
(2010) 01 RAJ CK 0015
In the Rajasthan High Court

Jaipur Development Authority

APPELLANT

Vs

Lala Ram and Others

RESPONDENT

Date of Decision : 11-01-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227
Jaipur Development Authority Act, 1982 — Section 83(A)
Rajasthan Land Acquisition Act, 1953 — Section 17(4), 18, 4, 6

Citation : (2010) 3 RLW 2823

Hon'ble Judges : Raghuvenra S. Rathore, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Raghuvenra S. Rathore, J.—This writ petition is directed against the order dated 18.10.05 passed by the learned Appellate Tribunal, Jaipur Development Authority, Jaipur in Appeal No. 107/05 (Lala Ram and Ors. v. JDA). The petitioner has prayed that the impugned order be quashed and set aside. Further, it is prayed that the appeal filed by respondents before the learned Tribunal be dismissed, holding that the Tribunal has no jurisdiction.

2. Briefly stated, the facts of the case are that respondents No. 1 to 5 are the ex-khatedar tenants of Khasra No. 2, 8, 10,12 and 19/168 situated in village Boyatwal Distt. Jaipur, On 3rd May, 1981 a notification, u/s 4 of the Rajasthan Land Acquisition Act, came to be issued in the Rajasthan Raj Patra. The said acquisition proceedings were initiated with the intention to acquire a total land of 1367 bighas and 13 biswa in revenue villages Niwaru, Mansharampura, Boytawala and Benad. Total area of 238 Bighas of land was acquired in village Boyatwal. Thereafter, another notification u/s 6 read with Section 17(4) of the Act was issued for acquiring the aforesaid land for the public purpose of establishing Field Firing Range. The Land Acquisition Officer passed an award on 26.3.83 for the entire land in question. A reference in respect of the land in question finds place at Serial No. 5, 15 and 21 of the tabulation in the Award

(Annex. 3). Subsequently, cheques drawn in the name of ex-khatedars for payment are said to have been tendered to the Land Acquisition Officer. Only four khatedars had accepted the award money. The possession of the land was taken and handed over to the Army for the purposes.

3. The ex-khatedars, not being fully satisfied with the award, had made request to the petitioners for enhancement of compensation. On having been dis-satisfied with the award passed by the Land Acquisition Officer and as nothing had been done by the petitioner in regard to the enhancement of compensation, the ex-khetadars had preferred a reference before the learned Civil Judge, Jaipur praying that the quantum of compensation be increased. The learned Civil Judge, Jaipur on 11.9.94 had enhanced the rate of compensation from Rs.1500/- to Rs.15,000/- per bigha, along with interest and solarium. Feeling aggrieved of the order made by the Civil Judge, the petitioner authority filed an appeal before this Court. The said appeal was dismissed by the High Court on 30th August, 2000.

4. The Jaipur Development Authority Act, 1982 was amended on 21.5.01 and Section 83(A) came to be inserted whereby the State Government was empowered to form a settlement committee to resolve the disputes between the authority and other persons. Accordingly, a Settlement Committee was constituted on 11.10.01. The amount of compensation @ Rs. 1500/- per bigha only and not at the enhanced rate was deposited in the Court of Civil Judge, Jaipur. The State of Rajasthan had issued a circular on 7.11.01, in continuation of its policy decision, for providing relief to the Khatedars whose lands had been acquired and award has been passed but no payment of compensation was made. It was decided that they may be allotted 15% developed land in lieu of acquisition either in the same scheme or in the nearest scheme. In the instant case, Vidhyadhar Nagar is the nearest scheme of JDA to the land situated in village Boyatwala.

Another circular was issued by the State Government on 13.12.01 considering the fact that persons who were not aware about the allotment of 15% land in lieu of compensation and had not availed the said benefit, may be given one more chance to opt for the same. The cut of date for submitting option by the Khatedars was fixed as 28.2.02. Certain guidelines were also provided in the circular. Under the said guidelines, the land allotted would be residential and ordinarily in the same area where the acquired land was situated and no compensation has been taken by the Khatedar. For the purpose of allotment, under the scheme, the Local Authority was to constitute a committee of three persons, including one public representative.

Further circulars were issued on 19.3.02, 26.7.02 and 27.10.05 for the purposes of allotment of developed land where options were not submitted in time. The respondents were not submitted in time. The respondents were not concerned with the subsequent circulars because they had exercised the option in January, 2002.

5. The respondents had submitted their option/application on 15.1.02 for allotment of 15% land, in terms of circular dated 13.12.01. When nothing was done by the petitioner authority, in pursuance of the aforesaid application, a representation was filed before the Hon'ble Minister, UDH, Govt. of Rajasthan, Jaipur in the month of June, 2003 with the request for allotment of land in Vidhyadharnagar Scheme. The respondent State had called for comments in the matter from the petitioner authority. The State Government had also sought information with regard to the non payment of compensation and for not deciding the application of the respondents filed in the month of January, 2002. The State Government had found the case of the respondents suitable for allotment of land and accordingly, the petitioner authority was asked to give details of vacant plots available in Vidhyadhar Nagar Scheme.

The State of Rajasthan had also appointed a Cabinete Sub-Committee, vide circular dated 30.6.03, to consider the cases pertaining to allotment of 15% of land in lieu of compensation. The respondents and 13 other persons had accordingly, submitted a common representation before the said committee but the same could not be considered since the election process got underway and ultimately there was a change of Government.

6. On 8.9.04, the notification constituting the aforesaid committee was withdrawn and final result by the committee became defunct. Thereafter, on 1st July, 2005, the State Government had Issued an order stating, inter alia, that all those who failed to apply within the time prescribed under circular dated 13.12.02, will be allotted 15% of developed land, earmarked in Lalchandpura and Nandpura Scheme. In furtherance thereof, a lottery was held on 20th July, 2005 for allotment to the remaining claimants. The allotment letters were then issued. The respondents, being aggrieved of the said action of the petitioner authority, preferred an appeal (10/05) before the learned Tribunal. By the impugned order dated 18th October, 05, the learned Tribunal had allowed the appeal and directed the petitioner authority to give 15% developed land to the respondents in Vidhyadhar Nagar Scheme. It is against the said order of the Tribunal that the present writ petition has been preferred by the Jaipur Development Authority,

7. It would not be out of place to mention here that one Chotu Ram S/o Chunna Ram, an awardee as the respondent, had filed an appeal (79/03) before the learned Tribunal which was allowed by order dated 18th August, 2003 and the petitioners were directed to allot land to him in Vidhyadhar Nagar Scheme. The petitioner authority had then preferred a Writ Petition (144/04). The said writ petition came to be dismissed on 4.1.05. Further, it may be mentioned that the State Level Settlement Committee had also allowed 15% developed plots in Vidhyadharnagar Scheme, while deciding the cases (No. 476 and 479).

8. It was the case of respondents before the learned Tribunal that the petitioner authority had drawn the lots on 20.7.05 for allotment of 15% land in favour of khatedars whose land had been acquired for field firing range, Niwaru, but no notice in this regard was issued to him. Therefore, the respondents had filed an

appeal before the learned Tribunal, challenging the order dated 20th July, 2005 as well as the order dated 6th August, 2005 passed by the Jaipur Development Authority whereby letter of reservation was issued in furtherance of the said lottery.

9. Despite of order passed by the Tribunal on 18th October, 2005, when no further steps were taken in compliance thereof, the respondents preferred a Writ Petition (9908/08) before the High Court with the prayer, inter alia, that the JDA be directed to comply with the order passed by the appellate Tribunal. The said writ petition was allowed on 23rd October, 2008 directing the petitioner authority to implement the order passed by the learned Tribunal, within a period of two months. The petitioner authority, then filed an appeal before the Division Bench of the High Court (1879/2008) against the aforesaid order, which was dismissed on 17.11.08. Subsequently, the petitioner authority preferred a Special Leave to Appeal (2901/09) before the Hon'ble Supreme Court. In the said, appeal, notices were issued on 16.2.09 and an interim order was passed.

Meanwhile, the petitioner authority filed a writ petition before the High Court on 17.1.09 challenging the order dated 18.10.2005 passed by the learned Tribunal. The said writ petition is said to have been misplaced in the office, and thereafter, the present writ petition was re-constituted on 6.3.09.

10. The Special Leave to Petition (2901/09) then came to be disposed of by the Hon'ble Apex Court on 20.7.09, with the observation that the order passed by the Division Bench on 17.11.08 shall be subject to any order in the writ petition filed subsequently (the present writ petition), challenging the order dated 18.10.05 passed by the learned Tribunal.

11. The respondents in their appeal before JDA Tribunal had primarily challenged the order dated 6.8.05, passed by the Deputy Commissioner, Zone-12, Jaipur Development Authority. The broad facts given in the appeal were that the respondent appellant had about 69 bigha 7 biswa of land, out of 238 bighas in village Boyatwala, Tehsil and District, Jaipur which was acquired and award was passed on 26.8.1983. Further, it was stated that for the purpose of field firing range at village Boyatwala, land was given to the Army and as per the settlement arrived at between State Government and the Ministry of Defence, Government of India on 8th June, 1980 another land, in place of land at Field Firing Range, Vidhyadharnagar, was to be given in village Boyatwala. The entire expenses with regard to the acquisition was to be born by the State Government and as such, the whole responsibility came to be that of Jaipur Development Authority.

As a long period had passed since the said acquisition and the agriculturists had not been compensated that the State Government had issued an order on 13.12.01 that in lieu of the acquired land, 15% of developed land shall be given, for which option should be exercised by 28.2.02. The respondent appellants had exercised their option on 15.1.02 (Annex. R/7) which was much before the cut-off date. It is to be noted that the said application exercising option, was filed on

behalf of 13 Khatedars and the present respondents are at Serial No. 9 to 13 therein. In so far as other khatedars from Serial No. 1 to 8 are concerned, an order had already been passed by the appellate Tribunal, Jaipur and thereafter, the writ petition filed by the JDA before this Court had also come to be dismissed.

It was also stated in the appeal that as per the State Government order dated 26.6.02, land was allotted to influential persons like Inspectors Resort whose lands have been submerged in Jal Mahal. Similarly, on 25.7.2000, land was ordered to be given to Tej Narain Sharma at Vidhyadhar Nagar Scheme, in lieu of his Khasra No. 193/391 measuring 11 Bigha 5 Biswas at Gram Devari, Tehsil Sanganer Distt. Jaipur. It was stated by the respondent-appellants that other persons like Sedu S/o. Rugha, Nathu S/o Goru, Moti S/o Nathulal, Hanuman, Ramnath etc., had also been given land in lieu of their land in Gram Boyatwala which had been acquired for the purpose of field firing range.

Further, it was stated that the JDA has wrongly mentioned that no land is available at Vidhyadhar Nagar and the same is established from the document on record, particularly that of the reference proceedings. Therefore, it was prayed that the appeal against the order dated 6.8.05 passed by the Deputy Commissioner, Zone 12 be accepted and the subordinate employees of the Deputy Commissioner Zone -12 be restrained by permanent injunction from allotting 15% of developed land, in lieu of land of Khasra Nos. 2, 8, 10, 12 and 19/168, measuring 69 bighas and 7 biswa in village Boyatwala. Further, it was prayed that the land described in Para 7(c) of the appeal may not be disposed of or auctioned or allotted to any other person by the JDA.

12. Along with the appeal and in support of it, the respondent-appellants had filed affidavits; copies of registered sale deed, award, order of the State Government dated 17.11.01, 13.12.01, 17.10.02 and 19.3.03; State Government notification dated 13.12.01; the settlement arrived between the Ministry of Defence, Government of India and State Government, the judgments dated 18.8.03 and 20.10.03 passed by the Tribunal, JDA; the copy of the judgment passed by the High Court on 4.1.05; the order of the State Government dated 26.6.02 giving 50% of the developed land to Inspectors Resort and the allotment order dated 27.6.02 whereby the land was allotted in favour of Nathu Ram, Motirarn and Hanuman in lieu of acquisition of their land for the purpose of field firing range.

13. The petitioner-respondent had filed reply before the Tribunal, to the appeal submitted by the Khatedars (Annex. 10). It was stated in the reply that the land was acquired in village Niwaroo, Mansrampura, Boyatwala and Benad. An award was passed on 26th March, 1983 @ Rs.1500/- per bigha. The Khatedars-appellants had gone for reference, u/s 18 of the Land Acquisition Act, against the quantum of compensation and the learned Civil Court had enhanced the compensation to Rs. 15,000/- per bigha. Further, it was stated that the cheques in respect of the award had been deposited in the civil court and the khatedars had not accepted the same. As the awardees had not accepted the amount of

compensation and in order to settle the dispute, 15% of developed land in lieu of compensation was decided to be given, as per the Cabinet sub-committee of the State of Rajasthan. In furtherance of the orders of the State Government dated 1.7.05, land had been allotted to the Khatedars in village, Anantpura/Lalchandpura by drawing of lottery. It was also stated in the reply that the Land Acquisition Officer has no legal authority to give land in lieu of compensation. According to JDA, allotment of land has already been done to the Khatedar appellants in village Lal Chand Pura and Anantpura Schemes. The order passed by the State Government on 13.2.01 was not denied by the JDA but had stated that the khatedars had been allotted developed land, 15% of the land acquired at village Lal Chand Pura and Anant Pura. Further, it was stated in the reply that the khatedar-appellants do not have any right to be allotted land in Vidhyadharnagar Scheme. Therefore, it was requested that the appeal be dismissed with costs.

14. Accordingly, the case of the khatedar appellants before the learned Tribunal was that their land was acquired and award was passed on 26.8.83 under the provisions of the Land Acquisition Act, 1953. It was contended that the land acquired at Village Boyatwala was given to the army and in place of it, the land of field firing range at Vidhyadharnagar Scheme, Jaipur vested with the State Government, as per the settlement between the two. It was prayed that as per the order of the State Government dated 13.12.01, developed land, 15% of the land acquired, should be given to the Khatedars in lieu of compensation. Therefore, the Khatedars have right to be allotted land in Vidhyadharnagar Scheme for which they have already exercised their option. On the basis of the earlier decision given by the Tribunal, which was upheld upto to the Hon'ble Supreme Court, the Khatedar appellants claimed for allotment of land in Vidhyadharnagar Scheme. Moreover, it was contended that many people whose land did not fall within the area of field firing range, have also been given land in Vidhyadharnagar in lieu of compensation for acquisition. Such allotments have been made to benefit some persons even though their land, which was acquired, had been situated at other places.

On behalf of the petitioner, it was contended before the Tribunal that even though the land, in place of field firing range at Vidhyadharnagar scheme, was given to the defence, the khatedars whose land was acquired at Boyatwala have no right for allotment of land in Vidhyadharnagar Scheme. The khatedars have been allotted land at Anantpura and Lalchand Pura with the approval of the State Government, and JDA is bound by such orders. In respect of the earlier order of the Tribunal, it was stated that an appeal before the Division Bench is pending. Hence, the petitioners had submitted that the appeal be dismissed.

15. The learned Tribunal, having considered the contentions and pleadings of rival parties and the material on record, held that the land was acquired in village Boyatwala for field firing range and in place of it, the Ministry of Defence had handed over their land in Vidhyadharnagar Scheme to the State Government

wherein residential colony is being developed. The non applicants have accepted this in their reply but they have stated that they want to give 15% developed lands to the Khatedars in village Anantpura and Lalchand Pura. The learned Tribunal held that the value of the land in those villages is meager in comparison to that of Vidhyadhar Nagar. The learned Tribunal came to the conclusion that the Khatedars were ordered to be given 15% developed land in lieu of compensation of the land acquired but by giving them land in Lalchand Pura and Anand Pura in place of Vidhyadhar Nagar Scheme, it cannot be said that the same is of equal value, rather much less in comparison to it. Therefore, the said allotment of land would not be in lieu of the compensation of the acquired land. The learned appellate Tribunal had concluded that the allotting of land to the khatedars-applicants at village Anantpura and Lal Chand Pura, cannot be said to be justified when other similarly situated persons had been allotted land in Vidhyadharnagar Scheme, even though the case of the appellants is not different from them. It was also held that land is still available in Vidhyadhar Nagar Scheme and transfer/allotment of said land to persons, other than the khatedars whose lands have been acquired for field firing range, are not entitled to it. Therefore, the appeal was allowed and the petitioner non applicant was directed not to allot or transfer any land at Vidhyadhar Nagar before allotment of 15% developed land to respondent/appellants.

16. The learned Counsel for the appellant has, by and large reiterated the contentions raised before the learned Tribunal and submitted that the list for allotment of 15% developed land to respondent Khatedars had already been prepared on 20.7.2005 (Annexure-8) and thereafter a lottery was drawn on 6.8.05 (Annex. 13). Further, he has submitted that now there is no land available in Vidhyadhar Nagar Scheme so as to allot developed land to the khatedars. This fact was confronted by the learned Counsel for the respondents, and therefore, the Court had directed the petitioner to file an affidavit with regard to the allotment of land made in Vidhyadharnagar Scheme since February, 2002. In compliance thereof, an additional affidavit has been filed by the Officer-in-charge, on behalf of the petitioner authority. It was also contended by the counsel for the petitioner that the land available in Vidhyadhar Nagar, is only commercial land and that cannot be allotted to the Khatedars in lieu of the compensation for acquisition of their land. He has also submitted that the land in village Anant-Pura is not very far off from the land of Vidhyadhar Nagar Scheme, nor there is much difference in the value of the two. It is also contended that the learned Tribunal did not have the jurisdiction to entertain the appeal filed by the respondents as the relief sought was beyond its powers.

17. On the other hand, the learned Counsel for the khatedar-respondents have at the very outset, raised a preliminary objection that the impugned order has sought to be challenged after a period of about three and half years, and therefore, the writ petition is hopelessly time barred and deserves to be dismissed on the ground of delay and laches. Further, he has submitted that the order passed by the learned Tribunal is a reasoned one and does not suffer from

any illegality or jurisdictional error so as to call for any interference by this Court, in exercise of its extraordinary powers under Article 227 of the Constitution of India. It is also submitted that the writ petition deserves to be dismissed also on account of the fact that it is contrary to the rules of the High Court, as it is not supported by an affidavit of the competent person. He has also submitted that the learned Tribunal did have the jurisdiction to hear an appeal against the order dated 6.8.05 whereby lottery was drawn and allotment order was issued to the Khatedars for land situated in village Anant Pura and Lalchand Pura in lieu of their lands which was acquired for the purpose of field firing range at Boyatwala.

Further, he has submitted that it is wholly incorrect to say that the land was not available at Vidhyadhar Nagar Scheme as it is clearly revealed from the record of the petitioner authority itself. In this regard, he has referred to the office noting dated 19.7.07 at Para 330 which is on record at Page 242 of the paper book. He has also invited the attention of this Court to the option exercised by the Khatedars including the respondents on 15.1.02 which is on record as Annex. R/7 wherein the total number of applicants were 13 in number and the present respondents are at Serial No. 9 to 12. He has submitted that the respondents had not only exercised their options very much in time but other khatedars who were the co-applicants thereof have already been allotted 15% developed land and they have been left out without any just cause. He has also referred to Annex. R./8 at Page 238 of the paper book.

18. Having given my anxious and thoughtful consideration to the submissions made by the counsel for the rival parties and taking into consideration the aforesaid facts and circumstances of the case as well as the material on record, I am of the considered opinion the preliminary objections raised by the learned Counsel for the respondent has merit. By recapitulating the facts mentioned herein above, it is crystal clear that the order was passed by the learned Tribunal as back as on 18.10.05 and it is an undisputed fact that the present writ petition has been filed only on 17.1.09, challenging the said order of the learned Tribunal. It is also significant to note that after passing of the impugned order dated 18.10.05, when the petitioner authority had not made any compliance in furtherance thereof, the respondents had filed a Writ Petition (9908/08), before the High Court with a prayer, inter-alia, that the JDA should be directed to comply the same. The said writ petition was decided, wherein the petitioners were duly represented, on 23.10.08 directing the petitioner authority to implement the order passed by the Tribunal within a period of two months. Thereafter, the petitioner authority sought to challenge the order of the learned Single Judge, by preferring an appeal before the learned Division Bench of the High Court (1879/08) which came to be dismissed on 17.11.08.

19. It is pertinent to note here that while dismissing the Special Appeal, the learned Division Bench had observed that the said order would not preclude the appellant JDA from now challenging the above-referred order of the Tribunal on its own merit. But for the reasons best known to the petitioners, no writ petition

challenging the order of the Tribunal was filed immediately thereafter and they preferred a Special Leave to Appeal (2901/09) before the Hon''ble Supreme Court against the order of learned Division Bench. Thereafter, the writ petition is said to have been filed on 17.1.09 against the order of the learned Tribunal which was never seriously taken up, as a result of which the same is said to have been misplaced in the office of the High Court. The petitioner had appeared to be more serious to pursue the special leave to appeal before the Hon''ble Supreme Court, which they did and had the notices issued on 16.2.09 and an interim order was passed.

According to the petitioner, they had reconstituted the file which was misplaced by the office on 6.3.09. Nothing appears to have been done by the petitioner to pursue the present writ petition, even thereafter. It was only when the SLP came to be decided by the Hon''ble Supreme Court on 20.7.09 that the petitioners had taken up the present petition and sought appropriate order on 12.8.2009 for reconstitution of file. In other words, the petitioner has sought to challenge in this petition the impugned order dated 18.10.05 with an extraordinary delay of more than three years and three months. It is to be noted that the present petition under Article 227 of the Constitution of India, has been filed challenging the order dated 18.10.2005 passed by the learned appellate Tribunal, JDA, Jaipur in Appeal No. 107/05, being fully aware about the passing of the impugned order as the appeal before the Tribunal was contested by the petitioner and the same was decided in their presence. Even then the petitioner had not approached this Court soon thereafter, seeking to challenge the order of the Tribunal which was admittedly against them. The petitioner preferred to file the present writ petition only on 17.1.09.

20. It is also relevant to mention here that the contest between the parties, in the present case, was not over merely by passing of the impugned order on 18.10.05 by the learned appellate Tribunal, but subsequent to it the respondents had approached this Court by filing a writ petition for compliance of the same by the present petitioner. Notices of the said writ petition were issued to the petitioners and it was in their presence that the same was allowed in favour of the respondents on 23.10.08. The petitioner authority had then preferred to file a Special Appeal against the said order passed by the learned Single Judge. The petitioner has pursued the Special Appeal and after hearing both the parties, the learned Division Bench dismissed the same on 17.11.08. Even at this stage, the petitioner authority did not choose to challenge the order of the learned Appellate Tribunal dated 18.10.05, despite of the fact that the learned Division Bench had categorically observed that the petitioner authority may now challenge the order of JDA Tribunal on its own merit.

It is an undisputed fact that immediately thereafter, i.e. on 17.11.08, the petitioner authority did not challenge the order of the learned Tribunal dated 18.10.05 by way of filing the writ petition. It was only on 17.1.09 that a writ petition challenging the order of the learned appellate Tribunal is said to have

been filed but not followed to be taken up for hearing and as such, it was misplaced in the office. Thereafter, the petitioner authority reconstituted the file but neither any appropriate orders for reconstitution of file was sought from the Court, nor the said writ petition was taken up before the Court. It was only after the decision of the Apex Court on 20.7.09 that the petitioners filed an application on 10.8.09 seeking permission to reconstitute the file. The said application was allowed on 12.8.09,

21. The first and foremost question which arises for consideration before this Court is as to whether In the facts and circumstances, as referred to above, the present writ petition suffers from delay and laches, or it would be just and proper for this Court to exercise Its discretion for condoning such inordinate and unexplained delay in filing of It. Needless to say, there is no specific limitation in so far as filing of a writ petition under Article 226/227 is concerned and there is no legal bar also In entertaining a writ petition which is filed belatedly. But it is an equally settled principle of law that while considering the question of delay and laches, the Court has also to see the intervening circumstances as well as the conduct of the parties before exercising its discretion in favour of the petitioner.

22. As back as in the year 1874, the Privy Council in the case of Lindsay Petroleum Co. v. Prosper Armstrong Hurd (1874) 5 PC 221, had observed as under:

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 the 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, if founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, 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.

The said observation in regard to doctrine of laches in courts of equity made by Sir Barnes Peacock had been approved by the Hon''ble Supreme Court in the case of Moon Mills Ltd. v. MR Meher AIR 1967 SC 1450 and in the case of Maharashtra State Road Transport Corporation Vs. Balwant Regular Motor Service, Amravati and Others,

In the case of State of M.P. and Others Vs. Nandlal Jaiswal and Others, , the Hon''ble Supreme Court held that the High Court in exercise of its discretion does

not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction.

23. In the case of Hari Singh and Others Vs. State of U.P. and Others, , it was held that "any interference in this case filed after two and a half years with the acquisition proceedings is likely to cause serious public prejudice. This appeal should, therefore, fail on the ground of delay alone."

Later, in the case of Lipton India Ltd. and Others Vs. Union of India (UOI) and Others, and in M.R. Gupta Vs. Union of India and others, it was held by the Hon"ble Supreme Court that although there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, ordinarily writ petition should be filed within a reasonable time. Subsequently, in the case of Government of West Bengal Vs. Tarun K. Roy and Others, Chairman, U.P. Jal Nigam and Another Vs. Jaswant Singh and Another, and Karnataka Power Corporation Limited through its Chairman and Managing Director and Another Vs. K. Thangappan and Another, similar principle was laid down.

24. The learned Counsel for the petitioner had submitted that this Court while exercising the writ jurisdiction, should not be guided merely by limitation or delay. In support of his submissions, he has placed reliance on the case of A.S. Chauhan v. Rajasthan State Electricity Board and Anr. 1993 WLC (Raj.) 681. It would be suffice to say that the said case was decided not only in a different facts situation, but the learned court, in Para 12 and 13, had held as under:

Delay by itself is not a ground which disentitles a petitioner to seek relief from the High Court. Delay accompanied by negligence amounts to laches and that can be a ground for High Court to decline to entertain a writ petition. The rational of this approach is that in large number of cases rights of the parties get settled the passage of time and the Courts by issue of writ will be doing greater injustice if settled rights are unsettled. Precisely, this was the consideration which prevailed with the Apex Court.

In Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, Their Lordships of the Supreme Court observed:

Utmost expedition is the sine qua non for such claims. The party aggrieved must explain satisfactorily all semblance of delay. No period can be indicated which may be regarded as the ultimate limit of action for that would be taking upon itself legislative functions. In England a period of six 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, each case will have to be considered on its own facts. Avoidable delay effecting the merits of the claim, will disentitle a party to invoke the extra-ordinary jurisdiction.

13. In Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra

and Others, their Lordships referred to the decision in *Trilok Chand Moti Lal v. H.B. Munshi* (supra) and observed:

The rule which says that a Court may not inquire into belated or stale claims is not a rule of law but a rule of practice based on sound and proper exercise of discretion, and there is no unavoidable rule that whenever there is delay the Court must necessarily refuse to entertain the petition. The question is one of discretion to be followed on the facts of each case.

It may be noted that the principle on which the Court proceeds in refusing relief to the petitioner on ground of laches or delay is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there was reasonable explanation for the delay.

25. Another case, on which the counsel for the petitioner had placed reliance was that of *Firdos Khan v. State of Raj.* 2000 WLC (Raj.) 127. It was a case where the learned Single Judge had dismissed the writ petition on the ground of delay and laches after having admitted the same. Therefore, the learned Division Bench accepted the appeal and remitted the case back to the learned Single Judge with a request to dispose of the same on merits.

26. In the case of *Uttaranchal Forest Development Corpn. and Another Vs. Jabar Singh and Others*, the Hon"ble Supreme Court in Para 43 held as under:

43. ...It is not in dispute that the effective alternative remedy was not availed of by many of the workmen as detailed in paragraphs supra. The termination order was made in the year 1995 and the writ petitions were admittedly filed in the year 2005 after a delay of 10 years. The High Court, in our opinion, was not justified in entertaining the writ petition on the ground that the petition has been filed after a delay of 10 years and that the writ petitions should have been dismissed by the High Court on the ground of laches.

Similarly, in the case of *New Delhi Municipal Council Vs. Pan Singh and Others*, , it was observed as under:

There is another aspect of the matter which cannot be lost sight of. Respondents herein filed a Writ Petition after 17 years. They did not agitate their grievances for a long time. They as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the Writ Petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the Court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction. See. *Government of West Bengal Vs. Tarun K. Roy and Others*, *Chairman, U.P. Jal Nigam and Another Vs. Jaswant Singh and Another*, and *Karnataka Power*

Corporation Ltd. through its Karnataka Power Corporation Limited through its Chairman and Managing Director and Another Vs. K. Thangappan and Another, Although, there is no period of limitation provided for filing a Writ Petition under Article 226 of the Constitution of India, ordinarily, Writ Petition should be filed within a reasonable time...

In a recent case of Khoday Distilleries Limited v. Scotch Whisky Association and Ors. (2008) 10 SCC 723, the Hon"ble Supreme Court had applied the principle of waiver and acquiescence being a case involving equity and justice. Conduct of the parties has also been considered to be a ground of attracting the doctrine of estoppel by acquiescence or waiver.

27. Besides, the matter was taken up on merits also and the learned Counsel for the respective parties had advanced their arguments in respect of it.

As regards the stand taken by the counsel for the petitioner that the learned appellate Tribunal had no jurisdiction to entertain the matter of the present nature, it would suffice to say that apart from the fact that the respondents had filed an appeal before the Tribunal (Annex. 9) challenging the order dated 6.8.05 passed by the Deputy Commissioner Zone-12 of JDA, a bare perusal of the reply (Annex. 10) to the appeal filed on behalf of the petitioner before the learned Tribunal goes to show that no such objection was taken up before it. Even the impugned order passed by the learned Tribunal reveals that no objection with regard to its jurisdiction was taken up on behalf of the petitioner. The other contention raised by the learned Counsel for the petitioner that there is no land available for allotment to the respondents also deserves to be negated. It is to be noted that the petitioner had exercised their options for 15% developed land, in lieu of compensation, on 15.1.07 alongwith other Khatedars (Annex. R/7) and some of them had been given the land. Therefore, there was no just reason for the petitioner not to have allotted developed lands to the respondents at that time. Moreover, it is so revealed from the record, as for instance, the letter dated 16.10.07 issued by the Secretary, JDA to the Deputy Secretary to the Chief Minister, State of Rajasthan, Jaipur (Annex R/6), the note sheet dated 19.7.07 which is on record at page 242 of the paper book.

In reply to specific directions given to the petitioner to file an affidavit in regard to the allotment of land made in Vidhyadhar Nagar Scheme from February, 2005 to August, 2005 and onwards, an additional affidavit has been filed by the Deputy Commissioner, who is also the officer in charge. A perusal of the said affidavit goes to show that it does not satisfy with the information which was sought by the Court with regard to allotment of land in Vidhyadhar Nagar Scheme, The Additional Director (Revenue and Property Disposal) vide letter dated 27.10.09 has given the details in respect of allotment of land to the institutions and obviously so because the letter of Deputy Commissioner, Zone-12 seeking information from him speaks only about institutional allotments. Similarly, in a subsequent letter of 23.10.09 the Additional Director has given information with regard to the auction of commercial land at Vidhyadhar Nagar

from November, 2005 onwards. As far as the information furnished with regard to allotment made to Shyam Bihari Sharma is concerned, the letter dated 16.5.07 (Annex. 25) goes to show that the allotment was made to him of Plot No. 3/251 after the decision of the High Court dated 16.4.07; much later to the decision given by the learned Tribunal i.e. 18.10.05. It is also note worthy that S,B. Sharma, was allotted new plot on the same rate, conditions, regulations etc. The amount already deposited by him was also adjusted. In no case, the additional affidavit filed by the officer of the petitioner authority does furnish the information with regard to allotment of land for residential purposes since February, 2002 to August, 2002 in respect of which, the Court had issued directions. In fact, the additional affidavit and the documents annexed thereto shows that the specific directions issued by the Court has not been complied with so as to furnish the information which was actually sought for.

28. It may also be noted here that other, similarly situated khatedars whose land was acquired for the purpose of field firing range at village Boyatwala, such as Chotu S/o Chuna and the khatedars which were at Serial No. 1 to 8 in the application for exercise of option, filed on 15.1.07; Sedu S/o Rugha, Nathu S/o Goru, Moti S/o Nathulal, Hanuman, Ramnath etc., had also been allotted land in Vidhyadhar Nagar and a copy of the allotment dated 27.1.02 issued in favour of the said khatedars had also been placed on record by the respondent before the appellate Tribunal. The instant acquisition made by the State Government for the purpose of field firing range to be established at village Boyatwala was in fact to shift the firing range from Vidhyadhar Nagar Scheme. The Ministry of Defence, Government of India had entered into a settlement with the State Government to hand over the land of the firing range in Vidhyadhar Nagar Scheme, in place of new one at village Boyatwala. Therefore, it was incumbent for the State Government to have first allotted the land of the firing range at Vidhyadhar Nagar to the khatedars @ of 15% developed land in lieu of compensation of their land acquired in village Boyatwala. According to the petitioner, only two such khatedars have been allotted the land in Vidhyadhar Nagar Scheme. The petitioner has failed to furnish full information with regard to the allotment of land on which the field firing range was situated at Vidhyadhar Nagar Scheme.

29. The respondents had to approach the learned appellate Tribunal when their rights were effected and they had the apprehension that they would not be allotted the land in Vidhyadhar Nagar Scheme. The learned Tribunal had thoroughly considered the facts and circumstances of the case; the contentions of the respective parties and also the material on record placed by them. It had also taken into consideration the fact that persons other than the one whose land was acquired for the purpose of field firing range in village Boyatwala, had been allotted land in Vidhyadhar Nagar, as for instance, the one from Jal Mahal, Sanganer etc. Further it took note of the fact that similarly situated persons have been allotted land in Vidhyadhar Nagar Scheme but not the respondents.

Recently, a Division Bench of this Court in a similar matter of acquisition where

developed land was to be given to the Khatedars in lieu of compensation, in the case of *State of Raj. v. Rajasthan Housing Board and Anr.* DB Special Appeal (Civil) No. 13/2001, decided on 29.10.2009, has held as under:

There is substance in the plea of the learned Counsel for the applicant. The State should deal with all the citizens with equal yard stick. If the judgment of the Court is not made applicable, there shall be discrimination against the applicant by the Court.

30. Therefore, in my considered opinion, the learned appellate Tribunal has not committed any illegality or jurisdictional error so as to call for any interference by this Court. Moreover, this Court while exercising powers under Article 226/227 of the Constitution has to proceed in accordance with the settled position of law.

As back as in the year 1952, the Hon"ble Supreme Court had, in the case of *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, had laid down in Para 20, as under:

Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decisions impugned and decide what is the proper view to be taken or the order to be made.

The said principle was reiterated by the Apex Court in many case subsequently as for instance, in the case of *Shri Ambica Mills Co. Ltd. Vs. S.B. Bhatt and Another*, in Para 8, the Hon"ble Supreme Court had observed thus:

The question about the nature and extent of the jurisdiction of the High Courts in issuing a writ of certiorari under Article 226 has been the subject matter of several decision of this Court. It is now well settled that the said writ can be issued not only in cases of illegal exercise of jurisdiction but also to correct error of law apparent on the face of the record. In this connection it may be pertinent to refer to the observations made by Denning, L.J., in *Rex v. North-umberland Compensation Appeal Tribunal 1952 (1) KB 338* ." The writ has been supposed to be confined to the correction of excess of jurisdiction," observed Lord Justice Denning," and not to extend to the correction of errors of law; and several Judges have said as much. But the Lord Chief Justice has, in the present case, restored certiorari to its rightful. position and shown that it can be used to correct errors of law which appear on the face of the record eve though they do not go to jurisdiction." There is no doubt that it is only errors of law which are apparent on the face of the record that can be corrected, and errors of fact, though they may be apparent on the face of the record, cannot be corrected

vide: Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others,

31. In the case of Surya Dev Rai Vs. Ram Chander Rai and Others, held as under:

Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:

(1) Amendment by Act No. 46 of 1999 with effect from 1.7.2002 in Section 115 of CPC cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the Courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction - by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial

conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in super session or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

Similarly, in the case of B.K. Muniraju Vs. State of Karnataka and Others, the Hon"ble Supreme Court has laid down in Para 22, as under:

22. It is settled law that a writ of certiorari can only be issued in exercise of extraordinary jurisdiction which is different from appellate jurisdiction. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals or authorities in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice. In regard to a finding of fact recorded by an inferior tribunal or authority, a writ of certiorari can be issued only if in recording such a finding, the tribunal/authority has acted on evidence which is legally inadmissible, or has refused to admit an admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. It is needless to mention that a pure error of fact, however grave, cannot be corrected by a writ.

32. For the aforesaid reasons, I am of the considered opinion that the submissions made by the counsel for the petitioner has no force and this writ petition deserves to be dismissed on merits as well as on the ground of delay and laches. No case for interference in the order passed by the learned appellate Tribunal on 18.10.05, in exercise of extraordinary powers of this Court under Article 227, is made out.

Consequently, the writ petition is dismissed as being devoid of merits. The order dated 18.10.05 passed by the appellate Tribunal, Jaipur Development Authority, Jaipur is affirmed. There shall be no order as to costs.

The contempt petition be detached from the writ petition for consideration in regular course.