
(2014) 08 SHI CK 0091
In the High Court Of Himachal Pradesh
Case No : LPA Nos. 48 and 1 of 2011

Kirti Devi

APPELLANT

Vs

Satija Rajesh N
 Satija Rajesh N Vs State of Himachal Pradesh

RESPONDENT

Date of Decision : 26-08-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 19 Rule 19
Constitution of India, 1950 — Article 226

Citation : (2014) 08 SHI CK 0091

Hon'ble Judges : Mansoor Ahmad Mir, C.J.;Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : J.L. Bhardwaj and Ajay Mohan Goel, Advocate for the Appellant; Shrawan Dogra, Advocate General, Romesh Verma, V.S. Chauhan, Additional Advocate Generals, J.K. Verma, Kush Sharma, Deputy Advocate Generals, Bhupender Gupta, Senior Advocate, Janesh Gupta, Ajay Mohan Goel, Charu Gupta and L. Bhardwaj, Advocate for the Respondent

Judgement

Mansoor Ahmad Mir, C.J.—This judgment shall govern both these Letters Patent Appeals, which are outcome of the judgment, dated 22nd December, 2010, made by the Writ Court in CWP No. 1483 of 2007, titled as Satija Rajesh N. versus State of H.P. and others, whereby the writ petition filed by the writ petitioner-appellant in LPA No. 48 of 2011 came to be allowed with a direction to writ respondent No. 2-HIMUDA to initiate fresh process in case it still intended to lease out the property (hereinafter referred to as "the impugned judgment").

2. Shri Ashish Satija, being the attorney holder of one Shri Satish Rajesh N., filed the writ petition for quashing the procedure drawn by HIMUDA whereby bid of writ respondents No. 3 and 4-appellants in LPA No. 1 of 2011 in respect of a partly built space measuring 331.80 sq. mtrs. situate in Shimla Town for raising construction of Cafeteria was accepted and also for cancellation of the lease deed executed, on the grounds taken in the writ petition.

3. The writ respondents, i.e. the appellants in LPA No. 1 of 2011 and HIMUDA contested the writ petition. The writ Court, after examining the pleadings of the parties, quashed the lease granted in favour of writ respondents No. 3 and 4-appellants in LPA No. 1 of 2011 and also provided that writ respondent No. 2-HIMUDA is at liberty to lease out the property by issuing a fresh process, if it intended to do so.

4. Writ respondents No. 3 and 4-appellants in LPA No. 1 of 2011, feeling aggrieved by the impugned judgment, questioned the same by the medium of LPA No. 1 of 2011 on the grounds that the writ Court has fallen in error while granting the writ petition and has also not discussed all the points raised in the reply including the preliminary objections raised by them viz-a-viz maintainability of the writ petition; the writ Court has also determined the disputed question of facts, which cannot be gone through in a writ petition; the writ petition is hit by the doctrine of delay and laches and the writ petitioner is caught by law of waiver and acquiescence.

5. It is contended that the process drawn in leasing out the property in question is legal one, the lease deed executed is also valid and the writ petition was required to be dismissed.

6. The writ petitioner-appellant in LPA No. 48 of 2011 has also questioned the impugned judgment by the medium of LPA No. 48 of 2011 on the grounds that the writ Court has fallen in error in directing writ respondent No. 2-HIMUDA to initiate fresh proceedings in case it is still interested in leasing out the subject matter of the writ petition; the writ petitioner was the lowest bidder, the lease was to be made in his favour and writ respondent No. 2-HIMUDA has to execute the lease deed in his favour. Learned counsel for the writ petitioner-appellant in LPA No. 48 of 2011 prayed that the impugned judgment be modified by directing writ respondent No. 2-HIMUDA to lease out the said property in favour of the writ petitioner-appellant in LPA No. 48 of 2011 and also to execute the lease deed.

7. We have heard the learned counsel for the parties and gone through the pleadings of the parties, including the documents annexed with the pleadings.

8. The writ respondents, i.e. writ respondent No. 2-HIMUDA and writ respondents No. 3 & 4-appellants in LPA No. 1 of 2011, have resisted the writ petition on the grounds that the entire proceedings were legal; writ respondents No. 3 and 4-appellants in LPA No. 1 of 2011 were the successful bidders/lowest bidders, the property came to be rightly allotted in their favour and the lease deed executed is valid and legal one.

9. Writ respondents No. 2, 3 and 4 have also resisted the writ petition on the ground that when the bids were opened, the parties have signed the document, i.e. Annexure R/2-7, which is at page 140 of the writ record and none of the parties has raised any objection about the receiving of the bids and opening of the same; even there is no ambiguity or any correction or any tampering on the

said document.

10. The filing of the writ petition is just an afterthought, that too, after long delay. The writ petitioner-appellant in LPA No. 48 of 2011 is caught by his own conduct.

11. The writ respondents have also pleaded that the writ petition is hit by doctrines of delay and laches, waiver and acquiescence.

12. Admittedly, the advertisement notice was made on 14th March, 2006; bids were submitted on 14th September, 2006; were opened on 15th September, 2006 and the writ petition came to be filed on 31st August, 2007, which is after lapse of about one year. The writ petitioner has not explained the delay.

13. Learned counsel for the writ petitioner-appellant in LPA No. 48 of 2011 argued that the writ petitioner has specifically averred in the writ petition that the protest letter was written by him and proforma respondent No. 6 in the writ petition on 15th September, 2006, and they have made representations right from 15th September, 2006 till 31st January, 2007.

14. We have gone through the writ petition. It appears that the writ petitioner has made representation on 31st January, 2007 and has also written letters right from 16th September, 2006, till 31st January, 2007. There is no whisper in the writ petition as to whether the writ petitioner has made any representation after 31st January, 2007, till filing of the writ petition, i.e. 31st August, 2007, and why the writ petitioner waited till 31st August, 2007.

15. Learned counsel for the writ respondents argued that the writ petition was not maintainable also on the ground that the writ petition has been filed by attorney holder, namely Shri Ashish Satija, not by Shri Satija Rajesh and affidavit filed is not in accordance with law.

16. We have gone through the affidavit annexed with the writ petition. While going through the same, it appears that it has been filed by Shri Ashish Satija not in the capacity of attorney holder, but as if he was himself the writ petitioner, is not in accordance with law and procedure, particularly, Order 19 of the CPC (hereinafter referred to as "the CPC").

17. The writ petitioner has also not at all denied the factum of the said document (supra), i.e. Annexure R/2-7. He has not explained how and why he has signed the same.

18. It is apt to reproduce Annexure R/2-7 annexed with the writ petition, which is at page 140 of the paper book of the writ petition, herein:

19. From a bare perusal of the said document, it appears that three persons/firms have responded to the tender notice and have offered bids, bids were opened in their presence by HIMUDA and all the bidders have signed the document including the writ petitioner. None of them has made any protest, have accepted the receiving of bids by three persons/firms, were opened and writ

respondents No. 3 & 4 were found to be lowest and successful bidders. None has raised any whisper about participation of writ respondents No. 3 and 4 in the tender process.

20. No doubt, the writ petitioner has filed representations, but filing of representation is no excuse for explanation of delay. Neither there is any pleading to this effect nor there is any document on the record to explain the delay. It is averred in the writ petition that the last representation was made on 31st January, 2007, but the reason for not filing the writ petition with effect from 31st January, 2007, till 31st August, 2007, has also not been explained. Thus, the writ petitioner is caught by the doctrine of delay and laches.

21. The Apex Court in a case titled as R and M Trust Vs. Koramangala Residents Vigilance Group and Others, , held that delay is a very important factor while exercising extraordinary jurisdiction under Article 226 of the Constitution; delay defeats equity and delay cannot be brushed aside without any plausible explanation. It is apt to reproduce para 34 of the judgment herein:

"34. There is no doubt that delay is a very important factor while exercising extraordinary jurisdiction under Article 226 of the Constitution. We cannot disturb the third-party interest created on account of delay. Even otherwise also why should the Court come to the rescue of a person who is not vigilant of his rights?"

22. The Apex Court in cases titled as S.D.O. Grid Corporation of Orissa Ltd. and Others Vs. Timudu Oram, , and Sri Srinivasa Bhat (D) by L.Rs. and Others Vs. Sri A. Sarvothama Kini (D) by L.Rs. and Others, , has also discussed the same principle. It would be profitable to reproduce para 9 of the judgment in Timudu Oram's case (supra) herein:

"9. In the present case, the appellants had disputed the negligence attributed to it and no finding has been recorded by the High Court that the GRIDCO was in any way negligent in the performance of its duty. The present case is squarely covered by the decision of this Court in Chairman, Grid Corporation of Orissa Ltd. (Gridco) and Others Vs. Smt. Sukamani Das and Another, . The High Court has also erred in awarding compensation in Civil Appeal No. of 2005 (arising out of SLP (C) No. 9788 of 1998). The subsequent suit or writ petition would not be maintainable in view of the dismissal of the suit. The writ petition was filed after a lapse of 10 years. No reasons have been given for such an inordinate delay. The High Court erred in entertaining the writ petition after a lapse of 10 years. In such a case, awarding of compensation in exercise of its jurisdiction under Article 226 cannot be justified."

23. It would also be apt to reproduce para 39 of the judgment rendered by the Apex Court in Bhakra Beas Management Board Vs. Krishan Kumar Vij and Another, , herein:

"39. Yet, another question that draws our attention is with regard to delay and

laches. In fact, respondent No. 1's petition deserved to be dismissed only on that ground but surprisingly the High Court overlooked that aspect of the matter and dealt with it in a rather casual and cursory manner. The appellant had categorically raised the ground of delay of over eight years in approaching the High Court for grant of the said relief. But the High Court has simply brushed it aside and condoned such an inordinate, long and unexplained delay in a casual manner. Since, we have decided the matter on merits, thus it is not proper to make avoidable observations, except to say that the approach of the High Court was neither proper nor legal."

24. The writ petitioner has averred in the writ petition that he has made representations. The last representation was made on 31st January, 2007, to the Chief Minister and thereafter, no representation was made.

25. The moot question, which arises for consideration, is-whether submission of a letter or a representation can be a ground to condone the delay? The answer is in negative for the reason that when an aggrieved party pursue a cause and despite making letters/representations, his grievance is not redressed, he has to seek appropriate remedy, as early as possible, and, that too, an equitable remedy without inordinate delay and mere filing of representations here and there cannot be a ground to condone the delay.

26. The Apex Court has considered the same issue and point in a case titled as Delhi Administration and Others Vs. Kaushilya Thakur and Another, . It is apt to reproduce para 10 of the judgment herein:

"10. We have heard Shri H.P. Raval, learned Additional Solicitor General and Shri Rishikesh, learned counsel for respondent No. 1 and perused the record. In our view, the impugned order as also the one passed by the learned Single Judge are liable to be set aside because,

(i) While granting relief to the husband of respondent No. 1, the learned Single Judge overlooked the fact that the writ petition had been filed after almost 4 years of the rejection of an application for allotment of 1000 sq. yards plot made by Ranjodh Kumar Thakur. The fact that the writ petitioner made further representations could not be made a ground for ignoring the delay of more than 3 years, more so because in the subsequent communication the concerned authorities had merely indicated that the decision contained in the first letter would stand. It is trite to say that in exercise of the power under Article 226 of the Constitution, the High Court cannot entertain belated claims unless the petitioner offers tangible explanation State of Madhya Pradesh Vs. Bhailal Bhai and Others, .

(ii) The claim of Ranjodh Kumar Thakur for allotment of land was clearly misconceived and was rightly rejected by the Joint Secretary (L&B), Delhi Administration on the ground that he was not the owner of land comprised in khasra No. 70/2. A bare reading of Sale Deed dated 12.7.1959 executed by Shri Hari Chand in favour of Ranjodh Kumar Thakur shows that the former had sold

land forming part of khasra Nos. 166, 167 and 168 of village Kotla and not khasra No. 70/2. This being the position, Ranjodh Kumar Thakur did not have the locus to seek allotment of land in terms of the policy framed by the Government of India. The payment of compensation to Ranjodh Kumar Thakur in terms of the award passed by the Land Acquisition Collector and the enhanced compensation determined by the Reference Court cannot lead to an inference that he was the owner of land forming part of Khasra No. 70/2. In any case, before issuing a mandamus for allotment of 1000 square yards plot to the writ petitioner, the High Court should have called upon him to produce some tangible evidence to prove his ownership of land forming part of Khasra No. 70/2. Unfortunately, the learned Single Judge and the Division Bench of the High Court did not pay serious attention to the stark reality that Ranjodh Kumar Thakur was not the owner of land mentioned in the application filed by him for allotment of 1000 square yards land."

27. The Apex Court in a latest case titled as Chennai Metropolitan Water Supply and Sewerage Board and Others Vs. T.T. Murali Babu, , has taken into consideration all the judgments and the development of law and held that delay cannot be brushed aside without any reason. It is apt to reproduce paras 13 to 17 of the judgment herein:

"13. First, we shall deal with the facet of delay. In Maharashtra State Road Transport Corporation Vs. Balwant Regular Motor Service, Amravati and Others, , the Court referred to the principle that has been stated by Sir Barnes Peacock in Lindsay Petroleum Co. v. Hurd, (1874) LR 5 PC 221, which is as follows: (Maharashtra State Road Transport Corporation Vs. Balwant Regular Motor Service, Amravati and Others,)

"11.Now the doctrine of laches in Courts of Equity is not an arbitrary or a 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." (Lindsay Petroleum Co. case, PC pp/239-40)"

14. In State of Maharashtra Vs. Digambar, , while dealing with exercise of power of the High Court under Article 226 of the Constitution, the Court observed that: (SCC p. 692, para 19)

"19. Power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct."

15. In State of M.P. and Others Vs. Nandlal Jaiswal and Others, , the Court observed that: (SCC p. 594, para 24)

" 24. it is well settled that power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic."

It has been further stated therein that: (State of M.P. and Others Vs. Nandlal Jaiswal and Others,)

"24. If there is inordinate delay on the part of the petitioner in filing a petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction."

Emphasis was laid on the principle of delay and laches stating that resort to the extraordinary remedy under the writ jurisdiction at a belated stage is likely to cause confusion and public inconvenience and bring in injustice.

16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant-a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

17. In the case at hand, though there has been four years" delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any

justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others" ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons-who compete with "Kumbhakarna" or for that matter "Rip Van Winkle". In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold."

28. Applying the principles to the instant case, the delay is writ large on the face of the record and writ petition ought to have been dismissed only on that count.

29. The disputed questions of facts have been raised by the writ petitioners, particularly in paras 8, 9 and 10 of the writ petition, which cannot be gone through by the writ Court. It was for the writ petitioner to prove, at least, prima facie, the grounds taken in paras 8, 9 and 10 of the writ petition.

30. The writ Court has made discussions in the judgment as if it was determining a civil suit, after going through the entire trial, i.e. after framing issues and leading evidence.

31. The writ Court has also brushed aside the affidavit filed by the Chief Executive Officer of writ respondent No. 2-HIMUDA, who has mentioned in the affidavit that the bid of the successful bidders-appellants in LPA No. 1 of 2011 was received on 14th September, 2006. How the writ Court came to the conclusion that the affidavit of the Chief Executive Officer is not correct or it should have been supported by other affidavits. It appears that the writ Court has fallen in error in returning findings on disputes questions of facts.

32. The Apex Court in a case titled as D.L.F. Housing Construction (P) Ltd. Vs. Delhi Municipal Corpn. and Others, , has held that the disputed question of facts cannot be gone through by the writ Court and the writ Court cannot return findings on disputed questions of facts. It is apt to reproduce para 18 of the judgment herein:

"18. In our opinion, in a case where the basic facts are disputed, and complicated questions of law and fact depending on evidence are involved the writ court is not the proper forum for seeking relief. The right course of the High Court to follow was to dismiss the writ petition on this preliminary ground, without entering upon the merits of the case. In the absence of firm and adequate factual foundation, it was hazardous to embark upon a determination of the points involved. On this short ground while setting aside the findings of the High Court, we would dismiss both the findings of the High Court, we would

dismiss both the writ petition and the appeal with costs. The appellants may if so advised, seek their remedy by a regular suit."

33. The same principle has been laid down by the Apex Court in Daljit Singh Dalal (dead) through L.Rs., Vs. Union of India and others, and Chairman, Grid Corporation of Orissa Ltd. (Gridco) and Others Vs. Smt. Sukamani Das and Another, .

34. The Apex Court in a case titled as State of Karnataka and Others Vs. KGSD Canteen Employees Welfare Association and Others, , has held that High Court should not exercise its powers under Article 226 of the Constitution of India in cases where disputed questions of facts have been raised. It is apt to reproduce paras 37 and 40 of the judgment herein:

"37. In a case of this nature, where serious disputed questions fact were raised, in our opinion, it was not proper for the High Court to embark thereupon an exercise under Article 226 of the Constitution. The High Court in its judgment relied upon a large number of decisions of this court, inter alia, in Reserve Bank of India (supra) and State Bank of India and Others Vs. State Bank of India Canteen Employees" Union (Bengal Circle) and Others, ignoring the fact that all such disputes were adjudicated in an industrial adjudication.

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40. It was, furthermore, reiterated that a disputed question of fact normally not be entertained in a writ proceeding."

35. The same view has been taken by the Apex Court in Orissa Agro Industries Corporation Ltd. and others versus Bharati Industries and others, reported in AIR 2006 Supreme Court 198 and Rajinder Singh Vs. State of Jammu and Kashmir and Others, .

36. It is beaten law of land that the party(ies), who participated in a tender process; took all chances and after noticing the failure, cannot question the same, that too, after lapse of about one year.

37. The writ petitioner is caught by his own conduct, as discussed hereinabove and no explanation whatsoever has been tendered by the writ petitioner and has also not explained his conduct.

38. The conduct of party also plays vital role while considering as to whether the equitable relief is to be granted or otherwise. The conduct of the writ petitioner do disclose that he has not raised any dispute at the time of opening of the tenders and the writ petition deserved to be dismissed on this count also.

39. It is also worthwhile to mention herein that the writ petitioner-appellant in FAO No. 48 of 2011, in terms of Annexure R/2-7 (supra), has accepted that the sealed bids were received from three bidders on 14th September, 2006, before

5.00 P.M., thus, has accepted the said factum and the objection, if any, stands waived.

40. The Apex Court in *Prasun Roy Vs. Calcutta Metropolitan Development Authority and Another*, has held that the principle of waiver and estoppel is also applicable where a party to the proceedings challenges the proceedings in which it has participated. It is apt to reproduce paras 6 and 10 of the judgment herein:

"6. Mr. Kacker submitted that this principle could be invoked only in a situation where the challenge is made only after the making of an award, and not before. We are unable to accept this differentiation. The principle is that a party shall not be allowed to blow hot and cold simultaneously. Long participation and acquiescence in the proceeding preclude such a party from contending that the proceedings were without jurisdiction.

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10. Mr. S.N. Kacker, learned counsel for the respondents drew our attention to the fact that the decision in the (1876) L.R. 3 I.A. 209 (Privy Council) , was where the party challenged the appointment of the receiver after the award was made. He also submits that in this case the respondents herein had challenged the order of appointment of the arbitrator on April 19, 1983 and not after the arbitrator had made the award. We are unable to accept this distinction. Basically the principle of waiver and estoppel is not only applicable where the award had been made but also where a party challenges the proceedings in which he participated. In the facts of this case, there was no demur but something which can be called acquiescence on the part of the respondents which precludes them from challenging the participation (sic proceedings)."

41. The Apex Court has considered as to what is "waiver" and how waiver can come in the way of the party seeking a relief in a case titled as *Khoday Distilleries Limited (now known as Khoday Distilleries Limited (Now known as Khoday India Limited) Vs. The Scotch Whisky Association and Others*, . It is apt to reproduce paras 43 and 45 of the judgment herein:

"43. The principles of waiver and acquiescence are applicable in a case of this nature. Apart from the ordinary rule of waiver of a right expressly provided for in a case of passing off, the court has consistently been noticing the development of law in this field. The principles in that behalf were laid down by way of provender in *The Scotch Whisky Association and another Vs. Pravara Sahakar Shakar Karkhana Ltd.*, .

44.

45. Noticing various other decisions, *Oliver, L.J.*, noticing a decision in *Taylor's Fashions Ltd. v. Liverpool Victoria Trustees Co. Ltd.*, 1982 QB 133, opined: (Habib

Bank case, (1981) 1 WLR 1265: (1981) 2 All ER 650 (CA), All ER p. 666 h-j)

"Furthermore, the more recent cases indicate, in my judgment, that the application of the Ramsden v. Dyson, (1866) LR 1 HL 129 (HL) principle (whether you call it proprietary estoppel, estoppel by acquiescence or estoppel by encouragement is really immaterial) requires a very much broader approach which is directed rather at ascertaining whether, in particular individual circumstances, it would be unconscionable for a party to be permitted to deny that which, knowingly, or unknowingly, he has allowed or encouraged another to assume to his detriment than to inquiring whether the circumstances can be fitted within the confines of some preconceived formula serving as a universal yardstick for every form of unconscionable behaviour."

It was held: (Habib Bank Ltd. v. Habib Bank A.G. Zurich, (1981) 1 WLR 1265: (1981) 2 All ER 650 (CA), All ER p. 668c-e)

"I have to acknowledge my indebtedness to counsel on both sides for some illuminating arguments, but at the end of them I find myself entirely unpersuaded that the judge erred in any material respect. He concluded his judgment in this way on the question of estoppel:

"Of course, estoppel by conduct has been a field of the law in which there has been considerable expansion over the years and it appears to me that it is essentially the application of a rule by which justice is done where the circumstances of the conduct and behaviour of the party to an action are such that it would be wholly inequitable that he should be entitled to succeed in the proceeding."

That, to my mind, sufficiently appears on the facts of this case.

Thus, in cases involving equity or justice also, conduct of the parties has also been considered to be a ground for attracting the doctrine of estoppel by acquiescence or waiver for infringement."

42. The same principle has been laid down by the Apex Court in Provash Chandra Dalui and another versus Biswanath Banerjee and another, reported in AIR 1989 Supreme Court 1834; Krishna Bahadur Vs. Purna Theatre and Others, and Babulal Badriprasad Varma Vs. Surat Municipal Corporation and Others, . It is apt to reproduce para 10 of the judgment rendered in Krishna Bahadur's case (supra) herein:

"10. A right can be waived by the party for whose benefit certain requirements or conditions had been provided for by a statute subject to the condition that no public interest is involved therein. Whenever waiver is pleaded it is for the party pleading the same to show that an agreement waiving the right in consideration of some compromise came into being. Statutory right, however, also be waived by his conduct."

43. The Apex Court in a series of cases has laid down the principle how the

interference can be made by the writ Court in tender matters and what are the grounds for interference. The person, who questions the tender process, including the allotment, has to carve out a case for judicial review, that too, prima facie and without going into the disputed questions of facts.

44. The said issue was also determined by this Court in a case titled as Minil Laboratories Pvt. Ltd. versus State of Himachal Pradesh and another, being CWP No. 4112 of 2014, decided on 15th July, 2014, after discussing the development of law and the principles laid down by the Apex Court in a catena of cases.

45. Having said so, the impugned judgment merits to be set aside and the writ petition merits to be dismissed. Accordingly, LPA No. 1 of 2011 is allowed; the impugned judgment is set aside; the writ petition is dismissed and consequently, LPA No. 48 of 2011 is also dismissed.