

(2005) 04 KAR CK 0029
In the Karnataka High Court
Case No : Writ Appeal No. 7772 of 1999

G. Jayaram Reddy

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 13-04-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Land Acquisition Act, 1894 — Section 18, 4 (1), 6, 6 (1)
Limitation Act, 1963 — Section 5

Citation : (2005) ILR (Kar) 1963 : (2005) 5 KarLJ 1 : (2005) 3 KCCR 1764

Hon'ble Judges : S.R. Nayak, J;Ajit J. Gunjal, J

Bench : Division Bench

Advocate : B.V. Acharya, for T.N. Viswanatha and T.N. Ramesh, for the Appellant; Deshraj, Government Advocate for R1 and R2, Basava Prabhu Patil, for Holla and Holla for R3 and Naganand, for Sundaraswamy Ramdas and Anand for C/R-4 and R5, for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J.—A short question that arises for our consideration and decision in this appeal is whether acquisition of 1 acre 3 guntas of land comprised in Sy.No. 122 of Kodihalli, Varthur Hobli, Bangalore South taluk (hereinafter shortly referred to as the "Schedule land) belonging to the appellant herein for a public purpose, to wit, for Golf-cum-Hotel Resort near Airport should be sustained notwithstanding the fact that the acquisition of 38 acres 21 guntas of land acquired under the same notification has been condemned by a Division Bench of this Court as fraud on power and tainted by malafide. The acquiring authority and the beneficiary of the acquisition would contend that the acquisition of the schedule land should be sustained notwithstanding the quashing of the notifications by the Division Bench of this Court with regard to 38 acres 21 guntas of land, on the ground of delay and laches on the part of the appellant in approaching this Court. On the other hand, it is the contention of the appellant that he has shown sufficient cause for the delay in approaching this Court for the

relief Alternatively, it was contended by the appellant that even assuming that the delay is not satisfactorily explained by the appellant, that circumstance should not come in the way of this Court quashing the land acquisition proceedings with regard to the schedule land, because, this Court has already quashed the acquisition of larger extent of land measuring 38 acres 21 guntas acquired under the same notification condemning the State action as fraud on power and tainted by malafide and that order has become final and binding.

2. The question set out by us at the threshold would arise for decision-making in the following facts and circumstances:

A total extent of 39 acres 24 guntas of land which includes the schedule land was acquired by the State Government in exercise of its eminent domain power for a public purpose, to wit, for Golf-cum-Hotel Resort near Airport by issuing preliminary notification u/s 4(1) of the Land Acquisition Act, 1894 (for short, the Act) dated 29-12-1981 and the same was published in the Karnataka Gazette dated 7-1-1982 and that was followed by final notification u/s 6(1) of the Act dated 16-4-1983 and the same was published in the Karnataka gazette on 16-6-1983. Award was passed by the L.A.O. on 7-4-1986. The possession of the acquired land was taken on 28-7-1987. The appellant herein sought reference to the Civil Court for higher rate of compensation by filing an application u/s 18 of the Act and the same was referred to the civil Court on 25-7-1987 and the same was numbered as L.A.C. No. 37 of 1988.

3. Although 39 acres 24 guntas of land was acquired for the benefit of the Karnataka State Tourist Development Corporation (KSTDC), the 3rd respondent herein, it diverted the land in favour of Respondent Nos. 4 and 5 herein by entering into agreements. It is alleged that the 3rd respondent wanted to part with the acquired land in favour of Respondents 4 and 5 and others even before taking possession of the acquired land by entering into agreements. Later, it transpired that Respondent No. 3 leased the acquired land in favour of respondents 4 and 5 for a period of 30 years by executing lease deeds dated 21-4-1989 and 9-1-1992 respectively. Out of the acquired land, the 3rd respondent parted with almost entire land; 12 acres 31 guntas by means of sale and 13 acres by way of lease etc., in favour of private persons. The lands were diverted for purposes other than the purpose for which it was acquired. The acquired lands were diverted in favour of individuals for their private benefits and profits. No part of the acquired land is used for the purpose for which it was acquired.

4. When the owners of the acquired land came to know about the above action of the 3rd respondents in parting with the acquired land in favour of Respondent 4 and 5 and others, some of the owners challenged the acquisition proceedings in Writ Petition Nos. 10881 and 10882 of 1987 and 10895 and 10896 of 1987 before this Court. A learned single Judge of this Court by his Judgment dated 20-7-1987 dismissed the writ petitions on the ground of delay and laches. Writ Appeal Nos. 1094 to 1097 of 1987 were preferred against the said order of the

learned single Judge and a Division Bench of this Court by its order dated 28-8-1991 allowed the writ appeals and quashed the land acquisition proceedings insofar as the lands concerned therein condemning the same as fraud on power and tainted by malafide. The above judgment of the Division Bench in the case of Mrs. Behroze Ramyar Batha Vs. Special Land Acquisition Officer, .

5. Similarly, Writ Appeal No. 2605 of 1991 and Writ Petition Nos. 19812 to 19816 of 1990 preferred by other owners of the acquired land under the same notifications were allowed by a Division Bench of this Court by its order dated 18-9-1991 and 3-10-1991 respectively quashing the Notifications issued u/s 4(1) and the declaration made u/s 6 of the Act in their entirety and the Division Bench in Writ petition Nos. 19812 to 19816 of 1990 also quashed the subsequent proceedings taken in pursuance of those notifications. In the above Writ Appeal No. 2605 of 1991, the Division Bench further directed that the State Government and the LAO to handover the possession of the land to the land owners concerned while directing the owners of the land to repay the compensation amount received by them with interest at 12% per annum.

6. The appellant herein came to know about quashing of the land acquisition proceedings in the year 1993. In the circumstance, the appellant was wrongly advised by his counsel to make an application in L.A.C. No. 37 of 1988 pending on the file of the Civil Court for dropping of the acquisition proceedings and handing over the schedule land to the appellant. Accordingly, an interlocutory application, I.A.No. I was filed in L.A.C.No. 37 of 1988 on 16-11-1993. That application was pending. In September 1995, another counsel advised the appellant that he is seeking withdrawal of the notifications issued under Sections 4(1) and 6(1) of the Act before a wrong forum and he should file a writ petition in this Court for that relief. Accordingly, the appellant without any further loss of time filed Writ petition No. 34891 of 1995 in this Court on 18-9-1995 for quashing Section 4(1) notification and Section 6(1) declaration. A learned single Judge of this Court, on 21-6-1999, allowed the writ petition following the judgment reported in BATHA's case (supra). Against the said order of the learned single Judge, Writ Appeal No. 7494 of 1996 was filed on 12-8-1996 and the said writ appeal was allowed by a Division Bench of this Court on 2-2-1998 and it remanded the proceedings to the learned single Judge for reconsideration and fresh disposal. A learned single Judge, after the remand, on the ground of delay and laches, dismissed the writ petition by order dated 17-9-1999 which is impugned in this writ appeal.

7. We have heard Sri B. V. Acharya, learned senior counsel for the appellant, Sri Deshraj, learned Government Advocate for Respondents 1 and 2, Sri Basavaprabhu Patil, learned counsel for Respondent No. 3, Sri S. Nagananda, learned Senior Advocate for Respondents 4 and 5. Sri B.V. Acharya contended that the learned single Judge erred seriously on fact in holding that there was a delay of 12 years in approaching this Court for quashing of the notifications and in so holding, the learned single Judge failed to appreciate the fact that the

appellant came to know of the fraudulent action of the 3rd respondent in diverting the land in favour of private parties only in 1993. Sri B.V. Acharya would contend that there are satisfactory materials to show that the appellant came to know about the quashing of the notifications by this Court in the case of BATHA (supra) only in the year 1993 and thereafterwards, without any further loss of time, initially, he made an application before the Civil Court in L.A.C. No. 37 of 1988 which was pending, under a wrong advice and thus the appellant was agitating before a wrong forum between 1993 and 1995. In September, 1995 he was advised by another counsel to file writ petition in this Court, he without any further loss of time, filed writ petition No. 34891 of 1995 on 18-9-1995. Sri B.V. Acharya would point out that due to delay, no third party interests are created and therefore, even assuming that there was some delay on the part of the appellant in approaching this Court, that fact itself could not be justification for this Court not to grant the relief particularly, because, this Court has quashed the notifications to the extent of 31 acres 21 guntas of land out of 39 acres 24 guntas and that judgment of the Division Bench has become final. Sri B.V. Acharya would contend that the schedule land compared to the total extent of land acquired, is very meagre in extent and that meagre extent of land would not serve any public purpose for which it was acquired. Alternatively, Sri. B.V. Acharya would contend that since the acquisition of the land has been condemned by this Court as fraud on power and tainted by malafide, mere delay in approaching this Court is of no consequence. It is submitted that the learned single Judge failed to apply the principle that fraud vitiates everything. Furthermore, Sri Acharya would contend that in Writ Petition Nos. 19812 to 19816 of 1990 this Court quashed the impugned notifications in their entirety and, therefore, there was absolutely no justification for the learned single Judge to refuse the relief to the appellant. Sri B. V. Acharya would also submit that if the acquisition of the schedule land is allowed to stand, it would tantamount to the Court granting an incentive to the State and the beneficiary for their fraudulent acts in diverting the acquired land in favour of Respondents 4 and 5, and looking from the angle also, the impugned action is liable to be condemned. It was lastly contended by Sri B.V. Acharya that admittedly in the schedule land no developments have taken place and no third party interests are created and, if that is so, delay itself could not be a justification for this Court not to grant the relief to the appellant, particularly when this Court itself has condemned the entire acquisition proceedings as fraud on power and tainted by malafide.

8. On the other hand, the learned counsel appearing on behalf of the respondents would reiterate the same contentions advanced by them before the learned single Judge and submit that the learned single Judge is totally justified in dismissing the writ petition on the ground of delay and laches in as much as the appellant has utterly failed to show sufficient cause for condoning the delay in approaching this Court. They would submit that the Court can refuse the relief on the ground of delay and laches even where the impugned action is tainted by malafide or one without jurisdiction. It was pointed out that since the Division

Bench remanded the proceedings to the learned single Judge to decide the writ petition afresh after considering the contention raised by the respondents on the ground of delay and laches in the premises of the norms and principles and the case law governing the delay and laches, the learned single Judge was obliged to go into the question of delay and laches and having gone into that question and having not found any satisfactory explanation for the inordinate delay, chose to dismiss the writ petition on the ground of delay and laches and, therefore the order of the learned single Judge cannot be faulted.

9. Having heard the learned counsel for the parties, the question that arises for our decision is whether the opinion of the learned single Judge with regard to the delay and laches, impugned in this writ appeal can be faulted on any permissible ground. If the opinion of the learned single Judge with regard to delay and laches cannot be upheld, it is trite, the appellant is entitled to the relief in view of the judgment of this Court in the case of BATHA (supra) and the judgments of this Court in Writ Appeal No. 2605 of 1991 and W.P. 19812 to 19816 of 1990 referred to above. The appellant cannot be treated differently because, the appellants/petitioners in the above cases and the appellant herein are similarly circumstanced and that the lands belonging to all of them totally measuring 39 acres 24 guntas was acquired for the benefit of the 3rd respondent-beneficiary under the same Section 4(1) notification and Section 6(1) declaration.

10. It is true that the Division Bench while allowing Writ Appeal No. 7494 of 1996 and 8788 of 1996 on 2-2-1998 and remanding the proceedings to the learned single Judge, in its order, has observed that the question on merits has to be decided only after the writ petitioners succeeding in showing to the Court the existence of circumstances for explaining the delay in approaching the Court. In the context of the above observations, it was necessary for the learned single Judge to initially consider the question whether the writ petitioner has shown sufficient cause to condone the delay.

11. It is true that the Court helps the vigilant and not the indolent. Delay in moving an application is also a relevant factor for which the Court may refuse to entertain the writ application for granting relief. Except in case where the delay is accounted, writ will not be granted unless applied for within a reasonable time after alleged default or neglect of duty or refusal or violation of right and if such delay is not satisfactorily explained, Court may in the exercise of its discretion, refuse its issuance. This is particularly so, when to grant the writ after such a delay would work a prejudice to the parties affecting their right. Though there is no specific period of limitation for invoking the jurisdiction of the High Court under Articles 226 and 227 of the Constitution, the High Court may refuse to exercise its extraordinary power/power of superintendence where the petitioner is guilty of laches or undue delay, for which there is no satisfactory explanation. In other words, the petitioner should be diligent in pursuing his remedy, and file his writ petition within a reasonable time from the date of the order challenged, and an undue delay on his part will debar him from getting the relief. There is no

general rule as to what is a reasonable time within which proceeding must be brought but it depends upon the facts in each case. The measure of delay in a specific case depends upon the nature of the action involved. It is now well settled that the principle of laches applies even to writ petitions complaining violation of fundamental rights. Unless the facts and circumstances of the case clearly justify the laches or undue delay, an applicant under Article 226, would not be entitled to relief. All that the High Court has to see in whether the laches on the part of the petitioner are such as to disentitle him to relief claimed by him. However delay, by itself, is not a ground to reject writ petition. In an appropriate case, the Court may condone the delay because of the reason that the Court may not enquire into belated and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion to be exercised by the High Court under Article 226, and there is no any inviolable rule that whenever there is delay, the Court must necessarily refuse to entertain the writ petition.

12. The Supreme Court in *Durga Prashad Vs. Chief Controller of Imports and Exports*, dealing with the question what is the measure of delay held thus:

"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".

Generally speaking, the Court would be justified in refusing the relief on the ground of delay and laches only in a case where the conduct of the petitioner, in keeping quiet, created an equity in favour of the respondent or where interest of third party is allowed to come into life or for such other similar reasons where the Court is satisfied that granting of relief to the petitioner would result in undue hardship to the respondent or third parties or affect public interest and not otherwise. Delay as such can never be an absolute bar for the Court to entertain the petition if it finds that the complaint made in the petition is a continued violation of Fundamental Rights or other rights of the petitioner.

13. In the case reported in *Bhagwan Swaroop and Others Vs. Mool Chand and Others*, D.A. Desai J., speaking for the Supreme Court, has emphatically stated that fairplay in action must inhere in judicial approach also as in administrative law and the Court's approach should be oriented with this view whether substantial justice is done between the parties or technical rules of procedure are given precedence over doing substantial justice in Court. A code of procedure is designed to facilitate justice and further its ends; not a penal enactment for punishment and penalties. It needs to be noticed that the laws of procedure by themselves do not create any impediment or obstruction in the matter of doing justice to the parties. The main purpose is to see that justice is done to the parties.

14. In the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, the Apex Court has emphasised liberal approach to be adopted by the Courts in the matter of condoning delay. In para 3 of the Judgment, the Apex Court held thus:

"The legislature has conferred the power to condone the delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every day"s delay must be explained" does not mean that a pedantic approach should be made. Why not every hour"s delay, every second"s delay? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala-fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so".

15. In M/s. Dehri Rohtas Light Railway Company Limited Vs. District Board, Bhojpur and District Board, Shahabad and others, the Supreme Court, while reiterating the principle that the Court may decline relief on the ground of delay and laches held that rule is not a rule of law but is a rule of practice, and if the Court finds an illegality manifest in the impugned order and applicant in the writ has explained the delay in not challenging the impugned action at an earlier point to time, then, the Court would be justified in condoning the delay. In the case of H.D. Vora Vs. State of Maharashtra and Others, the Supreme Court has condoned even 30 years delay in approaching the Court where it found violation

of substantive legal right of the applicant. In that case, the requisition of a premises made by the State was assailed. It was found that the order of requisition did not set out the public purpose for which it was made neither any material was placed before the Court to show what was the public purpose for which the order was made. It was also found by the Court that the allottee to whom the requisitioned property was allotted was neither a government servant nor a homeless person as required under the law. In the circumstances, notwithstanding the fact that the applicant approached the Court after lapse of 30 years, the Apex Court opined that there was justification for the Court to step in under Article 226 of the Constitution and grant the relief to the writ applicant.

16. In the premise of the law noticed above, we have to see whether the appellant has shown sufficient cause and whether there are any mitigating circumstances on the basis of which this Court could condone the delay and entertain the writ petition on merit. It is the definite case of the appellant that he came to know of the fraud committed by the 3rd respondent in diverting the acquired land clandestinely in favour of Respondents 4 and 5 and certain others, that too, for the purpose other than the purpose for which the land was acquired, only in the year 1993. It is his further case that even then, he did not approach this Court for legal remedies immediately after he came to know of the fraud committed by the 3rd respondent and also the judgment of this Court in the case of BATHA (supra), because, under a wrong legal advice, he filed I.A.I. in L.A.C. No. 37 of 1988. In other words, even after the appellant came to know of the fraud committed by the 3rd respondent, under a wrong advice, he was prosecuting his case before a wrong forum. The question for consideration is whether that circumstance can be taken into account for condoning the delay. A three Judge Bench of the Supreme Court in the case of BADLU AND ANR. v. SHIV CHARAN AND ORS., (1980) 4 SCC 401 where a party under a wrong advice given to them by their lawyer was pursuing an appeal bonafide and in good faith in wrong Court, held that the time taken for such prosecution should be condoned and took exception to the order of the High Court in dismissing the second appeal. Further, the Supreme Court in Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi and Others, has held that the delay caused on account of the mistake of counsel can be sufficient cause to condone the delay and the relief should not be refused on the ground that the manager of company is not an illiterate or so ignorant person who could not calculate period of limitation.

17. It is the further case of the appellant that only in the month of September, 1995 he was advised by another counsel that the appellant was wrongly prosecuting his case before the Civil Court by filing I.A.I. in L.A.C. No. 37 of 1988 and that the civil court has no jurisdiction to quash the notification issued u/s 4(1) and declaration u/s 6(1) of the Act and for that relief, he should necessarily file writ petition in this Court. The appellant on receiving such advice from the counsel, without any further loss of time, filed the present Writ Petition No. 34891 of 1995 in this Court on 18-9-1995. It further needs to be noticed that the pleading of the appellant would clearly demonstrate that but for the fraud

committed by the 3rd respondent in diverting the acquired land in favour of respondents 4 and 5 and others clandestinely for the purposes other than the purpose for which it was acquired, perhaps, the appellant would not have challenged the land acquisition proceedings at all. It is his definite case that he was approaching this Court under Article 226 for quashing the impugned notifications only because the acquired land was sought to be diverted by the 3rd respondent-beneficiary in favour of third parties, that too, for the purposes other than the one for which it was acquired and the acquisition of the entire extent of land under the same notification in its entirety is already quashed by this Court as fraud on power and tainted by malafide. Therefore, the Court has necessarily to consider the question of delay and laches in the premise of the specific case of the appellant and it will be totally unfair and unjust to take into account only the dates of Section 4(1) notification and Section 6(1) declaration. It is also necessary to take into account the fact that well before the appellant approached this Court, the Division Bench of this Court in Writ Appeal No. 2605 of 1991 and Writ Petition Nos. 19812 to 19816 of 1990 preferred by certain other owners of the acquired land vide its orders dated 18-9-1991 and 3-10-1991 had already quashed Section 4(1) Notification and Section 6(1) declaration in their entirety and directed the State Government and the LAO to handover the acquired land to the owners concerned on red positing of the compensation money received by the owners with 12% interest p.a. In that view of the matter, it is trite, the acquisition of the schedule land belonging to the appellant also stood quashed by virtue of the above judgments of the Division Bench. Strictly speaking, the State Government and the LAO even in the absence of a separate challenge by the appellant to the land acquisition proceedings, in terms of the orders made in the above writ appeal and writ petitions, ought to have handed over the schedule land to the appellant by collecting the amount of money received by him as compensation with interest at 12% p.a. Be that as it may, the appellant as an abundant caution separately filed writ petition for quashing of the notifications issued under Sections 4(1) and 6(1) of the Act with regard to the schedule land. The relief cannot be refused to the appellant, because, the appellant herein and the appellants in Writ Appeal Nos. 1094-1097 of 1987 and W.A. No. 2065 of 1991 and the petitioners in Writ petition Nos. 19812 to 19816 of 1990 are all owners of the acquired land under the same notifications and all of them belong to a "well-defined class" for the purpose of Article 14 of the Constitution. There is absolutely no warrant or justification to extend different treatment to the appellant herein simply, because, he did not join the other owners at an earlier point of time. It is not that all the owners of the acquired land except the appellant instituted the writ petitions jointly and the appellant alone sat on fence awaiting the decision in the writ petitions filed by the other owners. Some writ petitions were filed in the year 1987 and other writ petitions in the year 1990 as noted above. Since the appellant came to know of the fraud committed by the 3rd respondent only in the year 1993 after this Court delivered the judgment in BATHA's case (supra) and since he was prosecuting his case before a wrong forum under a wrong legal advice and therefore, the time so consumed has to be

condoned in view of the judgment of the Supreme Court already referred to above, we are of the considered opinion that the learned single Judge is not justified in dismissing the writ petition on the ground of delay and laches.

18. It needs to be noticed further that admittedly, no developments have taken place in the schedule land despite considerable passage of time. Further more, admittedly, no rights of third parties are created in the schedule land. The schedule land being a meagre extent of land compared to the total extent of land acquired for the public purpose, cannot be put to use for which it was originally acquired. Looking from any angle, we do not find any circumstance on the basis of which we would be justified in refusing the relief on the ground of delay and laches even assuming that there was some delay on the part of the appellant before approaching this Court by way of writ petition in the year 1995.

19. We also find considerable force in the submission of Sri B.V. Acharya that even assuming that there was delay on the part of the appellant in approaching this Court, that circumstance cannot be put against the appellant for refusing the relief because the action of the State in exercising its eminent domain power has been condemned by this Court as fraud on power and tainted by malafide. It is well settled that fraud vitiates all actions and the victim of fraud is always entitled to have the fraudulent actions set aside on proof of fraud, and it is one of the grounds like bias, want of jurisdiction etc., for grant of certiorari. The effect of fraud has been considered in the leading judgment of LORD DENNING J., in the case of LAZARUS ESTATES LIMITED v. E.C. BEASLEY 1956 (1) ALL ER 341 and it is held thus:

"No Court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The Court is careful not to find fraud unless it is distinctly pleaded and proved, but, once it is proved it vitiates judgments, contracts and all transactions whatever, see as to deeds, COLLINUS v. BLANTERN (1976) (2) K.B. 342) as to judgments, Duchess of Kingston's Case (1776) (1 Leach 146), and, as to contracts MASTER v. MILLER (1791) (4 Term Rep. 32). So here I am of opinion that if this declaration is proved to have been false and fraudulent, it is a nullity and void and..."

A Coordinate Bench of this Court in the case of The Vyalikaval House Building Co-operative Society, Bangalore Vs. V. Chandrappa and Others, held that since the petitioner-society acquired the land by fraudulent means creating bogus members, the interest of the owners of the acquired land cannot be defeated on the ground of delay and laches, especially when this Court itself had on an earlier occasion granted relief to similarly placed persons. We are in respectful agreement with the above statement of law made by a Coordinate Bench of this Court.

20. The following observations made by the Apex Court in United India Insurance Co. Ltd. Vs. Rajendra Singh and Others, in the context of this case are quite

apposite:

"4. For a High Court in India to say that it has no power even to consider the contention that the awards secured are the by products of stark fraud played on a Tribunal, the plenary power conferred on the High Court by the Constitution may become a mirage and people's faith in the efficacy of the High Courts would corrode. We would have appreciated if the Tribunal or at least the High Court had considered the plea and found them unsustainable on merits, if they are meritless. But when the Courts preempted the Insurance Company by slamming the doors against them, this Court has to step in and salvage the situation".

Since the appellant came to know of the fraud committed by the 3rd respondent only in the year 1993, it is fair and reasonable to assume that the appellant came to know of his right to apply for legal remedies under Article 226 of the Constitution only in the year 1993. There is no satisfactory material to show that the appellant had known parting of the acquired land in favour of Respondents 4 and 5 prior to 1993. If that is so, the fraud committed by the 3rd respondent in the years 1987, 1988 and subsequently in 1992 continued till the appellant came to know about it in the year 1993 after this Court quashed the Notifications in BATHA's case (supra). Therefore, it is reasonable to hold that only after the appellant became aware of the clandestine alienations made by the 3rd respondent in favour of respondents 4 and 5 and others, he came to know of his right to apply to this Court under Article 226 for legal remedies. In taking this view, we are fortified by the decision of the Kerala High Court in Mathen Simon of Mukalal Vs. Ouseph Looka of Makkiyil and Others, .

21. It is true that the issue of a writ of certiorari is legally a matter of sound discretion. It is also true that a writ of certiorari will not be granted if there is such negligence or omission on the part of the applicant to assail his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the averse party. The principle is to a great extent, though not identical with, similar to the exercise of discretion in the Court of Chancery. The principle has been clearly stated by Sir Barnes Peacock in LINDSAY PETROLEUM COMPANY v. PROSPER ARMSTRONG HURD, ABRAHAM FAREWELL AND JOHN KEMP (1874) 5 PC 221 as follows:

"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 limitations, 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".

From the above observations of Sir Barnes Peacock, it is quite clear that the Court while considering the question of delay has to take into account two factors, viz., length of delay and the nature of the acts done during the interval, which might affect either party conjointly and decide the question. In other words, mere length of delay without prejudice to any party or without there being creation of interest or rights in favour of third parties cannot be a valid ground to refuse the relief provided the delay is not so inordinate as to persuade the Court to decline the relief.

22. The Supreme Court in *G.P. Doval and Others Vs. Chief Secretary, Government of U.P. and Others*, refused to throw out a petition on the ground of delay where petition was filed challenging the seniority list twelve years after it was published and when the department neither finalised the list nor gave reply to the representation given against it.

23. Taking the entire materials and circumstances placed before us and the case laws which have bearing on the decision-making and balancing the substantive rights of the appellant-petitioner and the consequences that flow from granting or refusing the relief, we are of the considered opinion that it will be totally unjust for the Court to refuse the relief to the appellant on the ground of delay and laches.

24. This takes us to the merits of the matter. There is no need for us to again dwell into the aspects touching on merits of the acquisition of the schedule land. The acquisition of the entire land under the very same notifications was subject matter of judicial review at the hands of this Court in the case of *BATHA* (supra) and the "Notifications were quashed by this Court holding that the acquisition was an instance of fraud on power and is tainted by malafide. Following the above judgment, Writ Appeal No. 2605 of 1991 and Writ Petition Nos. 19812 to 19816 of 1990 were also allowed by orders dated 18-9-1991 and 3-10-1991 respectively. The Division Bench quashed the Notification u/s 4(1) as well as declaration u/s 6(1) of the Act in their entirety and also all further proceedings thereto. Furthermore, the Division Bench directed the State Government and LAO to hand over the acquired land to the owners while directing the owners to refund the compensation amounts received by them with interest at 12% p.a. Since the appellant herein and the appellants and writ petitioners in W.A.No. 2605 of 1991 and W.P. Nos. 19812 to 19816 of 1990 are the owners of the acquired land under the same notification and similarly circumstanced in every material aspect, they should be regarded as the persons belonging to a "well-defined class" for the purpose of Article 14 of the Constitution. In other words, the appellant herein is also entitled to the same relief which this Court granted in Writ Appeal No. 2605 of 1991 and W.P. Nos. 19812 to 19816 of 1990 to the owners therein. Apart from that, as already pointed out, the schedule land is a

very meagre land compared to the total extent of land acquired and except the schedule land the acquisition of the remaining land has been set at naught and the possession of the land has been handed over to the owners. The schedule land being a meagre in extent, cannot be used for the purpose for which it was acquired. That is precisely the reason why the schedule land is kept in the same position as it was on the date of Section 4(1) notification without any improvement or development.

25. In the result and for the foregoing reasons, we allow Writ Appeal No. 7772 of 1999 and set aside the order of the learned single Judge dated 17th September, 1999 and allow Writ Petition No. 34891 of 1995 and quash the impugned Notification No. LAO (1) 80-81, dated 28-12-1983 issued by the Special Deputy Commissioner, Bangalore District, Bangalore, Annexure-B and the Notification No. BD 44 AQB 83, dated 16-4-1983-Annexure-C, issued by the Government of Karnataka insofar as it related to 1 acre 3 guntas of land in Sy.No. 182 (182/1) of Kodihalli village, Varthur Hobli, Bangalore South Taluk. A writ of mandamus shall issue to the respondents 3 to 5 to redeliver possession of the schedule land to the appellant forthwith. We, however, direct the appellant to refund the compensation amount, if received, from respondent 3 to 5 towards the acquisition of the schedule land with interest at the rate of 12% per annum from the date the compensation money was received by him till repayment. Time to repayment of compensation money is till 15-5-2005. In the facts and circumstances of the case, the parties shall bear their respective costs in the Writ Petition as well as in Writ Appeal.

26. Sri Deshraj, learned Government Advocate is permitted to file memo of appearance on behalf of respondents 1 and 2 within four weeks.