

SUPREME COURT OF INDIA

Yunus (Baboobhai) A Hamid Padvekar

Vs.

State of Maharashtra Through its Secretary

C.A.No.486 of 2009

(Dr. Arijit Pasayat and Asok Kumar Ganguly JJ.)

28.01.2009

JUDGMENT

Dr. Arijit Pasayat, J.

1. Leave granted.
2. Challenge in this appeal is to the order passed by a Division Bench of the Bombay High Court dismissing the Writ Petition filed by the appellant on the ground that it was highly belated. It also noted that the appellant had received compensation in respect of the land which was acquired.
3. Background facts in a nutshell are as follows:

“In the year 1971 Maharashtra Industrial Development Corporation (in short `MIDC') acquired about 1250 acres of agricultural land situated at four villages in Ratnagiri district of Maharashtra. Thirty eight acres of land belonging to the appellant were acquired. It is the stand of the appellant that out of the acquired area, about 50% was under paddy cultivation and 25% was under cultivation of mango crops. In the appellant's land about 175 mango trees were there. In the year 1973, the Revenue and Forest Department of the Maharashtra Government passed a resolution inter-alia deciding to take steps in respect of surplus acquired land which remained unutilized for a period of three years from the date of taking over possession for resumption of such lands in accordance with the applicable rules and orders. In 1974, a Writ Petition was filed by the appellant challenging the Notification for acquisition and an arrangement was worked out in which 20 acres of appellant's land out of 38 acres were released. The lands were acquired for a Govt. company-Balco for setting up a manufacturing unit. Since Balco did not set up any unit, license issued to it was cancelled. In the year 1982, appellant claims to have made representations alongwith similarly situated land owners for restoration of the acquired land to the original owners. In the year 1983, compensation was paid to 686 land owners. In 1984, again the appellant made a representation to the Collector of Ratnagiri for release of the

land. On 20.7.1989 a Committee was appointed by the Legislative Assembly for consideration of the proposal for handing back the acquired land to the original owners. Certain recommendations were made by the said Committee. On 20.8.1992 the land acquired for Balco was allotted to another industrial group. Subsequently, the State Government asked the industrial group not to continue the construction activities in view of pendency of cases. On 12.11.2002, representations were again made to hand back the land not utilized. It was the specific stand of the appellant that in view of Section 39(2a) of the *Maharashtra Industrial Development Act, 1961* (in short the 'Act') the land should be restored. The High Court dismissed the writ petition on the ground that it was highly belated.

4. In support of the appeal, learned counsel for the appellant stated that the appellant was all through representing to the authorities and because of the recommendations by the Committee, the appellant waited for some time and ultimately when no worthwhile action was taken, he filed the writ petition.

5. Learned counsel for the respondent on the other hand supported the judgment of the High Court.

6. It is pointed out that the recommendations made in terms of the resolution were not accepted by the Government. It was decided that since definite policy has been formulated the land is to be utilized for the industrial development, the same cannot be surrendered to the original owners for cultivation purposes. It is also pointed out that the so called representations do not in any way assist the appellant to explain the long delay in filing the writ petition.

7. It is also pointed out that Section 39(2a) is applicable only in respect of the undeveloped land, and in the instant case the land in question is developed land.

8. Delay or laches is one of the factors which is to be borne in mind by the High Courts when they exercise their discretionary powers under Article 226 of the Constitution of India, 1950 (in short 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 Prasad v. Chief Controller of Imports and Exports*¹. Of course, the discretion has to be exercised judicially and reasonably.

9. What was stated in this regard by *Sir Barnes Peacock in Lindsay Petroleum Company v. Prosper Armstrong Hurde etc.*² at page 239 was approved by this Court in *Moon Mills Ltd. v. Industrial Courts*³ and *Maharashtra State Transport Corporation v. Balwant Regular Motor Service*⁴, 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, 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 relates to the remedy.”

10. It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation with 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 *R.N Bose v. Union of India*⁵ 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.

11. It was stated in *State of M.P. v. Nandlal*⁶ 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 trail 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.

12. In view of the aforesaid position we are not inclined to interfere in this appeal which is dismissed accordingly.

¹(AIR 1970 SC 769)

²(1874) 5 PC 221

³(AIR 1967 SC 1450)

⁴(AIR 1969 SC 329)

⁵(AIR 1970 SC 470)

⁶(AIR 1987 SC 251)