
(2017) 05 AHC CK 0134
ALLAHABAD HIGH COURT

Case No: 8178 of 2012

Dhani Ram

APPELLANT

Vs

State Of
U.P.Thr.Prin.Secy.Deptt.Of
Revenue,Lucknow &
Others

RESPONDENT

Date of Decision: May 26, 2017

Acts Referred:

- Constitution of India, Article 226 - Power of High Courts to Issue certain writs
- Urban Land (Ceiling and Regulation) Act, 1976, Section 33, Section 10(1), Section 34, Section 10(2), Section 10(3), Section 10(6), Section 10(5) - Appeal - Acquisition of vacant land in excess of ceiling limit - Revision by State Government - Acquisition of vacant land in excess of ceiling limit - Acquisition of vacant land in excess of ceiling limit - Acquisition of vacant land in excess of ceiling limit

Hon'ble Judges: Narayan Shukla, Sheo Kumar Singh-I

Bench: Division Bench

Advocate: J.P.Verma

Final Decision: Dismissed

Judgement

1. By means of the present writ petition filed under Article 226 of the Constitution of India, the petitioner has assailed the order dated 03.10.1995 issued by the competent authority relating to making of entries in Khatauni of the land bearing Khasra No.878/3903.55 as well as Khasra No.189/600.83 situate at village Bharwara, Pargana, Tehsil and District Lucknow, and further issue a writ, order or direction in the nature of mandamus commanding the opposite parties to restore the name of the petitioner over Khasra/Khatauni and not to make any interference in his peaceful possession over the land in question.

2. Brief facts giving rise to filing of the present writ petition are that the petitioner was recorded land owner of the land mentioned above with transferable rights but without any notice or proceeding or opportunity of hearing, he has been deprived of the legitimate right of the land which has been declared by the competent authority as surplus ceiling land. By the impugned order, the land of the petitioner was declared as surplus land while it is version of the petitioner that notice under Sections 10(5) and 10(6) was not issued to him and he was not given any opportunity of hearing.

3. By filing the counter affidavit it has been submitted that opportunity of hearing was given to the petitioner and notice under Section 10(5) has already been issued and served by registered A.D.

4. Learned counsel for the respondents has submitted that the land in question has been declared surplus under Urban Land (Ceiling and Regulation) Repeal Act, 1999. The purpose of the Act has been narrated as follows:-

- i. To prevent concentration of urban property in the hands of a few persons and speculation and profiteering therein;
- ii. To bring about socialization of urban land in urban agglomerations to subserve the common good by ensuring its equitable distribution;
- iii. To discourage construction of luxury housing leading to conspicuous consumption of scarce building materials and to ensure the equitable utilization of such materials; and iv. To secure orderly urbanization.

And the Bill mainly provides for the following:

- i. Imposition of a ceiling on both ownership and possession of vacant land in urban agglomerations, the ceiling being on a graded basis according to the classification of the urban agglomeration;
- ii. Acquisition of the excess vacant land by the State Government with powers to dispose of the vacant land to subserve the common good;
- iii. Payment of an amount for the acquisition of the excess vacant land in cash and in bonds;

- iv. Granting exemptions in respect of certain specific categories of vacant land;
- v. Regulating the transfer of vacant land within the ceiling limit;
- vi. Regulating the transfer of urban or urbanizable land with any building (whether constructed before or after the commencement of the proposed legislation) for a period of ten years from the commencement of the legislation or the construction of the building whichever is later;
- vii. Restricting the plinth area for the construction of future residential building;
- viii. Other procedural and miscellaneous matters.

In light of above, the Act of 1976 was enacted.

5. Learned counsel for the respondents has further submitted that the matter is question is governed by Sections 10(3), 10(5) and 10(6) of the Act of 1976, which on reproduction read as:-

"10 (3) At any time after the publication of the notification under subsection (1), the competent authority may, by notification published in the Official Gazette of the State concerned, declare that the excess vacant land referred to, in the notification published under sub -section (1) shall, with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government and upon the publication of such declaration, such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified.

10(5) Where any vacant land is vested in the State Government under sub-section (3), the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorised by the State Government in this behalf within thirty days of the service of the notice.

10(6) If any person refuses or fails to comply with an order made under sub-section (5), the competent authority may take possession of the vacant land or cause it to be given to the concerned State Government or to any person duly authorised by such State Government in this behalf and may for that purpose use such force as may be necessary."

6. A perusal of Section 10(3) would show that after publication of notification in the official gazette the excess vacant land referred to in the notification published under sub-section (1) shall with effect from the date so specified in the declaration be "deemed" to have been acquired by the State Government and upon the publication of such declaration such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified.

7. In the counter affidavit, it has been narrated that notice was issued to the petitioner and thereafter the competent authority after considering the material available on record passed the order dated 05.12.1980 and land was declared as surplus. After the order dated 05.12.1980, notification under Section 10(1) of the Act, 1976 was published on 26.10.1981. After publication of notification under Section 10(1), the notification under Section 10(3) of the Act was published on 09.01.1988 and vide order dated 29.04.1988, the petitioner was directed to handover the possession to the Collector/District Magistrate. The order dated 29.04.1988 was passed in light of Section 10(5) of the Act of 1976. Learned counsel for the respondents has submitted that the petitioner was given an opportunity of hearing and he was communicated by the registered letter which had been received by him and the competent authority while passed the order has mentioned the above facts. The petitioner had remedy under Section 10(2), 33 and 34 of the Act of 1976 but he had not availed the same under the old Act which was applicable at the time of passing the order. Learned counsel for the respondents has submitted that the petitioner has filed the petition after delay of about 22 years, which is not maintainable.

8. When a person challenges Section 4 Notification on any ground, it should be challenged within a reasonable period, and if the acquisition is challenged at a belated stage, the petition deserves to be dismissed only on this count. In *Hari Singh & Ors. Vs. State of U.P.*, AIR 1984 SC 1020, the Apex Court held that where a large area of land is acquired and the plots, which are subject to acquisition, belong to large number of persons, if other persons have not challenged the acquisition proceedings, it is difficult to believe that appellant was not aware of the initiation of the acquisition proceedings as the acquisition of the said land would be the talk of the town in a short time and if the person interested failed to approach the writ court within reasonable period, the petition should fail only on the ground of delay.

9. A Constitution Bench of the Hon"ble Supreme Court, in *Aflatoon & Ors. Vs. Lt. Governor, Delhi & Ors.*, AIR 1974 SC 2077, has observed as under:-

" to have sat in fence and allowed the government to complete the acquisition on the basis that notification under Section 4 and the declaration under Section 6 were valid and then to attack the notification on the grounds which were available to them at the time when the notification was published, would be putting a premium of dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioner."

10. Same view has been taken by the Hon"ble Supreme Court in *State of Mysore Vs. V.K. Kangan*, AIR 1975 SC 2190, wherein it was observed that respondent was not entitled to challenge the validity of Section 4 Notification after an unreasonable lapse of time. If public notice, as required by Section 4 of the Act, was not given and that would per se vitiate the notification under Section 4, the person interested should have challenged its validity within a reasonable time of the publication of the notification under Section 4 of the Act.

11. The issue of delay in filing the writ petition was considered by the Hon"ble Apex Court in *Smt. Sudama Devi Vs. Commissioner & Ors.*, (1983) 2 SCC 1, wherein the Apex Court has observed as under:-

"There is no period of limitation prescribed by any law for filing the writ petition under Article 226 of the Constitution. It is, in fact, doubtful whether any such period of limitation can be prescribed by law. In any event, one thing is clear and beyond doubt that no such period of limitation can be laid down either under the rules made by the High Court or by practice. For every case, it would have to be decided on the facts and circumstances whether the petitioner is guilty of laches and that would have to be done without taking into account any specific period as period of limitation. There may be cases where even short delay may be fatal while there may be cases where even a long delay may not be evidence of laches on the part of the petitioner."

12. In *State of Tamil Nadu Vs. L. Krishnan*, AIR 1996 SC 497, the Apex Court held that "the delay in challenging the notification was fatal and the writ petitions were liable to be dismissed on the ground of laches only" and exercise of power under Article 226, after

the award had been made, was held to be unjustified.

13. Similarly, in *State of Maharashtra Vs. Digambar*, AIR 1995 SC 1991; and *State of Orissa Vs. Dhobei Sethi & Anr.*, (1995) 5 SCC 583, the Apex Court held that if the land acquisition proceedings stood finalised, interference by the writ court, quashing notification and declaration under Sections 4 and 6 respectively, was unwarranted and uncalled for. Exercise of jurisdiction in such a case cannot be said to be judicious and reasonable.

14. Similar view has been reiterated in *Girdharan Prasad Missir Vs. State of Bihar*, (1980) 2 SCC 83; *H.D. Vora Vs. State of Maharashtra*, AIR 1984 SC 866; *Ram Chand Vs. Union of India*, (1994) 1 SCC 44; *Bhoop Singh Vs. Union of India*, AIR 1992 SC 1414, and *C. Padma Vs. Deputy Secretary to Govt. of Tamil Nadu*, (1997) 2 SCC 627).

15. In *Municipal Corporation of Greater Bombay Vs. Industrial Development Investment Co. (P) Ltd.*, AIR 1997 SC 482, the Hon"ble Supreme Court observed as under:-

"If the interested person allows the grass to grow under his feet by allowing the acquisition proceedings to go on and reach its terminus in the award and possession is taken in furtherance thereof and vest in the State free from all encumbrances, the slumbered interested person would be told off the gates of the Court that his grievance should not be entertained when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary power under Article 226 of the Constitution to quash the notification under Section 4 (1) and Declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not exercise its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case, is hardly a ground for interference."

16. Similar view has been reiterated in *State of Rajasthan & Ors. Vs. D.R. Laxmi & Ors.*, (1996) 6 SCC 445, wherein the Apex Court has held that even the void proceedings need not be set at naught if the party has not approached the Court within reasonable time, as judicial review is not permissible at a belated stage.

17. In *Hindustan Petroleum Corporation Vs. Dolly Das*, (1999) 4 SCC 450, the Apex Court held as under:-

"So far as the contention regarding laches of the respondents in filing the writ petition is concerned, delay, by itself, may not defeat the claim for relief unless the position of payment had been so altered which cannot be retracted on account of lapse of time or inaction of the other party. This aspect, being dependant upon the examination of the facts of the case and such a contention not having been raised before the High Court, it would not be appropriate to allow the appellants to raise such a contention for the first time before us. Besides, where the mode is that the period for which the option of renewal has been exercised, has not come to an end. During the subsistence of such a period, certainly the respondents could make a complaint that such exercise of option was not available to the appellants and, therefore, the jurisdiction of the High Court could be invoked even at a later stage. Further, the appellants are not put to undue hardship in any manner by reason of this delay in approaching the High Court for a relief."

18. Similar view has been reiterated by the Hon"ble Supreme Court in Northern Indian Glass Industries Vs. Jaswant Singh, AIR 2003 SC 234; and Haryana State Handloom & Handicrafts Corporation Ltd. Vs. Jain School Society, AIR 2004 SC 850.

19. If some person has taken a relief from this Court by filing a Writ Petition immediately after the cause of action had arisen, petitioners cannot take the benefit thereof by filing a writ petition belatedly. They cannot take any benefit thereof at such a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.

20. In State of Karnataka & ors. Vs. S.M. Kotrayaya & Ors., (1996) 6 SCC 267, the Hon"ble Supreme Court rejected the contention that a petition should be considered ignoring the delay and laches on the ground that he filed the petition just after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. The Court observed that such a plea is wholly unjustified and cannot furnish any ground for ignoring delay and laches.

21. Same view has been reiterated by the Hon"ble Supreme Court in Jagdish Lal & ors. Vs. State of Haryana & ors., AIR 1997 SC 2366, observing as under:-

"Suffice it to state that appellants may be sleeping over their rights for long and elected to wake-up when they had impetus from Veerpal Chauhan and Ajit Singh"s ratio.... disparate attempts of the appellants to re-do the seniority, held by them in various cadre.... are not amenable to the judicial review at this belated stage. The High Court, therefore, has rightly dismissed the writ petition on the ground of delay

as well."

22. In *M/s. Roop Diamonds & ors. Vs. Union of India & ors.*, 1989 SC 674, the Hon"ble Supreme Court considered a case where petitioner wanted to get the relief on the basis of the judgment of the Supreme Court wherein a particular law had been declared ultra vires. The Court rejected the petition on the ground of delay and laches observing as under:-

"There is one more ground which basically sets the present case apart. Petitioners are re-agitating claims which they have not pursued for several years. Petitioners were not vigilant but were content to be dormant and close to sit on the fence till somebody else"s case came to be decided."

23. The issue of delay in filing the writ petition was considered by the Hon"ble Apex Court in *Smt. Sudama Devi Vs. Commissioner & ors.*, (1983) 2 SCC 1, wherein the Apex Court has observed as under:-

"There is no period of limitation prescribed by any law for filing the writ petition under Article 226 of the Constitution. It is, in fact, doubtful whether any such period of limitation can be prescribed by law. In any event, one thing is clear and beyond doubt that no such period of limitation can be laid down either under the rules made by the High Court or by practice. For every case, it would have to be decided on the facts and circumstances whether the petitioner is guilty of laches and that would have to be done without taking into account any specific period as period of limitation. There may be cases where even short delay may be fatal while there may be cases where even a long delay may not be evidence of laches on the part of the petitioner."

24. Similarly, in *State of U.P. Vs. Raj Bahadur Singh & Anr.*, (1998) 8 SCC 685; the Hon"ble Apex Court held that "there is no time limit for filing the writ petition. All that the Court has to see is whether the laches on the part of the petitioner are such as to disentitle him to the relief claimed by him."

25. In Northern Indian Glass Industries Vs. Jaswant Singh & ors., AIR 2003 SC 234, the Hon"ble Apex Court held that the High Court cannot ignore the delay and laches in approaching the writ court and there must be satisfactory explanation by the petitioner as how he could not come to the Court well in time. A similar view has been reiterated by the Hon"ble Supreme Court in Printers (Mysore) Ltd. Vs. M.A. Rasheed & Anr. (2004) 4 SCC 460 the Hon"ble Supreme Court held that the High Court should have dismissed the writ petition on the ground of delay and laches.

26. We have considered the submissions of learned counsel for the parties and found that the petition has been filed after a delay of about 22 years. The petitioner has not explained the delay.

27. In light of discussions made above, we are not inclined to interfere in the impugned order or entries in Khatauni which have been incorporated in light of the order passed in accordance with law. The petition lacks merit and deserves to be dismissed. Accordingly, the writ petition is dismissed. No order as to costs.