
(1973) 02 RAJ CK 0010
In the Rajasthan High Court
Case No : Civil Special Appeal No. 374 of 1971

Hastimal and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 07-02-1973

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1973 Raj 285

Hon'ble Judges : B.P. Beri, Acting C.J.; M.L. Joshi, J

Bench : Division Bench

Advocate : Hastimal, for the Appellant; S.K. Mal Lodha and S.K. Tiwari, Dy. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B. P. Beri, Ag. C.J.

1. This is a special appeal u/s 18 of the Rajasthan High Court Ordinance directed against the judgment of a learned single Judge of this Court dated 13th May, 1971 whereby he dismissed the appellant's petition under Article 226 of the Constitution of India.

2. The facts which it is necessary to recall for the disposal of this appeal briefly stated are these : The appellant claims to be the owner of a house No. 27 in Ward No. 6 in the city of Jodhpur. In the Rajasthan Gazette of June 30, 1965 a notification was published whereby the Government notified its intention to acquire land measuring 2074 Sq. yards which belonged to the appellant and whereon the house of the appellant stood. The land and the house were sought to be acquired under the scheme popularly known as the "Sojati Gate -- Girdi Kot scheme". The notice was served on the appellant u/s 52 (2) of the Rajasthan Urban Improvement Act, 1959 (hereafter called "the Improvement Act") inviting objections from the appellant against the proceedings for the acquisition of the appellant's property. Despite the objections filed by the appellant the State

Government took further steps to acquire the land and the house. A notice was issued on March 16, 1966 by the Collector for the determination of the compensation and on September 26, 1967 a compromise was effected between the mortgagor and the mortgagee of the property in dispute whereby the appellant as the mortgagee was authorised to receive the entire compensation. A writ petition was presented on July 25, 1968 by the appellant in which it was prayed that the provisions contained in Sections 52 and 53 of the Improvement Act be declared void being discriminatory and violative of Articles 14 and 31(2) of the Constitution of India; that a writ of prohibition be issued against the Additional Collector restraining him from taking further proceedings in the matter of the determination of compensation and further the acquisition proceedings be quashed and the respondents be ordered to restore the possession of the petitioners' property to them. No reply was filed to this writ petition by any one of the three respondents but the petition was contested. The learned single Judge repelled the contention of the appellant that Sections 52 and 53 of the Improvement Act were violative of Article 14 of the Constitution and held that the acquisition proceedings were not discriminatory. The learned single Judge also expressed the opinion that the appellant was guilty of delay in coming to the Court and he on that ground as well was not entitled to any relief. In the result he dismissed the petition. Dissatisfied the appellant has come up in appeal.

3. Mr. Hasti Mal learned counsel for the appellant urged that Sections 52 and 53 of the Improvement Act are inter-connected, the first relates to the acquisition and the second to the determination of compensation. When these two sections are compared with the provisions of the Rajasthan Land Acquisition Act (hereafter called "the Acquisition Act") they are discriminatory because the Improvement Act does not provide (a) solatium; (b) compensation for severance and (c) the method of calculation of compensation is also different. It was further urged that under the Acquisition Act a part of the property could not be acquired without consent while no such provision existed in the Improvement Act. The learned counsel added that the forum of determination of compensation under the Acquisition Act was different from the one provided under the Improvement Act. He placed reliance on (1) P. Vajravelu Mudaliar (In W. P. No. 144 of 1963) 2. P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another, and Deputy Commissioner and Collector, Kamrup and Others Vs. Durga Nath Sarma,

4. On the question of delay the learned counsel for the appellant urged that the petition having been admitted and adjudicated upon on merits the question of delay was of no consequence. He placed reliance on P.B. Roy Vs. Union of India (UOI), and S. Gurmejsingh v. The Election Tribunal, Gurdaspur 66 P&H LR 589 (AIR 1964 P&H 337) (FB). He also urged that no return having been filed and no objection regarding delay having been taken such a plea was not available to the respondents. Reliance was placed on S. Mahadeva Iyer v. State AIR 1954 Trav Co 469 (FB) and Pt. Gopi Nath Wali v. State of Jammu & Kashmir AIR 1958 J & K 11 (FB) . The learned counsel argued that when a statute was void for contravening a fundamental right nobody could be estopped from challenging actions

thereunder because there could be no estoppel against the statute. He placed reliance on *Somath Mal and Another Vs. State of Rajasthan and Others*, Lastly, he urged that one of the prayers made by the petitioner appellant was in regard to the possession of the premises sought to be acquired and because a suit therefore on the date of the petition was not barred by time, it could not be said that the petition under Article 226 of the Constitution of India was barred by time. He also submitted that the primary concern of the appellant was compensation and that having not been determined it could not be said that the petition was delayed.

5. Mr. S. K. Mal Lodha learned counsel for the Urban Improvement Trust respondent No. 2 argued that Sections 52 and 53 are not discriminatory because the proviso to Section 23 (2) of the Acquisition Act did not allow solatium in certain circumstances. His contention was that the compensation for severance was by necessary implication contained in the language of Section 53 (6) (b) of the Improvement Act because what was to be compensated for was the value of the land on the date of the notice. On the question of the market value he urged that the principles contained in Section 23 (3) (a) of the Acquisition Act were almost similar to those contained in Section 53 (6) (b) of the Improvement Act. On the question of payment of compensation from the date of notice the provisions of Section 53 (2) were similar to those contained in Sections 24, 28 and 34 of the Acquisition Act. In regard to the question of forum his submission is that nobody has a right of a particular forum but on close examination it will be noticed that there is only a difference of nomenclature otherwise the stages of determination of compensation were almost the same and there was no discrimination. He placed reliance on *State of Gujarat Vs. Shantilal Mangaldas and Others*, and *Dalchand and Others Vs. Delhi Improvement Trust (Now Delhi Development Authority) New Delhi*, .

6. On the question of return he urged that no reply was filed because no new facts were sought to be brought on record for defending the objection and it was clear from the petition itself that it was delayed. He urged that the doctrine of delay in the exercise of extraordinary jurisdiction was a matter of judicial discretion and not a matter between the parties and mere absence of an objection therefore cannot preclude a Court from refusing to exercise extraordinary jurisdiction if the principles of prudence so required. Reliance was placed on *Roopsingh Devisingh v. Sanchalak Panchayat and Samaj Sewa, M. P. Indore*, AIR 1962 Madh Pra 50. On the question of delay the learned counsel relied on *Mohammad Habibullah Sahib and Others Vs. Special Deputy Collector for Land Acquisition Madras and Others*, *Rabindranath Bose and Others Vs. The Union of India (UOI) and Others*, *Durga Prashad Vs. Chief Controller of Imports and Exports*, ; *State of Orissa Vs. Chandrasekhar Singh Bhoi, etc.*, *Purshottamlal v. State of Rajasthan*, 1972 WLN 702 & *Kamini Kumar Das Choudhury Vs. State of West Bengal and Others*, .

7. We propose to examine the question of delay first. It has been laid down in

para 3 of Durga Prashad Vs. Chief Controller of Imports and Exports, 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. Sikri J. (as he then was) has extracted certain observations of Gajendragadkar C. J. from an un-reported decision in Smt. Narayani Devi Khaitan v. State of Bihar (Civil Appeal No. 140 of 1964, D/- 22-9-1964 (SC)) which deserve a recall. They read:

"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..... 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."

The plea of laches came to be examined closely in State of Orissa Vs. Chandrasekhar Singh Bhoi, etc., Hidayatullah C. J. expressed the view that the party claiming fundamental rights must move the Court before other rights come into existence. The action of Courts cannot harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court. In para 8 it is observed:

"The English and American practice has been outlined in Halsbury's Laws of England and Corpus Juris Secundum. It has been mentioned by my brethren in their opinions and I need not traverse the same ground again except to say this that Courts of Common Law in England were bound by the Law of Limitation but not the Court of Chancery. Even so the Chancery Courts insisted on expedition. It is trite learning to refer to the maxim "delay defeats equity" or the Latin of it that the Courts help those who are vigilant and do not slumber over their rights. The Courts of Chancery, therefore, frequently applied to suits in equity the analogy of the law of Limitation applicable to actions at law and equally frequently put a special limitation of their own if they thought that the suit was unduly delayed.....

The party aggrieved must move the Court at the earliest possible time and explain satisfactorily all semblance of delay. I am not indicating any period which may be regarded as the ultimate limit of action for that would be taking upon myself legislative functions. In England a period of 6 months has been provided statutorily, but that could be because there is no guaranteed remedy and the

matter is one entirely of discretion. In India I will only say that each case will have to be considered on its own facts. Where there is appearance of avoidable delay and this delay affects the merits of the claim, this Court will consider it and in a proper case hold the party disentitled to invoke the extraordinary jurisdiction."

In 1972 WLN 702 Tyagi J., has examined a large number of cases on the question of delay and held that in a case under the Land Acquisition Act a challenge of the notification u/s 6 after four years of waiting disentitles the petitioner to any relief. This case came up before a Division Bench of this Court in Special Appeal No. 265 of 1972 (decided on 25-7-1972 (Raj)) and the decision of the learned single Judge was confirmed and the appeal was dismissed in limine. The matter was taken up to the Supreme Court by Spl. Petn. No. 2250 of 1972 and the same was dismissed on 22-9-1972 (SC).

8. From the discussion of the aforesaid authorities it is clear that notwithstanding that violation of a fundamental right is alleged the delay disentitles a petitioner from seeking a relief in the exercise of extraordinary jurisdiction under Article 226 of the Constitution. No rigid rule could be laid down but discretion will have to be exercised having regard to the facts and circumstances of each case. In the present case a notice under Sub-section (2) of Section 52 of the Improvement Act dated 6th November, 1964 (Ex. 2) was served on the appellant. A reply to this notice was filed on 21st November, 1964 vide Ex. 3 and then a notification was published in the Government Gazette u/s 52 (1) of the Improvement Act on 30th June, 1965 whereby the Government decided to acquire the land for the purpose of improvement and for establishment and construction of a market from overbridge outside Sojati Gate to Girdikot at Jodhpur. The Collector sent notice for determination of compensation on 16th March, 1966 and the petition was filed on 25th July 1968. So far as the scheme of acquisition is concerned it was clearly communicated to the appellant in November, 1964 and the decision to acquire the premises of the appellant was conclusively pronounced by the publication of notification on 30th June, 1965 and the petition was submitted after three years of this notification. The learned single Judge has expressed the view that the petitioner appellant fought for the compensation before the Acquisition Officer and while proceedings were going on the property had been demolished and the road was going to be constructed on the open land and the petitioner could not get the possession of the property as claimed by him from the respondents and in these circumstances the appellant was guilty of delay and was not entitled to the relief in the exercise of extraordinary jurisdiction. This argument of the learned single Judge is assailed by Mr. Hasti Mal learned counsel on the ground that once the petition was disposed of on merits such considerations were not available for the rejection of the petition. It was not open to the learned single Judge to dismiss the petition on the ground of delay. The main case relied upon by the learned counsel is 66 Pun LR 589=(AIR 1964 Punj 337) (FB). In para 7 of the judgment the learned Judges have expressed the view which may be quoted in their own words:

"If, therefore, this Court after hearing the petitioner admits the writ petition and issues a rule nisi and at hearing after actually adjudicating upon the merits of the controversy comes to a positive conclusion in favour of the petitioner, that may also be a factor which, to some extent, may reasonably weigh against the refusal to exercise discretion in granting relief to the aggrieved party."

The consideration of a petition on merits therefore cannot be said to be decisive on the question of the plea regarding undue delay. The learned counsel adds that this observation of the Full Bench has received the approval of their Lordships of the Supreme Court in *P.B. Roy Vs. Union of India (UOI)*, We are afraid that this contention has no substance. Mere reference is not the same as putting a seal of approval. The argument that in the absence of the reply the objection of delay cannot be considered is also without force. In *AIR 1954 Trav. Co. 469* there was a counter affidavit where lack of diligence was pleaded but not pressed and the case is therefore distinguishable. So far as *AIR 1958 J. & K. 11 (FB)* is concerned all that the learned Judges of the Jammu and Kashmir High Court said was that in order to determine whether there has been a delay in a particular case the facts of each case have to be taken into consideration. In that case the petitioner had been making representations to the Government conveying his grievance but had been unsuccessful and the delay of one and a half years was not considered fatal to the petition. In the case before us the appellant amongst the contending rivals was to receive the compensation, participated in the compensation proceedings and has come up after more than three years to this Court for a relief. Against the arguments advanced on the doctrine of estoppel all that we may need say is that in *State of Orissa Vs. Chandrasekhar Singh Bhoi, etc.*, the law under which money was recovered was declared to be ultra vires and yet the relief was declined to the petitioner on the ground of delay. The ground of delay is not merely a controversy between the parties inter se but as we have already observed it is an important factor which regulates the exercise of judicial discretion in the exercise of extraordinary jurisdiction. The line between these two approaches is subtle but it exists. Another argument in this context is that the suit for possession is not barred by time. The Supreme Court in the cases already noticed above has categorically observed that the question of delay is not to be exactly measured by the period of limitation prescribed by law in every case. That is merely an equitable principle and not a decisive factor. If the argument of the learned counsel was accepted then we would be importing the Indian Limitation Act for determining exercise of our extraordinary jurisdiction. We are therefore satisfied that the appellant in this case was rightly held guilty of laches in coming to the Court and his petition was correctly dismissed on the ground of delay. In this view of the matter we express no opinion on the point of discrimination urged by the learned counsel for the appellant.

9. The result is that this appeal fails and is dismissed with, costs.