

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE
HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI
ON THE 25th of MAY, 2023

WRIT PETITION No. 24025 of 2021

BETWEEN:-

BADRILAL S/O TULSIRAMJI PATIDAR,
AGED ABOUT 62 YEARS,
OCCUPATION: AGRICULTURIST
R/O VILLAGE BIRMAWAL TAPPA,
TEH. MUNDARI (MADHYA PRADESH)

.....PETITIONER

(SHRI GOPAL KRISHNA PATIDAR, COUNSEL FOR THE PETITIONER) .

AND

THE STATE OF MADHYA PRADESH
1. THRU. PRINCIPAL SECRETARY VALLABH BHAWAN,
BHOPAL (MADHYA PRADESH)

DISTRICT COLLECTOR
RATLAM COLLECTORATE OFFICE,
2. NEW COLLECTOR BUILDING,
MHOW NEEMUCH ROAD,
RATLAM (MADHYA PRADESH)

SUB DIVISIONAL OFFICER AND
COMPETENT AUTHORITY
3. LAND ACQUISITION RATLAM GRAMIN
SDO OFFICE NEW COLLECTOR BUILDING,
MHOW NEEMUCH ROAD (MADHYA PRADESH)

CHIEF EXECUTIVE ENGINEER,
PUBLIC WORKS DEPARTMENT
4. OLD COLLECTORATE ROAD
RATLAM (MADHYA PRADESH)

.....RESPONDENTS

(SHRI AAKASH SHARMA, GOVERNMENT ADVOCATE FOR THE STATE).

Reserved on : **03.03.2023**

Pronounced on : **25.05.2023**

This petition having been heard on admission and reserved for orders, coming on for pronouncement this day, the Court passed the following :

ORDER

In this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs :

- (1) Kindly issue an appropriate writ order or direction quashing impugned order dated 03.09.2021 passed by the SDO and Competent Authority, Land Acquisition, Ratlam Gramin.
- (2) Kindly issue an appropriate writ order or direction quashing bearing No. 1222 dated 20.05.2021 passed by Executive Engineer, Public Works Department, Ratlam.
- (3) An appropriate writ order or direction directing the respondent concerned to give fair compensation to the petitioner for using the land bearing Survey No. 1533/2 Rakba 0.080 hectare for *pakki sadak*.
- (4) An appropriate writ order or direction to commanding the respondent concern to either pay the compensation or return back the land in question to the petitioner.
- (5) Any other relief which this Hon'ble Court deems fit may kindly provide to the petitioner.

2. The brief facts of the case are that the petitioner is an agriculturist and the owner of the land bearing Survey No. 1533/2 admeasuring 0.080 hectare. In the year 1985-86, the respondents constructed a permanent road over the land belonging to the petitioner. The grievance of

the petitioner is that without issuing any notice or granting any opportunity of hearing and without paying any compensation, the aforesaid land has been acquired by the respondents. The petitioner was pursuing the matter with the respondents but the claim of the petitioner was not acceded to, therefore, the petitioner was left with no option but to give a legal notice dated 07.04.2021 asking the respondents to pay compensation, hence, this petition.

3. On the other hand, learned Government Advocate for the State has vehemently opposed the prayer and submitted that the petition is hopelessly barred by delay and laches. As per the averments made in the petition, the road in question was constructed as back as in the year 1975-76. Thereafter, the petitioner kept silent for the last 47 years and now at this belated stage, is claiming compensation. The petitioner was sleeping over his rights. In such circumstances, the petition suffers from inordinate delay and laches, therefore, the same is liable to be dismissed.

4. Heard learned counsel for the parties.

5. It is settled legal position that the law will not help those who sleep over their rights '*Vigilantibus Non Dormientibus Jura Subveniunt*'.

6. This Court by order dated 04.09.2020 passed in W.P.No.12836/2020 has held as under:

*"The delay defeats equity and if the petitioner approaches the Court after a long delay, then the relief prayed by him may be denied on the ground of delay and laches irrespective of the fact that the similarly situated other candidates have been extended the benefit of judgment. The Supreme Court in the case of **Chairman/Managing Director, U.P. Power Corporation Limited and Ors. vs. Ram Gopal** by order dated 30/01/2020 passed in Civil Appeal No.852 of 2020 (Arising Out of Special Leave Petition No. 36253 of has held as under:-*

"iii) Inordinate delay in filing writ petition

14. Finally, the prolonged delay of many years ought not to have been overlooked or condoned. Services of the Respondent were terminated within months of his appointment, in 1978. Statedly, the Respondent made a representation and served UPPCL with a legal notice in 1982, however such feeble effort does little to fill the gap between when the cause of action arose and he chose to seek its redressal (in 1990).

15. Seen from a different perspective also, it is clear that the Respondent has shown little concern to the settled legal tenets. Even a civil suit challenging termination of services, if filed by the Respondent, would have undoubtedly been barred by limitation in 1990. In a similar situation where the appellant belatedly challenged the promotion of his junior(s), this Court in ***P.S. Sadasivaswamy v. State of Tamil Nadu***, held as follows:

"2.....if the appellant was aggrieved by it he should have approached the Court even in the year 1957, after the two representations made by him had failed to produce any result. One cannot sleep over the matter and come to the Court questioning that relaxation in the year 1971..... In effect he wants to unscramble a scrambled egg. It is very difficult for the Government to consider whether any relaxation of the rules should have been made in favour of the appellant in the year 1957. The conditions that were prevalent in 1957, cannot be reproduced now....". 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 relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matter..."

16. Whilst it is true that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution of India,

nevertheless, such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in writ actions, and writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence sitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which writ remedies can be enforced. In **SS Balu vs. State of Kerala**, this Court observed thus:

"17. It is also well-settled principle of law that "delay defeats equity". "It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment."

(emphasis supplied)

17. Similarly, in **Vijay Kumar Kaul v. Union of India** this Court while considering the claim of candidates who, despite being higher in merit, exercised their right to parity much after those who were though lower in merit but were diligently agitating their rights, this Court observed that:

"27...It becomes an obligation to take into consideration the balance of justice or injustice in entertaining the petition or declining it on the ground of delay and laches. It is a matter of great significance that at one point of time equity that existed in favour of one melts into total insignificance and paves the path of extinction with the passage of time."

18. We may hasten to add that these principles may not, however, apply to judgments which are delivered in rem. The State and its instrumentalities are expected In such category of cases to themselves extend the benefit of a judicial pronouncement to all similarly placed employees without forcing each person to individually knock the doors of courts. This distinction between operation of delay and laches to judgments delivered in rem and in personam, is lucidly captured in **State of Uttar Pradesh vs. Arvind Kumar Srivastava** laying down that:

"22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of

Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

*22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like **K. C. Sharma v. Union of India, (1997) 6 SCC 721 : 1998 SCC (L&S) 226.** On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.*

(Emphasis applied)

19. The order passed by the High Court for retention of Shyam Behari Lal in service, does not possess any ingredient of a Judgment in rem. The above cited exception, therefore, does not come to the Respondent's rescue. It is also pertinent to mention that neither has it been pleaded nor is it apparent from the material on record that the Respondent was unable to approach the court of law in time on account

of any social or financial disability. Had such been the case, he ought to have availed free legal aid and should have ventilated his grievances in a timely manner. Instead, he seems to be under the assumption that the termination order is illegal, that he consequently has a right to be reinstated, and that he can agitate the same at his own sweet-will. Neither of these three assumptions are true, as elaborated by us earlier."

*The Supreme Court in the case of State of **Karnataka and Others vs. S. M. Kotrayya and Others**, reported in **(1996) 6 SCC 267** has held as under:-*

"9. Thus considered, we hold that it is not necessary that the respondents should give an explanation for the delay which occasioned for the period mentioned in subsections (1) or (2) of Section 21, but they should give explanation for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should be required to satisfy itself whether the explanation offered was proper explanation. In this case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievance before the expiry of the period prescribed under sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal is wholly unjustified in condoning the delay. "

7. The petitioner has approached this Court after 47 long years, for which no plausible explanation has been put forth by him. The petitioner has been sleeping over his right and woke up after a long period of 47 years to approach this Court. In view of the above, this Court refrains from exercising extraordinary jurisdiction under Article 226 of the Constitution of India as the petition suffers from unexplained delay and laches on the part of the petitioner.

8. Accordingly, the petition stands dismissed on the ground of delay and laches.

No order as to costs.

(S. A. DHARMADHIKARI)
JUDGE

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