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**(2003) 05 MP CK 0042**

**In the Madhya Pradesh High Court**

**Case No :** Letters Patent Appeal No. 707 of 2002

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| Dilip Kumar Goushalawale and Others | APPELLANT  |
| Vs                                  |            |
| State of Madhya Pradesh and Another | RESPONDENT |

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**Date of Decision :** 16-05-2003

**Acts Referred:**

Land Acquisition Act, 1894 — Section 48

**Citation :** (2003) ILR (MP) 676 : (2003) 3 MPHT 217 : (2003) 3 MPLJ 453 : (2003) 1 MPLJ 504

**Hon'ble Judges :** Dipak Misra, J; A.K. Shrivastava, J

**Bench :** Division Bench

**Advocate :** A.P. Shrotri, for the Appellant; S.K. Yadav, Government Advocate for Respondent No. 1 and R.N. Singh and A.P. Singh, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Dipak Misra, J.

Invoking the jurisdiction of this Court under Clause 10 of the Letters Patent, the appellants, five in number, have called in question the defensibility of the order dated 31-7-2002 passed by the learned Single Judge in W.P. No. 3330/99 = Dilip Kumar Goushalawale and Others Vs. State of M.P. and Others, and penetrability of the order dated 25-2-2002 passed in M.C.C. No. 1071 of 2002.

The facts which are necessitous to be adumbrated are the appellants (hereinafter referred to as "the petitioners") preferred the aforesaid writ petition to direct the respondents to consider the representation submitted u/s 48 of the Land Acquisition Act, 1894 (for brevity "the Act") and further to quash the notifications issued u/s 4(1) read with Section 17(1) and notification issued u/s 6 of the Act and the award passed u/s 11 of the Act. The said documents were brought on record as Annexures P-10 to P-11. Apart from that there was prayer for quashment of Annexures P-27 and P-28. It is relevant to state here that by Annexures P-27 and P-28 there has been refusal by the State Government to

withdraw from the acquisition of the land.

According to the writ petitioners, a notice u/s 4(1) read with Section 17(1) of the Act was issued on 15-12-1988 invoking urgency clause. Notification u/s 6 of the Act was issued on 5-5-1989 and published in M.P. Gazette on 29-5-1989. An award was passed by the Land Acquisition Officer, Bhopal on 23-5-1991. Initially the petitioners filed a writ petition forming the subject-matter of W.P. No. 2857 of 1997 challenging the validity of the notification as well as the award. During the pendency of the writ petition, they submitted a representation to the State Government to denotify the land from acquisition. Being advised they withdrew the writ petition and this Court accordingly granted, liberty to file a fresh one. They submitted a representation to the State Government. In the representation they put forth that in the proceedings before the Land Acquisition Officer, they were neither heard nor any intimation was sent to them about the passing of the award and in that situation there was no justification to take possession from them. As the representation was not dealt with in quite promptitude the petitioners filed W.P. No. 3046/1998 to decide their representation preferred u/s 48 of the Act. This Court by order dated 10-10-1998 directed the State Government to consider the representation of the petitioners. Eventually the representation was rejected making a mention that the award had already been passed on 30th August, 1991; that the State Government had taken possession on 16-2-1992; and that delivered the same to the Housing Board. Quite apart from that it was also mentioned that the mutation in the name of the Housing Board had also been done on 30th June, 1995 and hence, it was not possible to release the land in favour of the petitioners. The said order was passed on 7-7-1999.

The petitioners in the writ petition while challenged the order refusing to withdraw the notifications issued u/s 4 read with Section 17 and Section 6 of the Act. It was averred in the writ petition that the rejection of the representation preferred u/s 48 of the Act was absolutely bad in law as it was passed without considering the relevant facts and there had been no construction of any house by the Housing Board. It is pertinent to state here that in the relief clause there was a prayer to quash the notifications contained in Annexure P-10 and the award passed under Annexure P-12.

A counter-affidavit and rejoinder affidavit were filed before the learned Single Judge. The learned Single Judge in Paragraph 4 mentioned that in the instant case acquisition proceedings were not in question but the legality of the order of refusal to withdraw from acquisition was questioned. There after, he proceeded to the factum of taking over of possession and referred to Section 48 of the Act and upon placing reliance on the decision rendered in the case of *Special Land Acquisition Officer v. Gopal & Boya*, AIR 1987 SC 224, came to hold that the Government cannot withdraw from acquisition if the possession has been taken. Being of this view, he dismissed the writ petition. A Letters Patent Appeal No. 586/2002 was filed against the order of the learned Single Judge. It was

contended before the Division Bench that the award having been passed beyond 2 years, the land acquisition proceedings had lapsed. The Division Bench noticed that the same submission did not appear to have been canvassed before the Single Judge. Taking note of such a fact situation, the Division Bench permitted the petitioners to withdraw the appeal to approach the learned Single Judge. Thereafter, an application for review forming the subject-matter of MCC No. 1071/2002 was filed. The learned Single Judge held that whatever submissions raised had been dealt with in the order which was passed in the Open Court. However, while saying so he dealt, the merits of the case and came to hold that there was no justification for review of the order.

Assailing the aforesaid two orders, it is submitted by Mr. A.P. Shroti that the petitioners who are the land owners had not been noticed by the Collector under the Act and the award having been passed *ex parte*, it cannot be placed reliance upon. It is urged by him that the award has not been passed within two years as stipulated u/s 11A of the Act and, therefore, the entire land acquisition proceedings lapsed and no benefit could have accrued in favour of the beneficiary, namely, the M.P. Housing Board. It is submitted by him that the learned Single Judge has fallen into error by rejecting the application for review by placing reliance on the decision rendered in the case of *Satendra Prasad Jain and Others Vs. State of U.P. and Others*, , inasmuch as in the present case possession had been taken after the award had been passed and, therefore, the ratio laid down in the said case is not applicable. It is propounded by him that when the award is a nullity it cannot be given the stamp of approval by efflux of time. It is also put forth by him that the petitioners did not have knowledge with regard to the proceedings and, therefore, their contentions cannot be thrown overboard on the ground of delay and laches. It is urged by him that there is no award in the eye of law as no signature has been given by the Land Acquisition Collector after obtaining prior approval from the competent authority and hence, as a logical corollary taking over possession, if any, is absolutely inconsequential. To bolster his submissions on various aspects he has placed reliance on the decisions rendered in the cases of *Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others*, , *Kaliyappan Vs. State of Kerala and Others*, ; *State of U.P. and Others Vs. Rajiv Gupta and Another*, , *Baij Nath Sharma v. Hon'ble Rajasthan High Court at Jodhpur and Anr.* (1998) 7 SCC 45 and *G.N. Nayak Vs. Goa University and Others*, .

Mr. S.K. Yadav, learned Government Advocate, per contra has submitted that more than 130 acres of land was acquired for construction of the houses by the M.P. Housing Board and the petitioners were very much aware of these notifications. It is urged by him that dates supplied by the petitioners is based on certified copies and even if some delay in passing of the award has occurred in the case at hand that cannot nullify the whole proceedings at this belated stage. It is propounded by him that the petitioners were well aware of the whole scenario when they first approached this Court and they could have prosecuted the litigation at that point of time and there was no reason to withdraw the same.

Mr. R.N. Singh, learned Senior Counsel appearing for the respondent - M.P. Housing Board, sounding a contra note, has contended that the notification had been issued long back and possession has been taken over and the award having been passed it cannot be assailed at such distance of time. It is urged by him that the houses have been constructed and the petitioners are only claiming in respect of 1.20 acres of land and the same is not acceptable as that would create a lot of confusion when possession in actuality has been taken and things have developed to a great extent. Mr. Singh, learned Senior Counsel has placed reliance on the decisions rendered in the cases of *The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others*, ; *Municipal Corporation of Greater Bombay v. The Industrial Development Investment Co. Pvt. Ltd. and Ors.* 1996 AIR SCW 3871; *Reliance Petroleum Ltd. Vs. Zaver Chand Popatlal Sumaria and Others*, .

This Court on earlier occasion had directed the learned Government Advocate to produce the file relating to the land acquisition proceeding before the Collector. The said file has been produced by Mr. Yadav. On a perusal of the file, it becomes quite clear that the petitioners were directed to be noticed but no notice were ever served on them. It is also noticed that the award has not been passed within two years from the date of declaration issued u/s 6(2) of the Act. These facts are absolutely indisputable. Mr. Shroti, learned Counsel has relied on certain decisions with regard to prior approval and the date when the award comes into effect. We need not advert to the same as that fact is manifest from the record. In the case of *State of U.P. and Others Vs. Rajiv Gupta and Another*, , it has been held by the Apex Court that Section 11A provides the limitation within which the award should be made and determined. It is also enunciated therein that if no award has been made within that period the entire proceeding for the acquisition of land shall lapse. It is also laid down therein that any award made in violation thereof renders the award non-est and void. In this regard, we need not load our decision.

The question that really falls for adjudication whether in the present case this Court should interfere and set aside the order passed by the learned Single Judge. To appreciate the whole scenario, one has to sit in a time machine and delve into the past. The first writ petition which was filed in the year 1997, the petitioners chose to withdraw the petition to file a fresh one and as and when occasion arises. The prayer was accepted. Mr. Shroti has submitted that the said order would not operate as res-judicata. To bolster that submission, he has placed reliance on the decision rendered in the case of *Baij Nath Sharma (supra)*. We need not dwell on the facet whether the petitioners could have filed second writ petition being barred by the doctrine of res-judicata. True it is, the second writ petition is not barred by res-judicata but what has to be seen is whether the writ petition would stand defeated by doctrine of delay and laches. A stand is taken that the petitioner was assured that there would be withdrawal of acquisition u/s 48 of the Act and, therefore, they could have challenged the award on the grounds which are being putforth at present. As it appears they

had submitted a representation and waited for disposal and again filed a writ petition in the year 1998 wherein this Court by order dated 10-9-1998 directed the State Government to deal with the representation in accordance with the law. When the representation was rejected the present writ petition was filed. If the present writ petition is carefully perused, it transpires that the petitioners are trying to protect their possession on the ground that the refusal of withdrawal of acquisition is bad in law. As far as assail to the notifications is concerned, there is no averment whatsoever challenging the said notifications in the backdrop of not passing of the award. Only in the prayer clause a reference has been made to Annexures P-10 and P-11. The petitioners had knowledge that they were ex parte and the award had been passed two years after the due date, yet they allowed the houses to be constructed and possession to be taken over. The learned Single Judge has discussed at length with regard to taking over possession in his original order. He has referred to the Panchnama, Annexure R-2/4 to come to the conclusion that is good enough to constitute the possession of the State. That apart the petitioners are claiming in respect of 1.20 acres. The entire area which is said to be acquired is more than 130 acres. The entire process has commenced in the year 1988. As per the petitioners, they came to know about it in the early part of 1996. They challenged the same and thereafter withdrew. True it is, liberty was granted and it would not bar a subsequent writ petition but definitely the principles of delay and laches would penetrate into the marrows of the case. The subsequent events that took place with the passage of time cannot be totally disregarded. In this context, we may profitably refer to the decision rendered in the case of *Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others*, , wherein Their Lordships held thus :--

"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 u/s 4(1) and declaration u/s 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 a 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 ground of laches."

In the case of *Urban Improvement Trust, Udaipur Vs. Bheru Lal and Others*, , their Lordships in Paragraph 21 held as under :--

"21. Further, learned Counsel for the appellant rightly submitted that on the ground of delay and laches in filing the writ petitions, the Court ought to have dismissed the same. In the present case, as stated above, the notification u/s 6

was published in the Official Gazette on 24-5-1994. The writ petitions are virtually filed after two years. In a case where land is needed for a public purpose, that too for a scheme framed under the Urban Development Act, the Court ought to have taken care in not entertaining the same on the ground of delay as it is likely to cause serious prejudice to the persons for whose benefit the Housing Scheme is framed under the Urban Development Act and also in having planned development of the area. The law on this point is well settled. (Reliance Petroleum Ltd. v. Zaver Chand Popatlal Sumaria and Hari Singh v. State of U.P.)."

True it is, in the said case, Their Lordships were dealing with notification pertaining to Section 6 of the Act but we have referred to the same to appreciate the concept of delay, laches and prejudice. Another aspect which requires to be appreciated is that the pleadings are quite vague in the writ petition. Before the learned Single Judge only refusal to withdrawal from acquisition was questioned. In the review application, the learned Single Judge has also held so though he has dealt with the matter on merits. We are conscious the decision rendered in the case of Satendra Prasad Jain (*supra*) is not applicable but the fact remains that the petitioners never challenged the notifications and the award. An edifice was built up for the first time in the earlier Letters Patent Appeal, i.e., L.P.A. No. 586 of 2002. The petitioners allowed things to happen for a period of five years. In the meantime, as has been putforth in the reply to the application for interim direction 1400 houses have been constructed on 48.03 acres and 84.19 acres of land is being developed on which more than 1800 houses, post office, community hall, higher secondary school, shopping complex and children park are to be constructed and completed by the end of the year 2006. It is also putforth that housing scheme under implementation of the law in question for the weaker section of the society and persons who belong to lower income group. It is averred that the appellant have illegally constructed five kaccha shades of 8 x 8 feet on the land to show their possession. When so many houses have been built and the scheme has been framed and there has been delay and laches on the part of the petitioners, we are inclined to think that it is not a fit case where extra-ordinary jurisdiction should be invoked to quash the notification or the award. In our considered opinion, a person who is not vigilant or diligent cannot claim justice. It is well settled that delay defeats justice.

In view of our preceding analysis, we do not find any merit in this appeal and the same stand dismissed without any order as to costs.