1988 it was submitted by the first two petitioners that they needed time in view of the death of their father on 13.10.1988 and hence on their request the proceedings for acquisition were adjourned to 14.11.1988 on 14.11.1988 no claim was filed and yet by the notice dated 31.12.1988 the proceedings were further adjourned and the time to file the claim was extended to 5.1.1989. On coming to know that M/s Mutha Associates had an interest in the land a specific notice was given to Shri Shantilal Mutha of M/s. Mutha Associates on 11.4.1989 to lodge the claim if any by 19.4.1989. Again, on the application given by Mutha Associates dated 19.4.1989, the Land Acquisition Officer adjourned the proceedings on 21.4.1989 and recorded it by his letter of that date of M/s. Mutha Associates. Thus the land owners and the land developers were fully aware of these proceedings and participated therein by filing the application seeking time but without lodging any claim or filing any submissions or objections. It was in these circumstances that the Land Acquisition Officer ultimately proceeded to make his Award on 9.11.1989".

44. Now, as can be seen from the above, instead of filing their objections before the Land Acquisition Officer, who has the

authority to consider them, the petitioners preferred to directly communicate the same to the then Chief Minister. The then Chief Minister also rejected their representation in November 1990. The petitioners did not choose to challenge that decision as well. It is only when the Land Acquisition Officer issued a notice for taking possession of the land that the petitioners rushed to the Civil Court wherein they sought to challenge the Award and an order of status quo came to be passed on 25.11.1990. As rightly pointed out by Mr. Sanghavi, in the civil suit the notice under section 126(2) of the MRTP Act read with section 6 of the Acquisition Act has not been challenged. It has been challenged for the first time in this writ petition which was filed on buth (sic) of January 1996 and it is now being contended that there is a departure from the designated purpose in the acquisition proceedings and also that the APMC did not have the capacity to deal in the particular items. The submission that the APMC had large parcel of un-utilized land and therefore it did not need the land could certainly have been made when revised draft development plan was published in the official gazette on 7.10.1982. It is at that stage that the petitioners were expected to lodge their objections to the reservation. After the plan was sanctioned and became final the acquisition proceedings were initiated. The declaration under section 126(2) of the MRTP Act read with Section 6 of the Acquisition Act was made on 13.1.1987. Thereafter specific notices under section 9 of the Acquisition Act were given to the land owners as well as to the developers. They participates in the proceedings by filing applications for adjournment and yet no objections were lodged before the Acquisition Officer. Thus the Acquisition Officer was left with no alternative but to finalise the proceedings which he did by passing the Award of 9.11.1989. The representation made to the State Government was rejected in November 1990 but that was also not challenged. In the suit filed on 25.11.1990 no challenge was raised to the notice under section

> 126(2) read with Section 6. That was raised for the first time in the present writ petition filed in January 1996".

20. The legal position, as to the approach which a writ Court must adopt while examining the validity of acquisition proceedings, is settled by a long line of decisions rendered by this Court from time to time. It is not necessary to burden this judgment by referring to all those decisions, for the proposition of law is so well settled that it hardly bears repetition. We may simply refer to the Constitution Bench decision of this Court in Aflatoon and Ors. v. Lt. Governor of Delhi and Ors. [1975 (4) SCC 285] where this Court was dealing with a case in which the land owners had not approached the Court after the declaration under Section 6 of the Land Acquisition Act was issued by the Collector. It was only after notices under Section 9 of the Act were issued that the owners had come forward to urge that there was no public purpose supporting the proposed acquisition. This Court held that a valid notification under Section 4 is a sine qua non for initiation of proceedings for acquisition of property. The owners were not, therefore, justified in sitting on the fence and allowing the Government to complete the acquisition proceedings on the basis that the notification under Section 4 and declaration under Section 6 were valid and then to attack the notification on grounds that were available to them at the time when the notification was published. The following passage is instructive in this regard:

> "11….There was apparently no reason why the writ petitioners should have waited till 1972 to come to this Court for challenging the validity of the notification issued in 1959 on the ground that the particulars of the public purpose were not specified. A valid notification under Section 4 is a sine qua non for initiation of proceedings for acquisition of property. To have sat on the fence and allowed the Government to complete the acquisition proceedings on the basis that the notification under Section 4 and the declaration under Section 6 were valid and then to attach the notification on grounds which were available to them at the time when the notification was published would be putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners. (see Tilokchand Motichand v. H.B. Munshi [1969 (1) SCC

> 110], and Rabindranath Bose v. Union of India."
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> 17. The position is no different in the instant case. The appellant owners or Mutha Associates Builders did not file any objections or move their little finger till the making of the award by the Collector. Instead of filing of the objections, opposing the proposed acquisition before the Collector and seeking redress at the appropriate stage they remained content with making representations to the minister which was not a remedy recognised by the statute. It was only after the Collector had made his award and after notice for taking over possession was issued by the appellants that they rushed to the civil court with a suit in which too they did not assail the validity of the declaration under Section 26(2) of the MRTP Act read with Section 6 of the Land Acquisition Act. The remedy by way of a suit was clearly misconceived as indeed this Court declared it to be so in State of Bihar v. Dhirendra Kumar and Ors. [1995 (4) SCC 229]. The appellants could and ought to have challenged the acquisition proceedings without any loss of time. Having failed to do so, they were not entitled to claim any relief in the extraordinary jurisdiction exercised by the High Court under Article 226 of the Constitution".

In the aforesaid case, the petition has been dismissed on the ground of delay and laches

The apex Court in the case of ***Prabhakar v/s Joint Director, Sericulture Department Y Another reported in 2015 Volume-15 SCC 1*** in paragraph 39 to 41 has held as under:-

> "37. Let us examine the matter from another aspect, viz. laches and delays and acquiescence.
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> 38. It is now a well recognised principle of jurisprudence that a right not exercised for a long time is non-existent. Even when there is no limitation period prescribed by any statute relating to certain proceedings, in such cases Courts have coined the doctrine of laches and delays as well as doctrine of acquiescence and non-suited the litigants who approached the Court belatedly without any justifiable explanation for bringing the action after unreasonable delay. Doctrine of laches is in fact an application of maxim of equity "delay defeats equities".
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> 39. This principle is applied in those cases where discretionary orders of the Court are claimed, such

> as specific performance, permanent or temporary injunction,
> appointment of receiver etc. These principles are also applied in the writ petitions filed Under Articles 32 and 226 of Constitution of India. In such cases, Courts can still refuse relief where the delay on the Petitioner's part has prejudiced the Respondent even though the Petitioner might have come to Court within the period prescribed by the Limitation Act.
> 40. Likewise, if a party having a right stands by and sees another acting in a manner inconsistent with that right and makes no objection while the act is in progress he cannot afterwards complain. This principle is based on the doctrine of acquiescence implying that in such a case party who did not make any objection acquiesced into the alleged wrongful act of the other party and, therefore, has no right to complain against that alleged wrong.
> 41. Thus, in those cases where period of limitation is prescribed within which the action is to be brought before the Court, if the action is not brought within that prescribed period the aggrieved party looses remedy and cannot enforce his legal right after the period of limitation is over. Likewise, in other cases even where no limitation is prescribed, but for a long period the aggrieved party does not approach the machinery provided under the law for redressal of his grievance, it can be presumed that relief can be denied on the ground of unexplained delay and laches and/or on the presumption that such person has waived his right or acquiesced into the act of other. As mentioned above, these principles as part of equity are based on principles relatable to sound public policy that if a person does not exercise his right for a long time then such a right is non-existent".

It is true that aforesaid case was a case arising from Industrial Disputes Act. In the aforesaid judgment the Supreme Court has taken into account the fact of delay and laches in respect of filing of writ petition under Articles 32 and 226 of Constitution of India. In the present case, the right, if any, accrued by the petitioner to ventilate his grievances, in the year 1934. The petitioner permitted the state to construct the police station, the petitioner did not approach the

machinery provided under the law for redressal of his grievances, and therefore, the present petition deserves to be dismissed on the ground of delay and laches. Right, if any, existing in view of the petitioner, has become non-existent by passage of time.

The apex Court in the case of ***Royal Orchid Hotels Limited & Another v/s G. Jayarama Reddy and Others (2011) 10 SCC 608*** in paragraph-25 has held as under:-

> 25. Although, framers of the Constitution have not prescribed any period of limitation for filing a petition under Article 226 of the Constitution of India and the power conferred upon the High Court to issue to any person or authority including any Government, directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto and certiorari is not hedged with any condition or constraint, in last 61 years the superior Courts have evolved several rules of self-imposed restraint including the one that the High Court may not enquire into belated or stale claim and deny relief to the petitioner if he is found guilty of laches. The principle underlying this rule is that the one who is not vigilant and does not seek intervention of the Court within reasonable time from the date of accrual of cause of action or alleged violation of constitutional, legal or other right is not entitled to relief under Article 226 of the Constitution. Another reason for the High Court's refusal to entertain belated claim is that during the intervening period rights of third parties may have crystallized and it will be inequitable to disturb those rights at the instance of a person who has approached the Court after long lapse of time and there is no cogent explanation for the delay. We may hasten to add that no hard and fast rule can be laid down and no straightjacket formula can be evolved for deciding the question of delay/laches and each case has to be decided on its own facts'.

In light of the aforesaid judgment, it can safely be gathered that a person, who is not vigilant and does not seek intervention of the Court within reasonable time from the date of accrual of cause of action or alleged violation of the constitutional, legal or other right is not entitled for relief

under Article 226 of the Constitution. It has also been held that no hard-and-fast rule can be laid down and no straight-jacket formula can be evolved for deciding the question of delay/laches and each case has to be decided on its own merit.

In the present case, the petitioner has woke up from slumber after 74 years for the reasons best known to him and it can safely be gathered in the peculiar facts and circumstances of the case, no relief can be granted to the petition on the ground of delay and laches alone.

In the considered opinion of this Court, the relief prayed by the petitioner cannot be granted.

Resultantly, the admission is declined.

Certified copy as per rules.

(S.C. Sharma)
Judge

Ravi

Ravi Prakash

Digitally signed by Ravi Prakash
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