

(2019) 03 J&K CK 0054

In the Jammu And Kashmir High Court

Case No : Other Writ Petition (OWP) No. 951 Of 2012, IA No. 01 Of 2012

Amina Begum

APPELLANT

Vs

State Of Jammu & Kashmir And Ors

RESPONDENT

Date of Decision : 18-03-2019

Acts Referred:

Constitution Of Jammu And Kashmir, 1956 — Section 103
Constitution Of India, 1950 — Article 32, 226

Citation : (2019) 03 J&K CK 0054

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : N.A. Tabassum, B.A. Dar

Final Decision : Dismissed

Judgement

1. In this petition, filed under Article 226 of the Constitution of India read with Section 103 of the Constitution of Jammu and Kashmir, the petitioner has sought the indulgence of this Court in granting her the following relief(s):

"a. A writ of mandamus commanding the respondents to acquire the suit land under the provisions of the J&K Land Acquisition Act and to pay the compensation to the petitioner according to present market rate for the land measuring 37 kanal & 8 marlas situated in village Chaki Sheera Tehsil Khan Sahab District Budgam under Survey No. (59) 9 Kanals and 1 Marla, Survey No. (65) 9 Kanals & 15 marlas, Survey No. 60 (now survey No. 250/60) 8 kanals & 2 marlas and under survey No. (242/61) 10 kanals & 17 marlas, in which the Horticulture Department developed plantation nursery way back in the year 1958 and which continues under the occupation of the respondent department till date.

b. A writ of mandamus commanding the respondents to assess the rent of the suit land and to pay the petitioner, the rent of the suit and accordingly within 18% interest per annum retrospectively w.e.f. 1958 till date Or in the alternative

c. A Writ of mandamus commanding the respondents vacate the suit land and

handover the possession of the same to the petitioner after paying the arrears of rent w.e.f. 1958 till date."

2. Learned counsel for the petitioner submits that the land belonging to the father of the petitioner was taken over by the respondents in the year 1958 on lease, but the requisite formalities for execution of the lease deed to that effect could not be completed. The learned counsel further submits that, thereafter, the father of the petitioner died, when she was a minor. It is pleaded that the petitioner represented before the concerned authority for payment of rent for the occupation of the land of the father of the petitioner which had devolved on her after the death of her father, but, as fate had it for her, all her requests fell in deaf ears.

3. Counter Affidavit stands filed by the respondents wherein a stand has been taken that the land in question had been acquired and compensation paid to the father of the petitioner. It is also contended by the respondents that the writ petition was liable to be dismissed on account of delay and laches as the land in question, admittedly, has been taken over way back in the year 1958 and the petitioner has filed the writ petition in 2012, i.e. after a period of 54 years.

4. When asked, the learned counsel for the petitioner, has vehemently disputed the fact pleaded by the respondents that the petitioner/ her father has/ had received any compensation in respect of the land in question.

5. Heard the learned counsel for the parties, perused the record and considered the record.

6. After hearing the rival parties, coupled with the appreciation of the pleadings on record, two basic issues, which require adjudication, have come to limelight herein this petition, viz.:

i. Whether the dispute with reference to payment or otherwise of the compensation in respect of the land in question, as raised by the rival parties, can be gone into and adjudicated upon by this Court in a writ petition; and

ii. Whether the petition of the petitioner is hit by the principle of delay and laches.

7. The first issue, as frame hereinabove, relates to the disputed claims made by the rival parties with reference to payment or otherwise of the compensation in lieu of land in question. It is the contention of the respondents that they have acquired the land in question and have already disbursed the compensation in respect thereto in favour of the concerned land owner at the relevant point of time, whereas the petitioner has averred that no compensation, whatsoever, has been received either by her or by her father at any point of time with regard to the land which is the subject matter of the writ petition. It is well settled position of law that this Court, under Writ jurisdiction, cannot go into a fact-finding mission so as to ascertain the veracity of disputed claims raised by the rival parties. For this purpose, if the petitioner so desires, she has to avail the

appropriate remedy, as may be available to her in accordance with the law. Time and again, the Hon'ble Apex Court as well as various High Courts of the country have held that disputed claims cannot be gone into and agitated upon by the Writ Court and, therefore, this proposition of law need not be reiterated any further.

8. The next issue which requires adjudication herein this petition is whether the petition of the petitioner is time barred. It is admitted position of the parties that the land in question has been taken over by the authorities concerned way back in the year 1958, but the petitioner has filed the writ petition in the year 2012, i.e. after a long period 54 years, thereby rendering the petition hopelessly time barred. No plausible explanation has been tendered by the petitioner as to why she, if aggrieved, did not approach the competent Court for seeking redressal of her grievances at the appropriate time. Law on the subject of delay and laches is no more *res integra*. The Hon'ble Supreme Court, in case titled '*Tamil Nadu Housing Board, Chennai v. M. Meiyappan & Ors.*', reported as '(2010) 14 SCC 309', at paragraph Nos. 14 to 19, has held as under:

"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*, 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* 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 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.*⁶, 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.

18. Similarly, in *Tridip Kumar Dingal & Ors. Vs. State of West Bengal & Ors.*⁷, (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 exhumed matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime."

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.*⁹, 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."

9. From a bare perusal of the law laid down above, what can be seen by a naked eye is that the Apex Court has observed that 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 of the validity of any claim, including the claim regarding land acquisition. It has also been held by Hon'ble the Supreme Court that the Courts must be averse to entertain writ petitions involving challenge to such acquisition proceedings where there is delay or laches, since such acquisition, if set aside, would not only involve enormous loss of public money, but would also cause undue delay in carrying out projects meant for general public. In the instant case, too, admittedly, the land of the father of the petitioner stands taken over by the respondents way back in the year 1958 and the petitioner has approached this Court in 2012, that is after a period of 54 years. If the petitioner wanted to invoke the jurisdiction of a Writ Court, she should have come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a Writ will indeed form a ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of State claims and exhumate matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime. On this count also, the petition of the petitioner is liable to be rejected.

10. Having regard to what has been said and done above, the petition of the petitioner is liable to be dismissed and, accordingly, same is dismissed alongwith the connected IA(s). Interim directions, if any, in force as on date, shall stand vacated. However, as regards the disputed claims made by the parties with reference to payment or otherwise of the compensation for the land in question, the petitioner shall be at liberty to work out appropriate remedy as may be available to her in accordance with law.