

**SUPREME COURT OF INDIA**

Tamil Nadu Housing Board, Chennai

Vs.

M.Meiyappan

C.A.No.1757 of 2002

(D.K. Jain and T.S. Thakur JJ.)

29.10.2010

**JUDGMENT**

**D.K.Jain J.**

1. This appeal arises out of the judgment and order dated 18th April 2001, delivered by a Division Bench of the High Court of Judicature at Madras, affirming the judgment of a Single Judge of the High Court in W.P. No. 108 of 1998, setting aside Notification G.O.M. No.311 Housing and Urban Development Department dated 17th February 1979, published in the Tamil Nadu Gazette dated 7th March 1979, being a notification under Section 4(1) of the Land Acquisition Act, 1894 (for short "the Act) relating to lands of the respondents comprised in Survey No. 12/2 and 12/3 in Ponmeni village, Madurai.

2. Respondent Nos.1 to 17 are contesting land owners, and are represented by respondent No.17 whereas respondent Nos.18 and 19 are the proforma respondents, viz. the State of Tamil Nadu and the Special Tehsildar, Ellis Nagar Development Scheme.

3. The material facts, giving rise to the present appeal, may be stated thus: The Government of Tamil Nadu, vide G.O.M. No.1358 Housing and Urban Development Department dated 20th September 1978, approved several schemes for providing housing facilities to people of low income group for which purpose acquisition of lands was necessary. One of such schemes was the Ellis Nagar Development Scheme, Madurai, for which about 220 acres of lands in West Madurai, Ponmein, and Madakulam villages was proposed to be acquired.

4. On 17th February 1979, the Government in their G.O.M. No. 311 Housing and Urban Development Department approved the notification under Section 4(1) of the Act. As stated above, the said notification was published in the official gazette on 7th March 1979.

5. After the publication of the afore-mentioned notification, enquiry under Section 5A of the Act was conducted, and thereafter, a declaration in terms of Section 6 of the Act was made

and requisite direction under Section 7 of the Act was issued by the Government as per G.O.M. No.735 Housing and Urban Development Department dated 2nd June 1980.

6. On 15th March 1982, notices under Section 9(1) and 10 of the Act were issued? Notices under Section 9(3) and 10 of the Act were served on the owners of the lands and the interested persons. Enquiry, as envisaged under Section 11 of the Act, was conducted on 16th April 1982, 20th April 1982, 21st April 1982 and 22nd April 1982. Land owners of the land, subject matter in this appeal, were represented by their authorised agent, one Mr. A.R. Rathinam Chettiar.

7. The Award in relation to the said lands was made on 28th April 1982, and the compensation was awarded to O.M.SP.L.M. Meyyappa Chettiar, Subramanian Chettiar, Arunachalam Chettiar, Alagappa Chettiar and Lakshmanan Chettiar. According to the appellant, after taking possession of the lands in question, on 4th December 1982, these were handed over to the Tamil Nadu Housing Board, which fact is now disputed by the contesting respondents. The matter rested there.

8. However, in December 1997, respondents Nos.1 - 17 herein preferred a writ petition being W.P. No. 108 of 1998 before the High Court of Madras, challenging the acquisition of their lands, which was contested by the appellant. One of the objections in the counter affidavit filed on behalf of the appellant in this appeal was as follows: "It is submitted that the possession of the lands in action has been taken over and handed over to Tamil Nadu Housing Board on 4.12.82 among other lands acquired for using them to scheme purpose. After a lapse of 15 years the writ petition has been filed against the acquisition and the same is bad on the ground of "Laches" (sic). The Land is in possession and enjoyment of the Tamil Nadu Housing Board since the date of handing over on 4.12.82. Taking undue advantage of the interim injunction, the writ petitioners (sic) are trying to convert the lands into the house sites flats by planting stones and forming mud roads illegally (sic)."

9. Ignoring the said objection to the maintainability of the writ petition, vide order dated 21st April 1998, the learned Single Judge allowed the writ petition of the respondents by a short order, which reads as under: "It is not in dispute that facts of this case is covered by the judgment in W.P. No.2244 of 1991 (sic.) dated 21.4.97. Hence the writ petition is allowed as prayed for appreciating the said judgment. Consequently, the connected W.M.Ps. are closed. No costs."

10. Aggrieved by the said order, the appellant herein, preferred intra-court appeal before the Division Bench of the High Court. It appears from the record that along with the appeal, an application seeking stay of the operation of the judgment delivered by the learned Single Judge, was also filed, wherein it was stated that upon delivery of the said judgment, the land owners were taking hectic steps to enter into possession of the subject lands. The Division Bench again without examining the question of delay and laches, by the impugned judgment, dismissed the appeal of the appellant observing that:

“The learned single judge, taking into consideration, all the materials available on record, found that the case in hand is fully covered by the order of this Court in W.P.No. 2244 of 1991 as above. We do not find any good ground to take a different view to that of the order of the learned single Judge. That apart, we find no error or illegality in the order of the learned Single judge warranting our interference.”

11. Hence, the present civil appeal.

12. Mr. T. Harish Kumar, learned counsel appearing for the appellant, while assailing the impugned judgment, strenuously urged that in light of the decision of this Court in *Yunus (Baboobhai) A. Hamid Padvekar Vs. State of Maharashtra through its Secretary & Ors.*<sup>1</sup>, the High Court committed a serious illegality in entertaining a writ petition which badly suffered from delay and laches, having been filed after a lapse of 16 years of the date of Award, without any explanation for the delay. Learned counsel argued that the High Court also failed to examine the stand of the appellant herein that the earlier decision of the High Court in W.P. No. 2244 of 1991, was clearly distinguishable on facts and thus, its ratio was not applicable to the facts at hand

13. Per contra, Mr. M.L. Varma, learned senior counsel appearing for the respondents contended that the judgment in W.P. No. 2244 of 1991 was based on the decision in W.P. No. 1326 of 1982, and the latter judgment operated in rem and not in personam, and therefore, each land owner was not required to challenge the notification under Section 4(1) of the Act individually. Commending us to the decisions of the Punjab and Haryana High Court in *M/s. Trilok Singh Mohan Singh Vs. State of Haryana & Ors.*<sup>2</sup> and *Mohinder Singh Sharma & Ors. Vs. State of Haryana & Ors.*<sup>3</sup>, learned counsel contended that in cases when the compensation is not granted or the possession is not taken over for a long period, the acquisition becomes bad and since in the instant case, possession has not been taken over by the Government so far, the acquisition must be declared null and void and appeal should be dismissed.

14. At the outset, we must state that on the facts of this case, the High Court was not justified in entertaining the writ petition. In our opinion, the writ petition must fail on the short ground that the writ petition had been filed 16 years after the award was announced by the Collector. It is trite law that delay and laches is one of the important factors which the High Court must bear in mind while exercising discretionary power under Article 226 of the Constitution. If there is such negligence or omission on the part of the petitioner to assert his right which, taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party, the High Court must refuse to invoke its extra-ordinary jurisdiction and grant relief to the writ petitioner.

15. In *Durga Prashad Vs. Chief Controller of Imports and Exports*<sup>4</sup>, this Court had held that it is well-settled that the relief under Article 226 is discretionary, and one ground for refusing relief under Article 226 is that the petitioner has filed the petition after delay for which there is no satisfactory explanation. It was noted that:

“4. Gajendragadkar, C.J., speaking for the Constitution Bench, in *Smt Narayani Devi Khaitan v. The State of Bihar*<sup>5</sup> observed: "It is well-settled that under Article 226, the power of the High Court to issue an appropriate writ is discretionary. There can be no doubt that if a citizen moves the High Court under Article 226 and contends that his fundamental rights have been contravened by any executive action, the High Court would naturally like to give relief to him; but even in such a case, if the petitioner has been guilty of laches, and there are other, judgment dated 22nd September 1964 relevant circumstances which indicate that it would be inappropriate for the High Court to exercise its high prerogative jurisdiction in favour of the petitioner, ends of justice may require that the High Court should refuse to issue a writ. There can be little doubt that if it is shown that a party moving the High Court under Article 226 for a writ is, in substance, claiming a relief which under the law of limitation was barred at the time when the writ petition was filed, the High Court would refuse to grant any relief in its writ jurisdiction. No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. That is a matter which must be left to the discretion of the High Court and like all matters left to the discretion of the Court, in this matter too discretion must be exercised judiciously and reasonably.”

16. In *Rabindranath Bose & Ors. Vs. The Union of India & Ors.*<sup>6</sup>, a Constitution Bench of this Court, dealing with the same issue in relation to Article 32 of the Constitution, had observed that:- "We are of the view that no relief should be given to petitioners who, without any reasonable explanation, approach this Court under Article 32 of the Constitution after inordinate delay. The highest Court in this land has been given original jurisdiction to entertain petitions under Article 32 of the Constitution. It could not have been the intention that this Court would go into stale demands after a lapse of years. It is said that Article 32 is itself a guaranteed right. So it is, but it does not follow from this that it was the intention of the Constitution-makers that this Court should discard all principles and grant relief in petitions filed after inordinate delay."

17. Though the afore-extracted observations in *Rabindranath Bose* (supra) relate to Article 32 of the Constitution, a fortiori, they would apply to writ petitions filed under Article 226 of the Constitution as well. (See: *Yunus (Baboobhai) A. Hamid Padvekar* (supra)).

18. Similarly, in *Tridip Kumar Dingal & Ors. Vs. State of West Bengal & Ors.*<sup>7</sup>, (to which one of us (D.K. Jain, J.) was a party), this Court had observed as under:

“56. We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a writ is

discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches.

57. If the petitioner wants to invoke jurisdiction of a writ court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhumate matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime" (See also: *P.S. Sadasivaswamy Vs. State of Tamil Nadu*<sup>8</sup>.)

19. Moreover, in relation to the land acquisition proceedings, the Court should be loathe to encourage stale litigation as the same might hinder projects of public importance. The Courts are expected to be very cautious and circumspect about exercising their discretionary jurisdiction under Article 226 or Article 32 of the Constitution if there has been inordinate unexplained delay in questioning the validity of acquisition of land. In this regard, it will be useful to advert to the observations made in *P. Chinnanna & Ors. Vs. State of A.P. & Ors.*<sup>9</sup>, wherein this Court had observed thus:-

“In fact, in relation to acquisition proceeding involving acquisition of land for public purposes, the court concerned must be averse to entertain writ petitions involving the challenge to such acquisition where there is avoidable delay or laches since such acquisition, if set aside, would not only involve enormous loss of public money but also cause undue delay in carrying out projects meant for general public good." (See also: *Hari Singh & Ors. Vs. State of U.P. & Ors.*<sup>10</sup>.)”

20. We may, however, note that in *Dayal Singh & Ors. Vs. Union of India & Ors*<sup>11</sup>, a three Judge bench of this Court, while dealing with a case of land acquisition, had observed that:

“Primarily a question of delay and laches is a matter which is required to be considered by the writ court. Once the writ court has exercised its jurisdiction despite delay and laches on the part of the respondents, it is not for us at this stage to set aside the order of the High Court on that ground alone particularly when we find that the impugned judgment is legally sustainable.”

21. We feel that the view echoed in *Dayal Singh* (supra) is not in consonance with the decision of the Constitution Bench in *Rabindranath Bose* (supra), which was not noticed in the said judgment. It is also pertinent to note that subsequently in *Printers (Mysore) Ltd. Vs. M.A. Rasheed & Ors.*<sup>12</sup>, another three Judge Bench of this Court, had observed as follows:- "Furthermore, the writ petition should not have been entertained keeping in view the fact that it was filed about three years after making of the allotment and execution of the deed of sale. The High Court should have dismissed the writ petition on the ground of delay and laches on the part of the first respondent. The Division Bench of the High Court also does not appear to

have considered the plea taken by the appellant herein to the effect that the first respondent had been set up by certain interested persons."

22. In the present case, as already stated, the respondents did not furnish any explanation as to why it took them 16 years to challenge the acquisition of their lands, when admittedly they were aware of the acquisition of their lands and had in fact participated in these proceedings before the Land Acquisition Collector. We have no hesitation in holding that the High Court ought not to have entertained the writ petition of the respondents after 16 years of the passing of the award. The High Court should have dismissed the writ petition at the threshold on the ground of delay and laches on the part of respondent Nos.1 to 17, notwithstanding

“its earlier decision in W.P. No.2244 of 1991, which decision, according to the appellant, was otherwise distinguishable.”

23. In light of the view we have expressed, we deem it unnecessary to evaluate the merits of other submissions canvassed by learned counsel for both the parties.

24. For the reasons aforesaid, the impugned judgment cannot be sustained. Accordingly, the appeal is allowed; the impugned judgment is set aside and the writ petition, filed by respondent Nos. 1 to 17 in this appeal, stands dismissed.

25. Parties to bear their own costs.

<sup>1</sup>1 (2009) 3 SCC 281

<sup>3</sup>1988 PLJ 525

<sup>5</sup>C.A. No. 140 of 1964

<sup>7</sup>(2009) 1 SCC 768

<sup>9</sup>(1994) 5 SCC 486

<sup>11</sup>(2003) 2 SCC 593

<sup>2</sup>(1994-2) 107 P.L.R. 144

<sup>4</sup>(1969) 1 SCC 185

<sup>6</sup>(1970) 1 SCC 84

<sup>8</sup>(1975) 1 SCC 152

<sup>10</sup>(1984) 2 SCC 624

<sup>12</sup>(2004) 4 SCC 460