IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 4nd OF MAY, 2023

MISCELLANEOUS PETITION No. 459 of 2022

BETWEEN:-

1. **PHOOLESHWARI PANDRE W/O SHRI TEERATH SINGH, AGED ABOUT 55 YEARS, OCCUPATION: AGRICULTURIST CASTE GOND R/O VILLAGE LORA POST KARAMSARA TEHSIL BIRSA DISTRICT BALAGHAT (MADHYA PRADESH)**

2. **SHANKAR SINGH S/O SAMHARU SINGH, AGED ABOUT 50 YEARS, OCCUPATION: AGRICULTURE R/O VILLAGE LORA POST KARAMSARA TEHSIL BIRSA DISTRICT BALAGHAT (MADHYA PRADESH)**

3. **SHYAMA BAI @ SANA BAI W/O SURAT, AGED ABOUT 60 YEARS, OCCUPATION: AGRICULTURE R/O VILLAGE LORA POST KARAMSARA TEHSIL BIRSA DISTRICT BALAGHAT (MADHYA PRADESH)**

4. **GAYATRI W/O MAHAR SINGH PANDRE, AGED ABOUT 50 YEARS, OCCUPATION: AGRICULTURE R/O VILLAGE LORA POST KARAMSARA TEHSIL BIRSA DISTRICT BALAGHAT (MADHYA PRADESH)**

.....PETITIONERS

(BY MS. C. VEDA RAO - ADVOCATE)

AND

M/S HINDUSTAN COPPER LTD. MALAJKHAND COPPER PROJECT, THROUGH ITS GENERAL MANAGER, HINDUSTAN COPPER LTD. MALAJKHAND, TEHSIL DEOSAR, DISTRICT BALAGHAT (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI SUYASH MOHAN GURU - ADVOCATE)

MISCELLANEOUS PETITION No. 461 of 2022

BETWEEN:-

ARJUN WALKE S/O SHRI MANGLU WALKE, AGED ABOUT 46 YEARS, OCCUPATION: AGRICULTURIST VILLAGE RAHENGI, POST KARAMSARA, TEHSIL BIRSA DIST. BALAGHAT (MADHYA PRADESH)

.....PETITIONER

(BY MS. C. VEDA RAO - ADVOCATE)

AND

M/S HINDUSTAN COPPER LTD. THR. ITS GENERAL MANAGER HINDUSTAN COPPER LTD. MALAJKHAND COPPER PROJECT MALAJKHAND TEHSIL DEOSAR DIST. BALAGHAT (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI SUYASH MOHAN GURU - ADVOCATE)

MISCELLANEOUS PETITION No. 462 of 2022

BETWEEN:-

1. **BIRJU SINGH DHURVEY S/O SHRI HAGRU SINGH DHURVEY, AGED ABOUT**

64 YEARS, OCCUPATION: AGRICULTURE CASTE GOND R/O VILLAGE RAHENGI POST KARAMSARA TEHSIL BIRSA DISTRICT BALAGHAT (MADHYA PRADESH)

2. **SIRDU SINGH DHURVEY S/O SHRI HAGRU SINGH DHURVEY, AGED ABOUT 60 YEARS, OCCUPATION: AGRICULTURIST R/O VILLAGE RAHENGI POST KARAMSARA TEHSIL BIRSA DISTRICT BALAGHAT (MADHYA PRADESH)**

3. **HIRDU SINGH DHURVEY S/O SHRI HAGRU SINGH DHURVEY, AGED ABOUT 58 YEARS, OCCUPATION: AGRICULTURIST R/O VILLAGE RAHENGI POST KARAMSARA TEHSIL BIRSA DISTRICT BALAGHAT M.P. (MADHYA PRADESH)**

.....PETITIONERS

(BY MS. C. VEDA RAO - ADVOCATE)

AND

M/S HINDUSTAN COPPER LTD. MALAJKHAND COPPER PROJECT THROUGH ITS GENERAL MANAGER HINDUSTAN COPPER LTD. MALAJKHAND TEHSIL DEOSAR DISTRICT BALAGHAT (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI SUYASH MOHAN GURU - ADVOCATE)

MISCELLANEOUS PETITION No. 464 of 2022

BETWEEN:-

1. **SAHO PANDRE W/O LATE SABAL SINGH PANDRE, AGED ABOUT 66 YEARS, OCCUPATION: AGRICULTURE CASTE GOND R/O VILLAGE RAHENGI POST KARAMSARA TEHSIL BIRSA DISTRICT BALAGHAT (MADHYA PRADESH)**

2. **MOM SINGH PANDRE S/O LATE SABAL SINGH PANDRE, AGED ABOUT 45 YEARS, OCCUPATION: AGRICULTURE VILLAGE RAHENGI POST KARAMSARA TEH. BIRSA DIST. BALAGHAT (MADHYA PRADESH)**

3. **TAM SINGH PANDRE S/O LATE SABAL SINGH PANRE, AGED ABOUT 40 YEARS, OCCUPATION: AGRICULTURE VILLAGE RAHENGI POST KARAMSARA TEH. BIRSA DIST. BALAGHAT MP (MADHYA PRADESH)**

4. **RAJKUMAR PANDRE S/O LATE SABAL SINGH PANDRE, AGED ABOUT 33 YEARS, OCCUPATION: AGRICULTURE VILLAGE RAHENGI POST KARAMSARA TEH. BIRSA DIST. BALAGHAT MP (MADHYA PRADESH)**

.....PETITIONERS

(BY MS. C. VEDA RAO - ADVOCATE)

AND

M/S HINDUSTAN COPPER LTD. MALAJKHAND COPPER PROJECT THROUGH ITS GENERAL MANAGER HINDUSTAN COPPER LTD. MALAJKHAND TEHSIL DEOSAR DISTRICT BALAGHAT M.P. (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI SUYASH MOHAN GURU - ADVOCATE)

MISCELLANEOUS PETITION No. 465 of 2022

BETWEEN:-

1. **MAN SINGH DHURVEY S/O LATE BUDDHU DHURVEY, AGED ABOUT 65 YEARS, OCCUPATION: CASTE GOND AGRICULTURIST VILLAGE BHEEMA POST GUDMA TEH. BIRSA DIST. BALAGHAT (MADHYA PRADESH)**

2. **SANTLAL DHURVEY S/O SUKMAN DHURVEY, AGED ABOUT 45 YEARS, OCCUPATION: AGRICULTURE VILLAGE BHEEMA POST GUDMA TEH.BIRSA DIST. BALAGHAT (MADHYA PRADESH)**

3. **SANTU DHURVEY S/O SUKMAN DHURVEY, AGED ABOUT 38 YEARS, OCCUPATION: AGRICULTURE VILLAGE BHEEMA POST GUDMA TEH.BIRSA DIST. BALAGHAT (MADHYA PRADESH)**

4. **ANTRAM DHURVEY S/O SUKMAN DHURVEY, AGED ABOUT 42 YEARS, OCCUPATION: AGRICULTURE VILLAGE BHEEMA POST GUDMA TEH.BIRSA DIST. BALAGHAT (MADHYA PRADESH)**

.....PETITIONERS

(BY MS. C. VEDA RAO - ADVOCATE)

AND

1. **M/S HINDUSTAN COPPER LTD. THR. ITS GENERAL MANAGER HINDUSTAN COPPER LTD. MALAJKHAND COPPER PROJECT MALAJKHAND TEH. DEOSAR DIST. BALAGHAT (MADHYA PRADESH)**

2. STATE OF MADHYA PRADESH THROUGH COLLECTOR BALAGHAT, DISTRICT BALAGHAT (MADHYA PRADESH)

.....RESPONDENTS

(RESPONDENT NO.1 BY SHRI SUYASH MOHAN GURU – ADVOCATE)

MISCELLANEOUS PETITION No. 467 of 2022

BETWEEN:-

1. RAJENDRA SINGH AGED ABOUT 66 YEARS, S/O SHRI MOHAN SINGH, CASTE–GOND, OCCUPATION – AGRICULTURIST R/O VILLAGE - RAHENGI, POST - KARAMSARA, TEHSIL- BIRSA, DISTRICT - BALAGHAT (MADHYA PRADESH)

2. NARESH CHANDRA S/O LATE PANCHAM SINGH MERAVI, AGED ABOUT 65 YEARS, OCCUPATION: CASTE GOND, AGRICULTURIST R/O VILLAGE - RAHENGI, POST - KARAMSARA, TEHSIL- BIRSA, DISTRICT - BALAGHAT (MADHYA PRADESH)

3. LATA BAI W/O SHRI DHANESH MERAVI, AGED ABOUT 50 YEARS, OCCUPATION: CASTE GOND, AGRICULTURIST R/O VILLAGE- RAHENGI, POST-KARAMSARA, TEHSIL- BIRSA, DISTRICT - BALAGHAT (MADHYA PRADESH)

4. MUKESH S/O LATE PANCHAM SINGH MERAVI, AGED ABOUT 45 YEARS, OCCUPATION: CASTE GOND, AGRICULTURIST R/O VILLAGE-RAHENGI, POST-KARAMSARA, TEHSIL-BIRSA, DISTRICT - BALAGHAT

(MADHYA PRADESH)

5. **MAHESH S/O LATE PANCHAM SINGH MERAVI, AGED ABOUT 40 YEARS, OCCUPATION: CASTE GOND, AGRICULTURIST R/O VILLAGE-RAHENGI, POST-KARAMSARA, TEHSIL-BIRSA, DISTRICT - BALAGHAT (MADHYA PRADESH)**

6. **NANDLAL S/O LATE DEVI SINGH DHURVEY, AGED ABOUT 65 YEARS, OCCUPATION: CASTE GOND, AGRICULTURIST R/O VILLAGE-RAHENGI, POST-KARAMSARA, TEHSIL-BIRSA, DISTRICT - BALAGHAT (MADHYA PRADESH)**

.....PETITIONERS

(BY MS. C. VEDA RAO - ADVOCATE)

AND

1. **M/S HINDUSTAN COPPER LTD. MALAJKHAND COPPER PROJECT THROUGH ITS GENERAL MANAGER HINDUSTAN COPPER LTD. MALAJKHAND TEHSIL DEOSAR DISTRICT BALAGHAT (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI SUYASH MOHAN GURU - ADVOCATE)

These petitions coming on for admission this day, the court passed the following:

ORDER

By this common order, M.P. No.459/2022, M.P. No.461/2022,

M.P. No.462/2022, M.P. No.464/2022, M.P. No.465/2022 & M.P. No.467/2022 shall be decided. For the sake of convenience, the facts of M.P. No.459/2022 shall be referred.

2. This Miscellaneous Petition under Article 227 of the Constitution of India has been filed against the order dated 24/10/2020 passed by Additional Collector Baihar, District Balaghat in Revenue Appeal Case No.0029/Appeal/2019-20.

3. The facts necessary for disposal of the present petitions in short are that certain pieces of land were acquired in the year 1977 for establishment of the respondent – M/s Hindustan Copper Ltd. Malajkhand Copper Project, Tehsil Deosar, District Balaghat. The draft notification as well as the final notification issued under the Land Acquisition Act was not challenged by the petitioners.

4. It is the case of the respondent that even the compensation fixed by the Land Acquisition Officer was also accepted by the petitioners without any protest. Jobs which were offered to the petitioners because of the acquisition of their lands were also accepted. Thereafter, it appears that under some misguided advice, the petitioners filed an application before Sub-Divisional Officer that since the acquisition was contrary to the provisions of Section 165(6) of M.P.L.R. Code, therefore their land should be returned back.

5. It appears that the said application was allowed by SDO Baihar, District Balaghat in case No.4/A-23/year 2017-18, however it is not out of place to mention here that the copy of the order of SDO has not been filed along with this petition.

6. Being aggrieved by the order passed by the SDO Baihar, District Balaghat, the respondent preferred an Appeal before the Additional Collector Baihar, District Balaghat which was registered as Revenue Appeal No.29/Appeal/2019-20 and by order dated 24/10/2020, the appeal has been allowed and the application filed by the petitioners on the ground of violation of Section 165(6) of M.P.L.R. Code was rejected.

7. Challenging the order passed by the Additional Collector, it is submitted by the counsel for the petitioners that since the acquisition of land was in violation of Section 165(6) of M.P.L.R. Code, therefore the same is void. It is true that the petitioners did not challenge the acquisition which took place in the year 1977 but the petition cannot be dismissed on the ground of delay and laches because the void order can be challenged at any point of time. It is further submitted that Section 165(6) of M.P.L.R. Code will include acquisition of land by the State Government and therefore, they are entitled for return of their land.

8. *Per contra*, it is submitted by the counsel for the respondent that final notification under Section 6 of Land Acquisition Act was issued in the year 1977. The petitioners had accepted the compensation without any protest. The jobs offered to the family members of the owners were also accepted by the petitioners. Further, the petitioners never challenged the acquisition proceedings. If the petitioners were aggrieved by the draft notification or the final notification issued under Section 4 or 6 of the Land Acquisition Act, then they should have challenged the same then and there. The petitioners after having accepted the compensation as well as the jobs in lieu of their land

which was acquired are estopped from asking for reversion of their land on the ground of violation of Section 165(6) of M.P.L.R. Code. It is further submitted that the provisions of Section 165(6) of M.P.L.R. Code would not apply to the cases of acquisition. The counsel for the respondent also relied upon the judgment passed by the Supreme Court in the case of **Balco Employees' Union (Regd.) Vs. Union of India and Others** reported in **(2002) 2 SCC 333**.

9. Heard the learned counsel for the parties.

Delay and laches

10. The undisputed facts are that the land of the petitioners or their predecessors was acquired for establishment of the respondent industry. The said acquisition was done by the State Government under the orders of the Central Government. The petitioners have not challenged the acquisition proceedings at all. Even in this Miscellaneous Petition, the petitioners have not challenged the notification issued under Section 6 of Land Acquisition Act. They filed an application before SDO claiming that since they were deprived of their lands in violation of Section 165(6) of M.P.L.R. Code, therefore they are entitled for reversion of their lands.

11. The counsel for the petitioners could not point out as to how the SDO can set aside the notification issued under Section 6 of Land Acquisition Act? Unless and until the final notification issued under the Land Acquisition Act is set aside, the petitioners cannot get any relief. No reason much less sufficient reason has been assigned by the petitioners as to why they did not challenge the acquisition proceedings for the last 45 years.

12. It is well established principle of law that the delay and laches defeats equity.

13. The Supreme Court in the case of **Union of India and others Vs. C. Girija and others** reported in **(2019) 15 SCC 633** has held as under:

> **16.** This Court had occasion to consider the question of cause of action in reference to grievances pertaining to service matters. This Court in *C. Jacob* v. *Director of Geology and Mining* [*C. Jacob* v. *Director of Geology and Mining*, (2008) 10 SCC 115 : (2008) 2 SCC (L&S) 961] had occasion to consider the case where an employee was terminated and after decades, he filed a representation, which was decided. After decision of the representation, he filed an OA in the Tribunal, which was entertained and order was passed. In the above context, in para 9, following has been held : (SCC pp. 122-23)
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> > "*9.* The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any "decision" on rights and obligations of parties. Little do they realise the consequences of such a direction to "consider". If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to "consider". If the representation is considered and rejected, the ex-employee files an application/writ

> petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The tribunals/High Courts routinely entertain such applications/ petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored."

17. This Court again in *Union of India* v. *M.K. Sarkar* [*Union of India* v. *M.K. Sarkar*, (2010) 2 SCC 59 : (2010) 1 SCC (L&S) 1126] on belated representation laid down following, which is extracted below : (SCC p. 66, para 15)

> "*15.* When a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or

erase the delay and laches."

14. The Supreme Court in the case of **Karnataka Power Corpon. Ltd. Vs. K. Thangappan** reported in **(2006) 4 SCC 322** has held as under :

> **6.** Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if 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 opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in *Durga Prashad* v. *Chief Controller of Imports and Exports*. Of course, the discretion has to be exercised judicially and reasonably.
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> **7.** What was stated in this regard by Sir Barnes Peacock in *Lindsay Petroleum Co.* v. *Prosper Armstrong Hurd* (PC at p. 239) was approved by this Court in *Moon Mills Ltd.* v. *M.R. Meher* and *Maharashtra SRTC* v. *Shri Balwant Regular Motor Service*. Sir Barnes had stated:
>
> > "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 limitation, 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 it relates to the remedy."

8. It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation to Article 32 of the Constitution. It is apparent that what has been stated as regards that article would apply, a fortiori, to Article 226. It was observed in *Rabindranath Bose* v. *Union of India* that no relief can be given to the petitioner who without any reasonable explanation approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution-makers that this Court should disregard all principles and grant relief in petitions filed after inordinate delay.

9. It was stated in *State of M.P.* v. *Nandlal Jaiswal* that the High Court in exercise of its discretion does not ordinarily assist the

> tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

15. The Supreme Court in the case of **M.P. Ram Mohan Raja Vs. State of T.N.** Reported in **(2007) 9 SCC 78** has held as under :

> **11.** So far as the question of delay is concerned, no hard-and- fast rule can be laid down and it will depend on the facts of each case. In the present case, the facts stare at the face of it that on 8-10-1996 an order was passed by the Collector in pursuance of the order passed by the High Court, rejecting the application of the writ petitioner for consideration of the grant of mining lease. The writ petitioner sat tight over the matter and did not challenge the same up to 2003. This on the face of it appears to be very serious. A person who can sit tight for such a long time for no justifiable reason, cannot be given any benefit.

16. The Supreme Court in the case of **Shiv Dass Vs. Union of India**

reported in **(2007) 9 SCC 274** has held as under :

> **6.** Normally, in the case of belated approach writ petition has to be dismissed. Delay or laches is one of the factors to be borne in mind by the High Courts when they exercise their discretionary powers under Article 226 of the Constitution of India. In an appropriate case the High Court may refuse to invoke its extraordinary powers if 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 opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in *Durga Prashad* v. *Chief Controller of Imports and Exports*. Of course, the discretion has to be exercised judicially and reasonably.
>
> **7.** What was stated in this regard by Sir Barnes Peacock in *Lindsay Petroleum Co.* v. *Prosper Armstrong Hurd*, PC at p. 239 was approved by this Court in *Moon Mills Ltd.* v.
> *M.R. Meher* and *Maharashtra SRTC* v. *Balwant Regular Motor Service*. Sir Barnes had stated:
>
> > "Now the doctrine of laches in courts of equity is not an arbitrary or 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, if founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, 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."
>
> **8.** It was stated in State of M.P. v. Nandlal Jaiswal that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

17. The Supreme Court in the case of **Nadia Distt. Primary School Council Vs. Sristidhar Biswar** reported in **(2007) 12 SCC 779** has held as under :

> **11.** In the present case, the panel was prepared in 1980 and the petitioners approached the court in 1989 after the decision in *Dibakar Pal*. Such persons should not be given any

> benefit by the court when they allowed more than nine years to elapse. Delay is very significant in matters of granting relief and courts cannot come to the rescue of the persons who are not vigilant of their rights. Therefore, the view taken by the High Court condoning the delay of nine years cannot be countenanced.

18. The Supreme Court in the case of **U.P. Jal Nigam Vs. Jaswant Singh** reported in **(2006) 11 SCC 464** has held as under :

> **12.** The statement of law has also been summarised in *Halsbury's Laws of England*, para 911, p. 395 as follows: "In determining whether there has been such delay as to amount to laches, the chief points to be considered are:
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> (i) acquiescence on the claimant's part; and
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> (ii) any change of position that has occurred on the defendant's part.
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> Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches."

19. The Supreme Court in the case of **Jagdish Lal Vs. State of Haryana** reported in **(1997) 6 SCC 538** has held as under :

> **18.** That apart, as this Court has repeatedly held,

> the delay disentitles the party to the discretionary relief under Article 226 or Article 32 of the Constitution.

20. The Supreme Court in the case of **NDMC Vs. Pan Singh** reported in **(2007) 9 SCC 278** has held as under :

> **16.** There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction. (See *Govt. of W.B.* v. *Tarun K. Roy*, *U.P. Jal Nigam* v. *Jaswant Singh* and *Karnataka Power Corpn. Ltd.* v. *K. Thangappan*.)
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> **17.** Although, there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, ordinarily, writ petition should be filed within a reasonable time. (See *Lipton India Ltd.* v. *Union of India* and *M.R. Gupta* v. *Union of India*.)
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> **18.** In *Shiv Dass* v. *Union of India* this Court held: (SCC p. 277, paras 9-10)
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> > "*9*. It has been pointed out by this Court in a number of cases that representations would not be adequate explanation to take care of delay. This was first stated in *K.V. Rajalakshmiah Setty* v. *State of Mysore*.

> There is a limit to the time which can be considered reasonable for making representations and if the Government had turned down one representation the making of another representation on similar lines will not explain the delay. In *State of Orissa* v. *Pyarimohan Samantaray* making of repeated representations was not regarded as satisfactory explanation of the delay. In that case the petition had been dismissed for delay alone. (See also *State of Orissa* v. *Arun Kumar Patnaik*.)
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> *10*. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit the appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone."

19. We, therefore, are of the opinion that it was not a fit case where the High Court should have exercised its discretionary jurisdiction in favour of the respondents herein.

21. The Supreme Court in the case of **State of Uttaranchal v. Shiv Charan Singh Bhandari** reported in **(2013) 12 SCC 179** has held as under :

> **19.** From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere

> submission of representation to the competent authority does not arrest time.
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> * * * *
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> **28.** Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the Tribunal and accepted by the High Court.

22. The Supreme Court in the case of **C. Jacob v. Director of Geology and Mining** reported in **(2008) 10 SCC 115 has** held as under :

> "**10**. Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim."

23. The Supreme Court in the case of **Union of India v. M.K. Sarkar** reported in **(2010) 2 SCC 59** has held as under :

> "**15.** When a belated representation in regard to a 'stale' or 'dead' issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the 'dead' issue or time- barred

> dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches."

24. The Supreme Court in the case of **State of Orissa v. Pyarimohan Samantaray** reported in **(1977) 3 SCC 396** has held as under :

> **6.** It would thus appear that there is justification for the argument of the Solicitor-General that even though a cause of action arose to the petitioner as far back as 1962, on the rejection of his representation on November 9, 1962, he allowed some eleven years to go by before filing the writ petition. There is no satisfactory explanation of the inordinate delay for, as has been held by this Court in *Rabindra Nath Bose* v. *Union of India* the making of repeated representations, after the rejection of one representation, could not be held to be a satisfactory explanation of the delay. The fact therefore remains that the petitioner allowed some 11 years to go by before making a petition for the redress of his grievances. In the meantime a number of other appointments were also made to the Indian Administrative Service by promotion from the State Civil Service, some of the officers received promotions to higher posts in that service and may even have retired. Those who continued to serve could justifiably think that as there was no challenge to their appointments within the period prescribed for a suit, they could look forward to further promotion and higher terminal benefits on retirement. The High Court therefore erred in rejecting the argument that the writ petition should be dismissed because of the

> inordinate and unexplained delay even though it was "strenuously" urged for its consideration on behalf of the Government of India.

25. The Supreme Court in the case of **State of Orissa v. Arun Kumar Patnaik** reported in **(1976) 3 SCC 579** has held as under :

> **14.** It is unnecessary to deal at length with the State's contention that the writ petitions were filed in the High Court after a long delay and that the writ petitioners are guilty of laches. We have no doubt that Patnaik and Mishra brought to the court a grievance too stale to merit redress. Krishna Moorthy's appointment was gazetted on March 14, 1962 and it is incredible that his service-horoscope was not known to his possible competitors. On November 15, 1968 they were all confirmed as Assistant Engineers by a common gazette notification and that notification showed Krishna Moorthy's confirmation as of February 27, 1961 and that of the other two as of May 2, 1962. And yet till May 29, 1973 when the writ petitions were filed, the petitioners did nothing except to file a representation to the Government on June 19, 1970 and a memorial to the Governor on April 16, 1973. The High Court made light of this long and inexplicable delay with a casual remark that the contention was "without any force". It overlooked that in June, 1974 it was setting aside an appointment dated March, 1962 of a person who had in the meanwhile risen to the rank of a Superintending Engineer. Those 12 long years were as if writ in water. We cannot but express our grave concern that an extraordinary jurisdiction should have been exercised in such an abject disregard of consequences and in favour of persons who were unmindful of their so-called rights for many long years.

26. The Supreme Court in the case of **BSNL v. Ghanshyam Dass** reported in **(2011) 4 SCC 374** has held as under :

26. On the other hand, where only the affected parties approach the court and relief is given to those parties, the fence-sitters who did not approach the court cannot claim that such relief should have been extended to them thereby upsetting or interfering with the rights which had accrued to others.

27. In *Jagdish Lal* v. *State of Haryana*, the appellants who were general candidates belatedly challenged the promotion of Scheduled Caste and Scheduled Tribe candidates on the basis of the decisions in *Ajit Singh Januja* v. *State of Punjab*, *Union of India* v. *Virpal Singh Chauhan* and *R.K. Sabharwal* v. *State of Punjab* and this Court refused to grant the relief saying: (*Jagdish Lal case*, SCC pp. 562-63, para 18)

> "*18*. … this Court has repeatedly held, the delay disentitles the party to the discretionary relief under Article 226 or Article 32 of the Constitution. It is not necessary to reiterate all the catena of precedents in this behalf. Suffice it to state that the appellants kept sleeping over their rights for long and elected to wake up when they had the impetus from *Virpal Chauhan* and *Ajit Singh* ratios. But *Virpal Chauhan* and *Sabharwal* cases, kept at rest the promotion already made by that date, and declared them as valid; they were limited to the question of future promotions given by applying the rule of reservation to all the persons prior to the date of judgment in *Sabharwal case* which required to be examined in the light of the law laid in *Sabharwal case*. Thus earlier promotions cannot be reopened. Only those cases arising after that date would be examined in the light of the law laid down in *Sabharwal case* and *Virpal Chauhan case* and equally *Ajit Singh case*. If the candidate has already been further promoted to the higher echelons of service, his seniority is not open to be reviewed. In *A.B.S. Karamchari*

> *Sangh case* a Bench of two Judges to which two of us, K. Ramaswamy and G.B. Pattanaik, JJ. were members, had reiterated the above view and it was also held that all the prior promotions are not open to judicial review. In *Chander Pal* v. *State of Haryana* a Bench of two Judges consisting of S.C. Agrawal and G.T. Nanavati, JJ. considered the effect of *Virpal Chauhan*, *Ajit Singh*, *Sabharwal* and *A.B.S. Karamchari Sangh* cases and held that the seniority of those respondents who had already retired or had been promoted to higher posts could not be disturbed. The seniority of the petitioner therein and the respondents who were holding the post in the same level or in the same cadre would be adjusted keeping in view the ratio in *Virpal Chauhan* and *Ajit Singh*; but promotion, if any, had been given to any of them during the pendency of this writ petition was directed not to be disturbed."

27. Under these circumstances, this Court is of the considered opinion that an adventurous attempt made on the part of the petitioners to adopt an indirect method to get the acquisition nullified after 45 years of acquisition of their lands suffers from delay and laches and accordingly, the petition is liable to be dismissed on the said ground only. However, it is submitted by the counsel for the petitioners that other grounds may also be considered.

Whether void/ voidable order is to be challenged or not?

28. It is next contended by the counsel for the petitioners that when an order is a void order, then it can be challenged at any point of time and question of delay and laches would not apply.

29. Heard the learned counsel for the petitioners.

30. Whether an order is void/ voidable or not is not to be assessed by the litigant on his own and he cannot sit over the matter under a false impression that since an order is voidable or void under his assessment, therefore he is not suppose to challenge the same.

31. The Supreme court in the case of **M. Meenakshi v. Metadin Agarwal,** reported in **(2006) 7 SCC 470** has held as under :

> **"17.** The competent authority under the 1976 Act was not impleaded as a party in the suit. The orders passed by the competent authority therein could not have been the subject-matter thereof. The plaintiff although being a person aggrieved could have questioned the validity of the said orders, did not chose to do so. Even if the orders passed by the competent authorities were bad in law, they were required to be set aside in an appropriate proceeding. They were not the subject-matter of the said suit and the validity or otherwise of the said proceeding could not have been gone into therein and in any event for the first time in the letters patent appeal."
>
> (Underline supplied)

32. The Supreme Court in the case of **Anita International v. Tungabadra Sugar Works Mazdoor Sangh,** reported in **(2016) 9 SCC 44** has held as under :

> **"54.** We are also of the considered view, as held by the Court in *Krishnadevi Malchand Kamathia case*, that it is not open either to parties to a lis or to any third parties to determine at their own that an order passed by a court is valid or void. A party to the lis or a third party who considers an order passed by a court as void or non est, must approach a court of competent jurisdiction to have the said order set aside on such grounds as may be available in law. However, till an order passed by a

> competent court is set aside as was also held by this Court in *Official Liquidator* and *Jehal Tanti* cases, the same would have the force of law, and any act/action carried out in violation thereof would be liable to be set aside. We endorse the opinion expressed by this Court in *Jehal Tanti case*. In the above case, an earlier order of a court was found to be without jurisdiction after six years. In other words, an order passed by a court having no jurisdiction had subsisted for six years. This Court held that the said order could not have been violated while it subsisted. And further that the violation of the order before it is set aside is liable to entail punishment for its disobedience. For us to conclude otherwise may have disastrous consequences. In the above situation, every cantankerous and quarrelsome litigant would be entitled to canvass that in his wisdom the judicial order detrimental to his interests was void, voidable, or patently erroneous. And based on such plea, to avoid or disregard or even disobey the same. This course can never be permitted."

33. The Supreme Court in the case of **Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group,** reported in **(2011) 3 SCC 363** has held as under :

> **"16.** It is a settled legal proposition that even if an order is void, it requires to be so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void. In *State of Kerala* v. *M.K. Kunhikannan Nambiar Manjeri Manikoth Naduvil*, *Tayabbhai M. Bagasarwalla* v. *Hind Rubber Industries (P) Ltd.*, *M. Meenakshi* v. *Metadin Agarwal* and *Sneh Gupta* v. *Devi Sarup*, this Court held that whether an order is valid or void, cannot be determined by the parties. For setting aside such an order, even if void, the party has to approach the appropriate forum."

34. Therefore, if the petitioners were of the view that acquisition is void for any good or bad reason, then they should have assailed the same and cannot sit over the same under a false impression that since under their assessment the order is void, therefore they are not suppose to assail the same.

Estoppel

35. The undisputed facts are that after the land was acquired, the compensation was fixed and it was also decided that a family member of the owner will be provided service in the establishment. It is the case of the respondent that the compensation was accepted by the petitioners without any protest and even the jobs which were offered to their family members were also accepted. Thus, after having accepted the compensation as well as the jobs offered in lieu of the acquisition of their land, this Court is of the considered opinion that now the petitioners are estopped from challenging the proceedings and in fact they have waived their right to assail the acquisition proceedings.

36. The Supreme Court in the case of **M.T.W. Tenzing Namgyal and Others Vs. Motilal Lakhotia and Others** reported in **(2003) 5 SCC 1** has held as under:-

> **"28.** The other documents referred to hereinbefore, namely, Exhibits D-7, D-14 and D-23 to D-23/12 are also clear pointers to the fact that certain properties over which the late Chogyal of Sikkim had been claiming right as its private estate were acquired by the Sikkim Darbar of which he was the head. The owner of the land accepted the amount of compensation without any demur whatsoever and in that view

> of the matter he as well as his successors-in-interest are estopped and precluded from contending that the said properties did not vest in the Sikkim Darbar and consequently, in the Government of India."

37. The Supreme Court in the case of **Kedar Shashikant Deshpande and Others Vs. Bhor Municipal Council and Others** reported in **(2011) 2 SCC 654** has held as under:-

> **"29.** It is well settled that if a person has submitted to the jurisdiction of the authority, he cannot challenge the proceedings, on the ground of lack of jurisdiction of the said authority in further appellate proceedings. Had this plea, been raised before the Additional Collector, the respondents would have got the opportunity to place on record notification issued under the provisions of the Maharashtra Land Revenue Code, 1966 to establish that the Additional Collector was delegated the powers of the Collector and was competent to decide the disqualification petition."

38. The Supreme Court in the case of **State of Punjab and Others Vs. Dhanjit Singh Sandhu** reported in **(2014) 15 SCC 144** has held as under:-

> **"22.** The doctrine of "approbate and reprobate" is only a species of estoppel, it implies only to the conduct of parties. As in the case of estoppel it cannot operate against the provisions of a statute. (Vide *CIT* v. *V. MR. P. Firm Muar*, AIR 1965 SC 1216)
>
> **23.** It is settled proposition of law that once an order has been passed, it is complied with, accepted by the other party and derived the

benefit out of it, he cannot challenge it on any ground. (Vide *Maharashtra SRTC* v. *Balwant Regular Motor Service*, AIR 1969 SC 329) In *R.N. Gosain* v. *Yashpal Dhir*, (1992) 4 SCC 683 this Court has observed as under : (SCC pp. 687-88, para 10)

> "*10*. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that 'a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage'."

24. This Court in *Babu Ram* v. *Indra Pal Singh*, (1998) 6 SCC 358 and *P.R. Deshpande* v. *Maruti Balaram Haibatti*, (1998) 6 SCC 507], has observed that : (*P.R. Deshpande case*, SCC p. 511, para 8)

> "*8*. The doctrine of election is based on the rule of estoppel—the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppel in pais (or equitable estoppel) which is a rule in equity. By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had."

25. The Supreme Court in *Rajasthan State Industrial Development and Investment Corpn.* v. *Diamond and Gem Development*

> *Corpn. Ltd.* (2013) 5 SCC 470 : (2013) 3 SCC (Civ) 153, made an observation that a party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience.
>
> **26.** It is evident that the doctrine of election is based on the rule of estoppel, the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of estoppel in pais (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when it is his duty to speak, from asserting a right which he would have otherwise had."

39. The Supreme Court in the case of **Rajasthan State Industrial Development and Investment Corporation and Another Vs. Diamond & Gem Development Corporation Limited and Another** reported in **(2013) 5 SCC 470** has held as under:-

> **"15.** A party cannot be permitted to "blow hot-blow cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself. This rule is applied to ensure equity, however, it must not be applied in such a manner so as to violate the principles of what is right and of good conscience. [Vide *Nagubai Ammal* v. *B. Shama*

> *Rao* [AIR 1956 SC 593] , *CIT* v. *V. MR. P. Firm Muar* [AIR 1965 SC 1216], *Ramesh Chandra Sankla* v. *Vikram Cement* [(2008) 14 SCC 58 : (2009) 1 SCC (L&S) 706 : AIR 2009 SC 713], *Pradeep Oil Corpn.* v. *MCD* [(2011) 5 SCC 270], *Cauvery Coffee Traders* v. *Hornor Resources (International) Co. Ltd.* [(2011) 10 SCC 420 : (2012) 3 SCC (Civ) 685] and *V. Chandrasekaran* v. *Administrative Officer* (2012) 12 SCC 133.]"

40. The Supreme Court in the case of **Bhagwat Sharan (Dead Through Legal Representatives) Vs. Purushottam and Others** reported in **(2020) 6 SCC 387** has held as under:-

> **"27.** The doctrine of election is a facet of law of estoppel. A party cannot blow hot and blow cold at the same time. Any party which takes advantage of any instrument must accept all that is mentioned in the said document. It would be apposite to refer to the treatise *Equity—A Course of Lectures* by F.W. Maitland, Cambridge University, 1947, wherein the learned author succinctly described principle of election in the following terms:
>
> > "The doctrine of election may be thus stated : that he who accepts a benefit under a deed or will or other instrument must adopt the whole contents of that instrument, must conform to all its provisions and renounce all rights that are inconsistent with it…."
>
> This view has been accepted to be the correct view in *Karam Kapahi* v. *Lal Chand Public Charitable Trust*, (2010) 4 SCC 753 : (2010) 2 SCC (Civ) 262. The plaintiff having elected to accept the will of Hari Ram, by filing a suit for eviction of the tenant by claiming that the

> property had been bequeathed to him by Hari Ram, cannot now turn around and say that the averments made by Hari Ram that the property was his personal property, is incorrect."

41. The Supreme Court in the case of **Kamaljit Singh Vs. Sarabjit Singh** reported in **(2014) 16 SCC 472** has held as under:-

> **"10.** It is evident from the above that the respondent does not dispute either the jural relationship of landlord and tenant between the parties or the rate of rent settled between them. All that the respondent has asserted is that he has been in possession of the shop since the year 1992 and not since 1989 as asserted by the appellant. It is also not the case of the respondent that he is the owner of the suit shop or that he had taken the same on rent from anyone other than the appellant. Such being the position, the question is whether the respondent can dispute the title of the appellant over the shop assuming that he was let in possession by the appellant in the year 1992 as asserted by him and not in the year 1989. Our answer is in the negative. We say so because once the respondent admits that he has been let in possession as a tenant by the appellant in the year 1992 i.e. more than 10 years before the filing of the eviction petition, the requirement of the appellant being owner of the property for more than five years within the meaning of Section 13-B (supra) would stand satisfied. The respondent would then be estopped from denying the title of the appellant during the continuance of the benefit that he is drawing under the transaction, between him and the appellant. It is trite that the doctrine of estoppel is steeped in the principles of equity and good conscience. Equity will not allow a person to say one thing at one time and the opposite of it at

> another time. It would estop him from denying his previous assertion, act, conduct or representation to say something contrary to what was implied in the transaction under which he obtained the benefit of being let in possession of the property to be enjoyed by him as a tenant."

42. The Supreme Court in the case of **Sunderabai w/o Devrao Deshpande and another Vs. Devaji Shankar Deshpande** reported in **(1952) 2 SCC 92** has held as under:-

> **"17.** Estoppel is a rule of evidence and the general rule is enacted in Section 115 of the Evidence Act which lays down that when one person has by his declaration, act or omission caused or permitted another person to believe a thing to be true and to act upon such belief neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing. This is the rule of estoppel by conduct as distinguished from an estoppel by record which constitutes the bar of "res judicata". The estoppel in this case was pleaded by Defendant 1 in the manner following in Para 6 of her written statement:
>
> > "The plaintiff's claim is also barred by estoppel as he received Rs 8000 as a consideration for accepting the terms of compromise from the defendant. As the compromise was lawful and as he induced the defendant to pay Rs 8000 on the understanding that Gangabai lost her right to adopt and he would never raise any dispute, he is estopped from contending that Gangabai had not lost her right to adopt." "

43. The Supreme Court in the case of **Jai Narain Parasrampuria**

(Dead) and others Vs. Pushpa Devi Saraf and Others reported in **(2006) 7 SCC 756** has held as under:-

> **"33.** While applying the procedural law like the principle of estoppel or acquiescence, the court would be concerned with the conduct of a party for determination as to whether he can be permitted to take a different stand in a subsequent proceeding, unless there exists a statutory interdict. If the principle of estoppel applies, Sarafs will not be permitted by a court of law to raise the contention that the Company was not the owner of the property.
>
> **41.** The doctrine of estoppel by acquiescence was not restricted to cases where the representor was aware both of what his strict rights were and that the representee was acting on the belief that those rights would not be enforced against him. Instead, the court was required to ascertain whether in the particular circumstances, it would be unconscionable for a party to be permitted to deny that which, knowingly or unknowingly, he had allowed or encouraged another to assume to his detriment. Accordingly, the principle would apply if at the time the expectation was encouraged (*sic*). (See also *Taylor Fashions Ltd.* v. *Liverpool Victoria Trustees Co. Ltd.* [(1981) 1 All ER 897 : (1981) 2 WLR 576 : 1982 QB 133 (Ch D)])"

44. The Supreme Court in the case of **Krishna Bahadur Vs. Purna Theatre and Others** reported in **(2004) 8 SCC 229** has held as under:-

> **"9.** The principle of waiver although is akin to the principle of estoppel; the difference between the two, however, is that whereas estoppel is not a cause of action; it is a rule of evidence; waiver is contractual and may constitute a cause of action; it is an agreement between the parties and a party

> fully knowing of its rights has agreed not to assert a right for a consideration."

Whether acquisition proceedings are covered under Section 165(6) of M.P.L.R. Code or not?

45. It is submitted by the counsel for the petitioners that Section 165 of M.P.L.R. Code speaks about transfer or otherwise, therefore acquisition will be covered by the word "otherwise" and since no permission was obtained from the Collector under Section 165(6) of M.P.L.R. Code, therefore the acquisition of the land is bad.

46. Section 165(6) of M.P.L.R. Code has been incorporated to protect the innocent members of aboriginal tribe from the clutches of the unscrupulous persons. The very fact that the land belonging to the members of aboriginal tribe was transferrable only after obtaining permission from the Collector clearly shows that the legislature wanted to put a check on the transactions regarding the lands belonging to the aboriginal tribes so that they may not be defrauded by the unscrupulous persons.

47. In the present case, the Collector himself was involved in the acquisition of land. The LAO had decided the compensation amount. If the owner of the land is not satisfied with the compensation amount so fixed by the Land Acquisition Officer, then he has a right to file an application under Section 18 of Land Acquisition Act seeking reference to the District Court. The District Court after recording evidence is empowered to enhance the compensation amount if it comes to a conclusion that the LAO has not awarded the sufficient compensation amount. Therefore, the procedure as laid down under the

Land Acquisition Act itself take cares of the interest of the holders of land whether belonging to aboriginal tribe or not. When the Collector himself was involved in the acquisition then there was no need for the State Government to obtain permission from the Collector. Before granting permission the Collector is only required to see as to whether the proposed transaction is in accordance with the market value or not and whether the holder of the land who is a member of aboriginal tribe is being defrauded or not. In nutshell, the basic purpose is to save the members of aboriginal tribe from any fraud. Here when multiple checks have been provided under the Land Acquisition Act and the acquisition was being done by the State Government itself, this Court is of the considered opinion that the submission that even the acquisition will be covered under Section 165(6) of M.P.L.R. Code cannot be accepted. Even otherwise, it is pointed out by the counsel for the respondent that it is clear from paragraph 3 of the impugned order that the father of the petitioner, namely, Samharu Singh himself had filed an application under Section 165(6) of M.P.L.R. Code before the Collector, Balaghat and the said permission was granted by the Collector, Balaghat by order dated 03/10/1977.

48. The Supreme Court in the case of **Balco Employees' Union (supra)** has held as under:-

> **"73.** By Section 2 of M.P. Act 61 of 1976 published in the Gazette on 29-11-1976, the aforesaid sub-section (6) of Section 165 was repealed and was substituted by the following provision:
>
> > "165.(6) Notwithstanding anything contained in sub-section (1) the right of bhumiswami belonging to a tribe which

has been declared to be an aboriginal tribe by the State Government by a notification in that behalf for the whole or part of the area to which this Code applies shall,—

(*i*) in such areas as are predominately inhabited by aboriginal tribes and from such date as the State Government may, by notification, specify, not be transferred nor it shall be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to such tribe in the area specified in the notification;

(*ii*) in areas other than those specified in the notification under clause (*i*), not be transferred or be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to such tribe without the permission of a Revenue Officer not below the rank of Collector, given for reasons to be recorded in writing."

Explanation.—For the purposes of this sub-section the expression 'otherwise' shall not include lease."

74. Sub-section (6) of Section 165, before and after its amendment, does not contain any provision prohibiting the giving of tribal land by way of lease to non-tribals. Prior to its amendment, a land could be transferred to a non-tribal after getting permission of the Revenue Officer not below the rank of Collector who is required to give his reasons for granting the permission. After amendment on 29-11-1976 by

virtue of provision of sub-section (6), lease of land is taken out of the purview of sub-section (6)(*i*).

75. In the instant case, either the land was acquired and then given on lease by the State Government to BALCO or permission was given by the District Collector for transfer of private land in favour of BALCO. This was clearly permissible under the provisions of Section 165(6) as it then stood and it is too late in the day, 25 years after the last permission was granted, to hold that because of this disinvestment, it must be presumed that there is a transfer of land to the non-tribal in the year 2001 even though the land continues to remain with BALCO to whom it was originally transferred. The giving of land to BALCO on lease was in compliance with the provisions of Section 165(6) of the Revenue Code. Moreover, change of management or in the shareholding does not imply that there has now been any transfer of land from one company to another. If the original grant of lease of land and permission to transfer in favour of BALCO between the years 1968 and 1972 was valid, then, it cannot now be contended that there has been another transfer of land with the Government having reduced its stake to 49%. Even if BALCO had been a non-public sector undertaking the transfer of land to it was not in violation of the M.P. Land Revenue Code. The decision of this Court in *Samatha case* [(1997) 8 SCC 191] is inapplicable in the present case as the statutory provision here does not contain any absolute prohibition of the type contained in Section 3(1) of the Andhra Pradesh Regulation, which was the basis of the decision in *Samatha case* [(1997) 8 SCC 191].

96. The ratio of the decision in *Samatha case* [(1997) 8 SCC 191] is inapplicable here as

> the legal provisions here are different. The land was validly given to BALCO a number of years ago and today it is not open to the State of Chhattisgarh to take a somersault and challenge the correctness of its own action. Furthermore, even with the change in management the land remains with BALCO to whom it had been validly given on lease."

49. Under these circumstances, it is held that the contention of the petitioners that even the acquisition was contrary to the provisions of Section 165(6) of M.P.L.R. Code, is not borne out from the record.

50. No other argument is advanced by the counsel for the petitioners.

51. Since no case is made out for interference in the matter, petitions fail and are hereby **dismissed** with cost of **Rs.10,000/- (Rupees Ten Thousand Only)** to be deposited by the petitioners in the Registry of this Court within a period of **two months** from today, failing which, the Registrar General is directed to initiate proceedings for recovery of cost and shall also initiate proceedings for Contempt of Court.

(G.S. AHLUWALIA)
JUDGE

shubhankar