
(2015) 04 RAJ CK 0115
In the Rajasthan High Court
Case No : Civil Writ Petition No. 13119 of 2014

Banwari Lal Sharma

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 21-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 04 RAJ CK 0115

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Sandeep Singh Shekhawat, for the Appellant

Final Decision : Dismissed

Judgement

Alok Sharma, J.—The petitioner is aggrieved of non-consideration of the application for allotment of the plot in Thatar Awasia Yozana stated to be launched by the Notified Area Committee, Amer, now merged with the Jaipur Municipal Corporation in the year 1988. The petitioner's case is that he submitted an application with a deposit of Rs. 500/- fee on 15.7.1988 for allotment of a plot. According to the petitioner the plots in the Yozana in issue were to be allotted, was to be all under a lottery preceded by publication of the date thereof in Local Newspapers. It has been submitted that the notification for conducting of lottery was not made and the petitioner's application kept pending. The allegation further is that no information at all has been conveyed to the petitioner as to the status of his application despite various representations on the issue starting with one on 20.5.1989 followed by those on 7.8.1989, 4.9.2004, 3.1.2005 and 6.8.2008- all of no avail.

2. It has been submitted that in the circumstances the petitioner invoked the provisions of the Right to Information Act, 2005 (hereinafter "the Act of 2005") whereupon on his application he was informed vide letter dated 12.4.2014 under the hands of Public Information Officer and Commissioner, Amer Zone, Jaipur Municipal Corporation, Jaipur that Thatar Awasia Yozana was in respect of 331

plots of which 223 plots were allotted and 64 plots are still lying vacant. It was also stated in the aforesaid information supplied under the Act of 2005 that the last allotments in Thatar Awasia Yozana were made in July 1988 and thereafter no further allotments were made owing to disputes pending before the Courts. It has been submitted that the information by the Designated Information Officer being inadequate, the petitioner filed an appeal before under the Act of 2005 before the Mayour, Jaipur Municipal Corporation, Jaipur (hereinafter "the Appellate Authority"). The Appellate Authority vide order dated 6.7.2012 required the Commissioner, Amer Zone, Jaipur Municipal Corporation, Jaipur to supply complete information sought by the petitioner within a period of 15 days. A second appeal to the Rajasthan Information Commission, Jaipur resulted in a penalty of Rs. 25,000/- on the Commissioner, Amer Zone, Jaipur Municipal Corporation, Jaipur for non-compliance with the direction to furnish the petitioner the requisite information with regard to the Thatar Awasia Yozana.

3. It has been submitted that while on the one hand the petitioner had been denied allotment of residential plot in the Thatar Awasia Yozana on his application filed in 1988, on the other the Jaipur Municipal Corporation sought to auction plots in the aforesaid residential Scheme as evident from the advertisement dated 18.3.2014. Demand for justice at the instance of the petitioner in the circumstances however illicit no response. It has been submitted that subsequently advertisements on 1.5.2014, 29.7.2014 and 11.8.2014 were issued by the Jaipur Municipal Corporation, Jaipur for auction of residential plots in Thatar Awasia Yozana. Hence this petition aggrieved of the arbitrariness of the Jaipur Municipal Corporation in non-allotment of a residential plot to the petitioner in the Thatar Awasia Yozana for over last 26 years. It has been submitted that the auction of the residential plots in the Thatar Awasia Yozana is therefore liable to be quashed and set aside and the respondent- Jaipur Municipal Corporation, Jaipur be directed to allot a residential plot to the petitioner in Thatar Awasia Yozana pursuant to his application at the rate then prevailing in the year 1988.

4. Heard the counsel for the petitioner and perused the writ petition.

5. Even though a purported right for allotment of a residential plot in Thatar Awasia Yozana has been claimed, there is no averment in the writ petition as to what was the terms and conditions for allotment in the residential plot in Thatar Awasia Yozana were. Nor a copy of the terms and conditions of the scheme filed. It is well settled that for a writ to be maintainable it is essential to plead foundational facts for the Court hearing the matter to evaluate the nature and content of the rights of the petitioner. Absence of details of the Thatar Awasia Yozana and a copy of the aforesaid Yozana (scheme) is therefore fundamental lacunae in the writ petition laid before this Court as this Court is not in a position to determine as what the terms and conditions of allotment of residential plots in the said Yozana were and whether the petitioner at all satisfied the said conditions. In my considered opinion, this Court cannot evaluate the purported

right of the petitioner and its alleged breach in a vacuous state on mere conjectures and surmises.

6. Aside of above, from the case set up by the petitioner it is evident that the application for allotment of a residential plot in Thatar Awasia Yozana was filed on 15.7.1988. The contents of the writ petition more particularly the letter dated 12.4.2010 under the hand of the Information Officer and Commissioner, Amer Zone, Jaipur Municipal Corporation, Jaipur to the petitioner on his application under the Act of 2005, evidence that since July 1988 no residential plot in the Thatar Awasia Yozana has been allotted to any person. It is thus clear that if at all the petitioner indeed had a case for consideration for allotment of residential plot on his application allegedly filed on 15.7.1988, he ought to have approached this Court within reasonable time thereafter. The writ petition does not even proffer any plausible reason for filing the instant petition in the year 2014 in respect of non-allotment of a residential plot on an application filed on 15/7/1988. The assertion that all this while i.e. between 1988 and 2014, the petitioner was pursuing first, the Notified Area Committee, Amer and thereafter the Jaipur Municipal Corporation into which it merged is routine and of no consequence. It is well settled that mere filing of representations does not elongate or defer a cause of action to over-come either limitation where applicable or laches as attract to petitions under Article 226 of the Constitution of India. Reference for this statement of law can be had to the case of C. Jacob Vs. Director of Geology and Mining Indus. Est. and Another, AIR 2009 SC 264 : (2008) 11 JT 280 : (2009) 2 LLJ 1 : (2008) 13 SCALE 434 : (2008) 10 SCC 115 : (2008) 2 SCC(L&S) 961 : (2009) 2 SLJ 223 : (2009) 1 SLR 638 .

7. The Hon"ble Apex Court in State of Maharashtra Vs. Digambar, AIR 1995 SC 1991 : (1995) 9 JT 310 : (1995) 4 SCALE 98 : (1995) 4 SCC 683 : (1995) 1 SCR 492 Supp has held that as the power of the High Court under Article 226 of the Constitution of India is discretionary and not a matter of course, its exercise must be judicious and reasonable and for this reason a person entitlement for the relief, be it against the State or its instrumentalities, even if alleging infringement of legal rights, has to seek relief within reasonable time of the cause of action arising and the Court will refuse to grant its discretionary relief to a person if he approaches the Court with laches or undue delay. It has been held in the aforesaid Judgment, relying upon the dictum of Sir Barnes Peacock in Lindsay Petroleum Co. v. Hurd, (1874) 5 PC 221 that laches by themselves would disentitle a petitioner from the grant of relief at the hands of the High Court in the exercise of powers under Article 226 of the Constitution of India. The same view also taken by a Constitution Bench of the Hon"ble apex Court in the case of The Moon Mills, Ltd. Vs. M.R. Meher, President, Industrial Court, Bombay and Others, AIR 1967 SC 1450 has also refused to. The Hon"ble Apex Court preceded thereupon to hold that where the High Court in the exercise of its powers vested under Article 226 of the Constitution of India issues a direction, order or writ for grant of relief to a person without considering his disentitlement to such relief inter-alia for reasons of undue delay or laches, such a direction, order or writ

would be unsustainable for reason of not having been made judiciously and reasonably in the exercise of the courts sound judicial discretion. The Hon''ble Apex Court in the context of the aforesaid enunciation of law proceeded, in the facts of the case before it, to set-aside the Judgment of the Bombay High Court (Aurangabad Bench) granting relief to the petitioner and directing payment of compensation in a writ petition filed in the year 1992 aggrieved of the utilization of the petitioner's land 20 years ago i.e. 1971-72 for relief operations by the State Government. The Court held that mere assertion by the petitioner that he had not been compensated for the land unauthorizedly used for the relief despite repeated representations- was of no avail and did not constitute good reason for delayed resort to the Court. The issue was dealt with specifically in para Nos. 25 and 26 by the Hon''ble Apex Court [State of Maharashtra v. Digambar (supra)], which are reproduced as under:

"25. In our view, the above allegation is in no way sufficient to hold that the writ petitioner (respondent here) has explained properly and satisfactorily the undue delay of 20 years which had occurred between the alleged taking of possession of his and the date of filing of writ petition in the High Court. We cannot overlook the fact that it is easy to make such kind of allegations against anybody that too against the State. When such general allegations is made against a State in relation to an event said to have occurred 20 years earlier, and the State's non-compliance with petitioners demands, State may not at all be in a position to dispute such allegation, having regard to the manner in which it is required to carry on its governmental functions. Undue delay of 20 years on the part of the writ petitioner, in invoking the High Court's extraordinary jurisdiction under Article 226 of the Constitution for grant of compensation to his land alleged to have been taken by the Governmental agencies, would suggest that his land was not taken at all, or if it had been taken it could not have been taken without his consent or if it was taken against his consent he had acquiesced in such taking and waived his right to take compensation for it.

26. Thus, when the writ petitioner (respondent here) was guilty of laches or undue delay in approaching the High Court, the principle of laches or undue delay adverted to above, disentitled the writ petitioner (respondent here) for discretionary relief under Article 226 of the Constitution from the High Court, particularly, when virtually no attempt had been made by the writ petitioner to explain his blameworthy conduct of undue delay or laches. The High Court, therefore, was wholly wrong in granting relief in relation to inquiring into the allegation and granting compensation for his land alleged to have been used for scarcity relief road works in the year 1971-72. As seen from the judgment of the High Court, the allegation adverted to above, appear to be the common allegation in other 191 writ petitions where judgments are rendered by the High Court following the judgment under appeal and which are subject of S.L. Ps. in this Court that are yet to be registered. We have, therefore, no hesitation in holding that the High Court had gone wholly wrong in granting the relief which it has given in the judgment under appeal, and judgments rendered following the

said judgment in other 191 writ petitions, said to be the subject of S.L. Ps or otherwise. All the said judgments of the High Court, having regard to the fact that they were made in writ petitions with common allegation and seeking common relief, are liable to be interfered with and set aside in the interests of Justice even though, only learned counsel appearing for a few writ petitioners were heard by us."

8. Reverting to the facts of the present case the petitioner's own case is that he applied for allotment of a residential plot on 15.7.1988. This petition has been filed in the year 2014 after a delay of about 26 years. The only explanation preferred for approaching this Court in 2014 is that the petitioner had made representations to the Notified Area Committee, Amer and thereafter to the Jaipur Municipal Corporation, Jaipur. However that would not be sufficient explanation for delayed resort to this Court under a writ petition as held by the Hon'ble Apex Court in the case of *State of Maharashtra v. Digambar* (supra) in almost similar circumstances. Besides, it is on record that last allotments in Thatar Awasia Yozana were made in the year 1988 and holding of auctions in respect of the said Yozana in the year 2013-14 is a wholly distinct and separate matter unrelated to the petitioner's application for allotment of residential plot filed on 15.7.1988 and cannot confer on the petitioner any immediate cause of action to approach this Court.

9. In view of the Judgment rendered by Three Judges Bench of Hon'ble Apex Court in case of *State of Maharashtra v. Digambar* (supra), reliance placed by the counsel for the petitioner on the case of *H.D. Vora Vs. State of Maharashtra and Others*, AIR 1984 SC 866 : (1984) 1 SCALE 353 : (1984) 2 SCC 337 : (1984) 2 SCR 693 : (1984) 16 UJ 381 - a Judgment rendered by the Bench of two Judges is of no avail. Even otherwise the case turned on its own facts and the challenge before the Court in the said case was to an order of requisition albeit passed 30 years prior to the filing of the petition, yet operative for an unconscionably and unreasonably long period to the disadvantage of the petitioner at the time when the writ jurisdiction of the Mumbai High Court was invoked.

10. In the circumstances, I find no force in the petition. Accordingly dismissed.