SUPREME COURT OF INDIA

Municipal Council,

Vs.

Shah Hyder Beig

(S Majmudar and U C Banerjee JJ.)

08.12.1999

ORDER

U.C. BANERJEE, J.

1. Leave granted.

2. The Municipal Corporation, Ahmednagar and another are in appeal against an order of the Bombay High Court (Aurangabad Bench) in Writ Petition No. 1156 of 1993, wherein the Writ Petition filed by the respondent Nos. 1 to 3 herein, Shah Hyder Beig and two others was allowed and the Municipal Corporation was directed to make over vacant possession of the land bearing CIS No. 5761-A situated at Ahmednagar to the petitioners within a period of three months from the date of the Judgment. The High Court further directed the writ petitioners to refund the amount of compensation received by them for the acquired land within a period of four weeks from the date of handing over the possession of the land to them by the respondent Corporation along with certain consequential orders. The facts for the matter being singularly singular ought to be adverted to at this juncture.

3. The facts depict that the Writ Petition before the High Court was filed on 21st October, 1992, for setting aside the Award dated 26th April, 1976 in regard to CTS No. 5761' of Ahmednagar Town. Subsequent thereto, however, the Writ Petition was amended for issuance of a Writ of Certiorari for quashing and setting aside the notification dated 15th May, 1971 issued under Section 126(4) of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as the Act) read with Section 6 of the Land Acquisition Act, 1994. It is on this petition that the High Court made the rule absolute and directed making over of the vacant possession of the land under acquisition within a period of three months from the date of the Judgement as noticed above. The appellants on grant of

special leave to appeal' are before this Court.

4. While issuing notice on 17th December, 1998, this Court was pleased to grant an interim stay of operation of the impugned judgement of the High Court and also directed filing of counter and rejoinder affidavits. It is in terms of this direction of the Court that the matter was taken up for hearing on 7.12.1999 and also today.

5. Upon however, hearing the submissions on behalf of the parties herein, we do feel it expedient to record that the matter can be dealt with finally on a short ground to wit, the time element. While addressing on behalf of the petitioners herein Mr. Salve learned Solicitor General severely criticised the judgment of the High Court and contended that the High Court should have taken note of the element of delay in moving the Court, Mr. Salve pointed out that whereas the notice for acquisition was issued in 1971 and the Award was passed and possession was taken in the year 1976, the Writ Petition was filed in the year 1992 i.e. to say after expiry of 21 years from the date of notification and 16 years from the date of making over possession and the Award.

6. Incidentally this point of delay and laches was also raised before the High Court and on this score the High Court relying upon the decision in Abhyankar's case N.L. Abhyankar v. Union of India [1995] 1 MHLJ 503, observed that it is not an inflexible rule that whenever there is delay, the Court must and necessarily refuse to entertain the petition filed after a period of three years or more which is the normal period of limitation for filing a suit. The Bombay High Court in Abhyankar 's case (supra) stated that the question is one of discretion to be followed in the fact and circumstances of each case and further stated:

The real test for sound exercise of discretion by the High Court in this regard is not the physical running of time such but the test is whether by reason of delay, there is such negligence on the part of the petitioner so as to infer that he has given up his claim or where the petitioner has moved the Writ Court, the rights of the third parties have come into being which should not be allowed to disturb unless there is reasonable explanation for the delay.

7. In the Judgment Impugned in this appeal the High Court stated:

It may be stated that in the instant case the respondent No. 2 not only failed to take steps even after passing of the Award in 1976 but attempted to change the public purpose even thereafter in 1980 and 1993. It can be seen from the discussion of the material placed before the Court by the petitioners that the respondent No. 2 in fact issued a public notice inviting objections to the modification in the development plan in 1993. The petitioners have in fact when realised the possibility of respondent No. 2 taking steps for changing or modifying the development plan to the extent of their land protested and has in fact lodged their objections on similar grounds which re urged in the Writ Petition. Therefore, there is a continuity in process without any break on the part of the respondent No. 2 in changing the public purpose in not giving effect to the purpose for which notification under Section 4(1) of the Act was published by the State F government in exercise of its powers and in consequence passing of the Award based on such notification. In the given set of circumstances, we feel that there petitioners have had cause of action even passing of the award in challenging the very initial action on the part of the respondents in acquiring the land. It may be stated that the respondent No. 2 has not raised the contention of delay and laches in the first affidavit in reply filed on 29.6.1966. It is only in the additional affidavit in reply on 28.4.98 and that too in reply to amendment made to the Writ Petition by the petitioners that for the first time a

contention is raised as to the delay and laches in filing the petition. We are afraid if the respondent No. 2 is entitled to raise this contention during the course of arguments....

8. The observations as above, with due respect the High Court are based on certain misconception of facts. While it is true that the plea of limitation ought to be raised at the first available opportunity but that does not mean and imply that the party raising it even during the course of hearing would be barred therefrom. Limitation is a mixed question of law and fact. Time barred claim would not even be entertained by a civil court without there being nay opportunity of filing a pleading by the respondents or the defendants in a civil suit. The fact remains that the respondents herein did in fact agitate the point of limitation during the course of hearing and also had taken the peal in their affidavit in reply and prior to the commencement of the hearing of the matter. The High Court was thus clearly in error in holding without any further factual detail that the cause of action for the challenge to the Notification under the Maharashtra Act of 1966 continues even on the date of filing of the writ petition. Mr. Venugopal, the learned senior counsel appearing for the respondents contended that since this is a continuing wrong, the question of the claim being time barred or the conduct being barred under the laws of limitation does not and cannot arise. Mr. Venugopal further contended that there are mala fide involved and mala fides ought not to be restricted to be challenged under the garb of limitation.

9. The High Court has in fact proceeded on the basis of the equitable principle as it appeared from the observations of the High Court as set out hereinbelow:

In the present case, the respondent No. 2 has in fact did nothing except by passing resolution for modification of the public purpose for which the land was acquired rather than actually making use of the land for which it was acquired or possession of which was taken after passing of the award. On equitable principle the petitioners are entitled to reliefs even if there is delay in filing the Writ Petition. As a matter of fact, the petitioners have explained the circumstances in which they have invoked the extra ordinary writ jurisdiction of this Court under Article 226 of the Constitution of India. Since the petitioners have been successful in establishing the please of legal malice as against the respondent No. 2, we think that the perpetual illegal action of which has causing substantial injustice to the petitioners is required to be remedied by invoking the extraordinary jurisdiction under Article 226 of the Constitution of India in favour of the petitioners. It cannot be overlooked that while exercising the extra-ordinary jurisdiction under Article 226 of the Constitution of India the High Court may be justified in exercising its powers where justice must appear to have been done and must be done.

10. Incidentally, the contextual facts depict that the respondents did in fact apply for the execution of the Award in the year 1995. This aspect of the matter, unfortunately, does not find place even in the amended Writ Petition. Significantly, as found from records one I.A. was filed in the present SLP being I.A. No. 1 of 1999 for dismissal of the Special Leave Petition on the ground of suppression of fact by the Municipal Council. But what about the failure to mention the factum of the award in the writ petition? The factum of initiation of the execution proceedings was suppressed even in the amended writ petition. We are at a loss to find as to who ought to be charged with guilt of suppression of facts.

11. The records depict that by reason of the failure to obtain necessary orders from the trail court, a civil revisional application was filed before the High Court wherein the High Court has directed deposit of Rs. 3,20,116 by the Municipal Council which sum in fact stands deposited till date. While

it is true that the High Court in the said Civil Revision has directed that further orders as regards the withdrawal of the amount of money can be had only after the disposal of the Writ Petition, but the factum of presentation of the execution application goes however to suggest that the respondents have in fact accepted the Award and wanted its execution.

12. The factual analysis in short therefore, depicts that the notification for acquisition in terms of the Act was issued in 1971, the Award was published in regard thereto in 1976 and the Writ Petition was filed in 1992. During the pendency of the Writ Petition, the respondent-writ petitioners moved an execution application so far as the Award is concerned and thereafter moved a further civil revision application before the High Court in 1995 these factual details in our view go to negate the observations of the High Court.

13. It is significant to note that since the year 1952, this particular property which is under acquisition was reserved for school and playground. In the year 1963 the reservation was further continued and as such, there had not been any development of the plot by any concern since 1952 onwards. Another redeeming feature ought also to be noticed at this juncture, namely, the original Writ Petitioner being the father of the present respondents sent a notice in 1964 to the Municipal Council to purchase the reserved property or to release the same in favour of the writ petitioner. But there was no assertion of right thereafter and till the issuance of the notification in 1971 and possession being delivered in terms of the award in 1976.

14. The High Court has thus misplaced the factual details and misread the same. It is now a well-settled principle of law and we need not dilate on this score to the effect that while no period of limitation is fixed but in the normal course of events, the period, the party is required for filing a civil proceeding ought to be the guiding factor. While it is true that this extraordinary jurisdiction is available to mitigate the sufferings of the people in general but it is not out of place to mention that this extraordinary jurisdiction, has been conferred on to the law courts under Article 226 of the Constitution on a very sound equitable principle. Hence, the equitable doctrine, namely, 'delay defects equity' has its fullest application in the matter of grant of relief under Article 226 of the Constitution. The discretionary relief can be had provided one has not by his act or conduct given a go-bye to his rights. Equity favours a vigilant rather than an indolent litigant and this being the basic tenet of law, the question of grant of an order as has been passed in the matter as regards restoration of possession upon cancellation of the notification does not and cannot arise. The High Court as a matter of fact lost sight of the fact that since the year 1952, the land was specifically reserved for public purposes of school playground and roads in the development plan and by reason therefore, the notification to acquire the land has, therefore, been issued under the provisions of the Act as stated above.

15. Apart from the time element as noticed above another redeeming feature on the factual aspect of the matter has not been considered by the High Court at all. There are three owners of the land, namely, Sulat Beig Razak Beig, Mohd. Ali Beig Razak Beig and Shah Hyder Beig Razak Beig. The first of the two owners amongst the three named above of the land did in fact put forward a claim in regard to the land value and structure before the concerned authority and two owners claimed as below:

(i) Market Value of Rs. 20 per Sq. ft

(ii) Value of Tin shed : Rs. 15,000

(iii) Build up structure : Rs. 30,000

(iv) Damages and severance of the property : Rs. 35,000

(v) Salatium : 15% of the amount of compensation

(vi) Compensation for loss of: Rs. 13,000 compensation of the strip of land along towards in North side of the land under acquisition

(vii) For losing frontage and benefits : Rs. 50,000 acquiring therein

(viii) Cost of the house acquired : Rs. 40,000 for the right

16. The other owner Shah Hyder Beig, however, did not put forth any claim for any specific amount but claimed only the market value of the land together with 15 per cent solatium and the cost of the building now standing on the land. Incidentally, the other owner is a resident of England and executed a power of attorney in favour of Mohd. Ali Beig to act on his behalf in the proceeding before the authorities and to receive the amount of compensation. The power of attorney stands recorded in England in February, 1973. While it is true that the evidence rendered by the respondents during the course of hearing was without prejudice qua the reservation of rights to challenge the same but the factual backdrop in its entirety however in our view does not indicate any challenge to the notice of acquisition.

17. In any event, after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder. This has been the consistent view taken by this Court and in one of recent cases Padma and Ors. v. Dy Secretary to the Govt. of T.N. and Ors. reported in [1997] 2 SCC 627. This court observed as below:

The admitted position is that pursuant to the notification published under Section 4(1) of the Land Acquisition Act, 1894 (for short "the Act") in GOR No. 1392 Industries dated 17.10.1962, total extent of 6 areas 41 cents of land in Madhavaram Village, Saidapet Taluk, Chengalpattu District in Tamil Nadu was acquired under Chapter VII of the Act for the manufacture of Synthetic Residua by Tvl. Reichold Chemicals India Ltd., Madras. The acquisition proceedings had become final and possession of the land was taken on 30.4.1964. Pursuant to the agreement executed by the company, it was handed over to Tvl. Simpson and General Finance Co. which is a subsidiary of Reichold Chemicals India Ltd. It would appear that at a request made by the said company, 66 cents of land out of one acre 37 cents in respect of which the appellants originally had ownership, was transferred in GOMs No. 816. Industries dated 24.3.1971 in favour of another subsidiary company, Shri Rama Vilas Service Ltd., the 5th respondent which is also another subsidiary of the company had requested for two acres 75 cents of land; the same came to be assigned on leasehold basis by the Government after resumption in terms of the agreement in GOMs No. 439 Industries dated 10.5.1985. In GOMs 546 Industries dated 30.3.86, the same came to be approved of. Then the appellants challenged the original GOMs No. 1392 Industries dated 17.10.62 contending that since the original purpose for which the land was acquired had ceased to be in operation, the appellants are entitled to restitution of the possession taken from them. The learned Single Judge and the Division Bench have held that the acquired land having already vested in the State, after receipt of compensation by the predecessor-in-title of the appellants, they have no right to challenge the

notification. Thus the writ petition and the writ appeal came to be dismissed.

18. Similar is the view in an earlier decision of this Court in the case of Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. Pvt. Ltd and Ors. reported in [1996] 11 SCC 501. Incidentally, the decision last noted was also on the land acquisition and requisition under the Maharashtra Regional and Town Planning Act, 1966 and in paragraph 29 k of the report, this Court observed:

It is well settled law that 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 powers 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 have exercised 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 ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the grounds of laches.

19. Mr. Venugopal, learned senior counsel appearing for one of the respondents, placed strong reliance upon a recent decision of this Court in the case of Hindustan Petroleum Corporation Ltd. and Anr. v. Dolly Das reported in [1999] 4 SCC 450, This Court in paragraph 8 of the report observed as below:

So far as the contention regarding laches of the respondent in filing the writ petition is concerned, delay, by itself, may not defeat the claim for relief unless the position of the appellant had been so altered which cannot be retracted on account of lapse of time or inaction of the other party. This aspect being dependent 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. (Emphasis supplied) Besides, we may notice 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 respondent 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.

20. The observations however pertain to the Transfer of Property Act and in particular reference to Section 105 and the facts therein are clearly distinguishable and the sentence emphasised as above depicts the disgust feature. Hindustan Petroleum's case (supra) is not a case for acquisition at all and reliance thereon thus is totally misplaced.

21. On the wake of the aforesaid, we do feel it expedient to record that the High Court has dealt with the matter on a totally different perspective and as such clearly fell into an error in passing the order as impugned in this appeal. Not only the length of time but the concept of approbation and reprobation has totally been ignored at the High Court stage. The appeal therefore, succeeds. The Writ Petition filed by the respondents in the High Court is dismissed and as such the I.A. No. 1/99 filed in SLP No. 19507 of 1998 also stands dismissed. In view of he dismissal of the writ petition by the present judgment, direction contained in the civil revision permitting the respondents to

withdraw the compensation amount will obviously now be complied with. Each party however should pay and hear its own costs.