

(2021) 12 J&K CK 0021

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 9900001 Of 2014

Mohd Latif And Others

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 16-12-2021

Acts Referred:

Constitution Of India, 1950 — Article 32, 16, 226, 300A

Citation : (2021) 12 J&K CK 0021

Hon'ble Judges : Pankaj Mithal, CJ; Mohan Lal, J

Bench : Division Bench

Advocate : O.P.Thakur, O.S.Bandral, M.A.Bhat, Ravinder Gupta, F.A.Natnoo, S.S.Nanda

Final Decision : Disposed Of

Judgement

Pankaj Mithal, CJ

1. The petitioners allege that they are all successors of Mahia Dhobi, who was the owner in possession of the land measuring 34 kanals and 17 marlas of Khasra No. 581 (1 Marla), Khasra No. 585 (3 kanals 1 marla), Khasra No. 586 (1 marla), Khasra No. 587 (2 kanals 5 marlas, Khasra No. 588 (3 kanal 4 marlas), Khasra No. 589 (24 kanals 19 marlas) and Khasra No. 590 (1 kanal 6 marlas) situated in village Digiana Tehsil and District Jammu.

2. They have filed the petition invoking Article 226 of the Constitution of India to provide them with suitable alternative land measuring 31 kanals and 10 marlas in the same village in lieu of their equivalent land of Khasra Nos. 581 and 585 to 590 of the village which is alleged to be in occupation of the State Authorities and for a direction to deliver possession of 3 kanals and 7 marlas of land of Khasra No. 589 in which is said to be still lying vacant. In the alternative, the petitioners have prayed for the compensation of the aforesaid land and for rental value of its unauthorized use and occupation from 1965-66 till it is actually acquired and compensation is paid.

3. The writ petition has been filed on the allegation that the aforesaid land belonging to their predecessor-in-interest was never acquired and they were not paid any compensation though its possession was illegally taken over in the year 1965-66.

4. The petition is in respect of the alleged illegal occupation of the land without acquisition in the year 1965-66, but has been filed in the year 2014 and, as such, apparently suffers from gross delay and laches. Thus, an objection has been raised regarding its maintainability at this juncture.

5. The petitioners contend that they were under the impression that their land might have been acquired and compensation may have been paid to their predecessor-in-interest, one Aziz Din but on inquiry, it was revealed that due to some mistake, the possession of the land was handed over by the respondent Nos. 4 to 6 to the respondent Nos. 1 to 3 without acquisition. On receiving such information, the petitioners started making further inquiries sometime in the year 2011-12 whereupon the correct facts were revealed.

6. It is also alleged that the petitioners are still shown to be owners of the said land in the Revenue record but the respondents are retaining possession of the same without paying any compensation.

7. The General Manager, District Industries Centre, Jammu has filed counter-affidavit on behalf of respondent Nos. 1, 2 and 3 alleging that the petitioners are not entitled to any relief as sought by them. They have no cause of action to initiate any proceeding under Article 226 of the Constitution of India. The petition suffers from gross delay and laches. The petitioners have slept over their rights, if any, for over fifty years.

8. On merits, it has been alleged that in the year 1960, the Government of Jammu and Kashmir acquired a total of 137 kanals of land for two Industrial Estates, i.e., Sant Nagar, Barzulla District Budgam and Industrial Estate, Digiana, Jammu. On acquisition of the said land, a pacca boundary wall was constructed immediately thereafter. The acquisition of the said land appears to have been on the basis of the agreement deeds executed in the year 1961. They have no knowledge about the earlier ownership of the land as the record relating to it is not traceable in the Revenue Department. The record relating to the acquisition is also not traceable in the office of the District Industries Centre as it appears to have been destroyed in the floods of 1988 when most of the record of the District Industries Centre was lost. The land in question was put in possession of the answering respondents in the year 1960 and has been in their possession since then.

9. No response to the writ petition has been filed by the respondent Nos. 4, 5 and 6, i.e., the District Administrative Authorities. However, Sh. S.S. Nanda, Senior AAG representing the Deputy Commissioner-Cum-Collector, Jammu, Assistant Commissioner Revenue, Jammu and Tehsildar, Jammu submits that the writ petition is hopelessly barred by time. The petitioners cannot be permitted to rake

up the issue, if any, which is long dead. The petitioners have approached the court only after coming to know that the records have been destroyed obviously with the malafide intention.

10. Sh. O.P.Thakur, Senior counsel appearing on behalf of the petitioners has argued that the petitioners cannot be deprived of their property without the authority of law and, if they have been dispossessed from their land, they are entitled to be adequately compensated, otherwise it would result in violation of their valuable human right. The respondents cannot claim title over the said land by adverse possession. The petition is not barred by time as it is in connection with the violation of a fundamental right. He has placed heavy reliance upon the decision in the case of 'Vidhya Devi vs. State of Himachal Pradesh and Others, (2020) 2 SCC 569' and that of 'D.B.Basnett (D) through LRs v. The Collector and another, Civil Appeal No. 196 of 2011 decided on 02.03.2020' to contend that the issue of violation of fundamental right can be raised at any time.

11. It is trite to mention that no limitation is provided for invoking the writ jurisdiction under Article 226 of the Constitution of India and it is also difficult to lay down any time period for it. It is thus left to the court of extra ordinary jurisdiction to exercise its discretionary jurisdiction or not if the party approaches the court with a long delay in a given fact and circumstances of the case.

12. At the same time, it must be remembered that the law of limitation is based upon the public policy that a litigation must come to an end and that there should be some lifeline prescribed for its initiation and conclusion.

13. In 'Smt. Sudama Devi vs. Commissioner and Others, AIR 1983 SC 653,' the Apex Court observed as under:-

"There is no period of limitation prescribed by law for filing the writ petition under Article 226 of the Constitution. It is, in fact, doubtful whether any such period of limitation can be prescribed by law. In any event, one thing is clear and beyond doubt that no such period of limitation can be laid down either under the rules made by the High Court or practice. For every case, it would have to be decided on the facts and circumstances whether the petitioner is guilty of laches and that what would have to be done without taking into account any specific period as period of limitation. There may be cases where even short delay may be fatal while there may be cases where even a long delay may not be evidence of laches on part of the petitioner."

14. In view of the above decision and many other on the above point, it is clear that there is no time limit provided for filing a writ petition. All that the court has to see is whether the delay or laches on part of the petitioner in approaching the court are such as to disentitle him to the relief claimed by him.

15. In 'Printer (Mysore) Ltd. v. M.A. Rasheed & Others, (2004) 4 SCC 460,' the Supreme Court held that the High Court should not ignore the delay and laches in filing the writ petition.

16. In 'Northern India Glass Industries v. Jaswant Singh, AIR 2003 SC 234,'it was held that the High Court cannot ignore the delay and laches in filing the writ petition and there must be satisfactory explanation by the petitioner explaining the delay as to why he could not approach the court well in time.

17. In 'New Delhi Municipal Council v. Pan Singh & Others, AIR 2007 SC 1365,'it was opined that even though there is no period of limitation prescribed for filing a writ petition under Article 226 of the Constitution of India, yet ordinarily a writ petition should be filed within a reasonable time.

18. In sum and substance, there may not be any period prescribed for invoking the writ jurisdiction but nonetheless, the High Court cannot be oblivious of the fact of delay and laches in filing the same vis-à-vis the cause of action for which it is filed and that ordinarily a writ should always be filed within a reasonable time.

19. Now what should be the reasonable time is again a matter which is dependent upon the facts and circumstances of the case but that certainly would not confer any power upon the court to exercise its discretionary power in connection with a matter or a cause which is dead for a long time resulting in the crystallization of the rights of the parties.

20. It may be noted that in certain Statutes, no limitation is provided for filing appeal or revision and it is left to the Appellate/Revisional Authorities to exercise it within a reasonable time or at any time.

21. The Supreme Court in interpreting such phrases 'reasonable time' and 'at any time' in a number of cases ruled that where the statutory provision does not prescribe for any limitation for exercising the power, the power must be exercised within a reasonable time and the length of the reasonable time must be determined on the facts and circumstances of the case.

22. In 'State of Andhra Pradesh & Another v. T. Yadagiri Reddy & Others, (2008) 16 SCC 299,' the Court observed as under:-

"The Legislature in its wisdom did not fix any time limit for exercising the revisional power nor inserted the words 'at any time' in Section 34 of the Act, 1976. It does not mean that the Legislature intended to leave the orders passed under the Act open to variation for an indefinite period inasmuch as it would have the effect of rendering title of the holders/allottees permanently precarious in a state of perpetual uncertainty."

23. The court, therefore, has to construe the statutory provision in a way in which it makes the provision workable. It leads to an inescapable conclusion that no statutory powers can be exercised arbitrarily at a belated stage but within a reasonable time depending upon the facts and circumstances of the case.

24. It may not be out of context to state that according to the dictum of law laid down by the Supreme Court in 'Murlidhar Aggarwal and Another v. State of Uttar

Pradesh & Others, AIR 1974 SC 1924,' that any provision of law which is based on public policy has to be given a strict adherence as the same has been enacted to protect the interest of community as a whole.

25. It is in the light of the legal position as has been summarized above that we have to examine whether the cause of action sought to be raised by means of the present writ petition after a long distance of time of over 50 years deserves exercise of discretion in extraordinary jurisdiction.

26. There is no dispute that the petitioners or their predecessors-in-interest were dispossessed from their land in the year 1965-66, if not earlier. They never initiated any action or made any complaint that they have been so dispossessed without acquiring the land or in an illegal manner without payment of compensation. In the event, they were being so dispossessed illegally, the petitioners or their predecessors ought to have filed a suit for permanent injunction or for restoration of possession if they were dispossessed but we are afraid that no such action in law was taken by them at any stage as is evident from the record. The petitioners as such having appropriate efficacious legal remedies for the redressal of the above grievance certainly failed to avail them which remedies with the passage of time became time barred. The petitioners having omitted to have availed proper legal remedy in time cannot be permitted to invoke extraordinary remedy after such a long and inordinate delay.

27. The petitioners have simply stated that they have been dispossessed from their land sometime in the year 1965-66 without disclosing the exact dates. They have not even stated that the land was not acquired by following the procedure prescribed under the Land Acquisition Act or any law for the time being in force in that regard. They simply allege that the land was not acquired though at one place they admit that they were under the impression that the land had been acquired and compensation paid to one of them, meaning thereby that they were not sure and have preferred the petition on half baked facts without knowing the truth. In such a situation, it is difficult for the courts to ascertain the manner/basis of dispossession of the petitioners from the land and virtually impossible for the State Authorities to give any specific reply in that regard or to find out the actual position if the land was notified to be acquired or the manner in which the same was acquired.

28. In the Union Territory of Jammu and Kashmir, we have noticed that it is very common that people offer their land for the construction of the road, enters into an agreement/memorandum of understanding to give land in lieu of employment to one family member and may even execute a sale deed with such a condition. There had been cases where after offering land and getting an employment, when the father or the person who got the employment died, the successors come up claiming compensation of the land on the allegation that their land had been taken over without acquisition and without payment of compensation.

29. In the above scenario, on the pleadings in the petition, it becomes difficult

rather impossible for this Court to ascertain in what manner actually the land of the petitioners came to be occupied by the respondents. The respondents categorically states that no record in this regard is available or traceable, as probably most of the record was destroyed during floods in the year 1988 which fact is not disputed. Thus, the possibility that the petitioners taking advantage of the destruction of the record may have started flogging dead horse in an attempt to put life into a dead cause of action.

30. In such circumstances, the court has to be careful and has to tread very cautiously as grant of any indulgence to the petitioners at this juncture may cause injustice to the respondents. The courts are obliged to ensure that justice at one place may not cause injustice to some other at another place. Therefore, it is necessary to examine, obviously on the basis of evidence, how and when exactly the land of the petitioners was acquired; if the petitioners were compensated in any manner or that they have been deprived of their valuable right to property in violation of their fundamental /constitutional/human right. These aspects are beyond the scope of the adjudication of this Court, more particularly, when the petition has been filed on incomplete facts without disclosing much of the relevant and material facts and the respondents are at loss to adequately reply on account of non-availability of the record. In such circumstances, it is difficult for this Court to exercise discretionary jurisdiction in a matter where cause of action of the year 1965-66 is taken to be the basis for seeking relief in this petition.

31. In *Vidya Devi (supra)*, no doubt the Apex Court held that right to property in view of Article 300 A of the Constitution of India is a very important human right and that no one can be deprived of his property otherwise than following the due procedure of law and that it is a recurring cause of action. Thus, turning down the plea of 'adverse possession' set up by the State Authorities on the ground that State cannot be permitted to take such a plea, the court directed for the payment of compensation.

32. In the aforesaid case, the petitioner was dispossessed from her property in the year 1967 admittedly without legal sanction or following the due process of law. The dispossession of the petitioner without following the due process of law was well established and was not in dispute which is not the situation with the case at hand.

33. In contrast to it, in the present case, it is not clear and it is not admitted that the petitioners were dispossessed in violation of any law or without payment of due compensation. The manner in which they were dispossessed has not been pleaded and established. As observed, they might have been dispossessed on a memorandum of understanding or their consent to take the land in lieu of employment to one family member. Thus, the aforesaid decision probably on the facts may not come to the rescue of the petitioners. Moreover, here no defence by way of adverse possession has been pleaded as in the case of *Vidya Devi (Supra)*. Therefore, in the fact situation of this case which may be to a great

extent similar to that in the above referred case, it does not appear to be appropriate to grant indulgence in favour of the petitioners.

34. In *D.B.Basnett (Supra)*, as the State respondents have encroached and trespassed the private land long back, a suit was filed before the District Judge on the plea that they were dispossessed without acquiring the land. The suit was dismissed by the Trial court both on the ground of limitation and merits. The appeal to the High Court was also dismissed on both issues. The SLP was granted and upon hearing the appeal, following *Vidya Devi (Supra)* holding that right to property is a constitutional right and that no person can be deprived of it without payment of compensation, the court held that petitioners are entitled to the restoration of possession of the land as also damage for the illegal use and occupation. Here in the instant case, we are not sure if the petitioners were dispossessed illegally or in pursuance of any commitment. Moreover, the case before the Supreme Court came through the proper channel of going through the process of civil suit before the Subordinate court, in appeal to the High Court and then by SLP to the Supreme Court.

35. In '*Tukaram Nana Joshi v. M.I.D.C. & Others*, (2012) 11 Judgment Today 246,' the Supreme Court held that in view of Article 300 A of the Constitution of India, no one can be deprived of his property without due sanction of law and that the land of which possession may have been taken decades ago and yet dues have not been paid, the dismissal of writ petition on the ground of delay and laches is not appreciable. It was also observed that the principle of delay and laches in exercising powers under Article 32 and 226 of the Constitution of India is applicable to service jurisprudence and in some other matters but not where possession of the land has been taken without sanction of law.

36. There is no second opinion on the principle so laid down by the Apex Court but to our mind, any principle has to be applied in the facts and circumstances of the given case. In a case where the deprivation of the property without sanction of law is admitted and clearly established, there is no difficulty in applying the above principle and, as such, a petition for compensation cannot be dismissed on the ground of delay and laches. Nonetheless, where the dispossession or deprivation is disputed and it is not clearly established that the same is without the sanction of law, it would be difficult to apply the above principle blindfoldly.

37. The Constitutional Bench of the Supreme Court in '*Ramchandra Shankar Deodhar and Others vs. The State of Maharashtra and Others*, AIR 1974 SC 259,' laid down that delay and laches may not stand in way of enforcement of fundamental rights under Article 16 of the Constitution of India.

38. In the case before us, no doubt, the petitioners were dispossessed from the land in the year 1961 or 1965-66 but it is not clear that in what manner they were dispossessed or whether they were granted any benefit in lieu of the said acquisition disentitling them for monetary compensation. The petitioners have nowhere pleaded that none of their ancestors were granted any benefit rather

they admit that they were under the impression that they have been paid the compensation and that the land stood acquired.

39. The court is conscious of the valuable right of the petitioners and that right to property is a constitutional right which has to be protected and, if any one is deprived of the same, he should be adequately compensated, but in the absence of a clear picture whether the petitioners have been compensated or not at any stage earlier, it is difficult for this Court to issue any absolute direction in this regard except for directing the Deputy Commissioner/District Collector, Jammu to examine the matter afresh by collecting as much material as possible from the various departments regarding the acquisition /possession of the aforesaid land and to pass a speaking and a reasoned order if the said land was acquired in accordance with the provisions of law and that the petitioners or their predecessors-in-interest were in any manner compensated for it or were otherwise given any benefit in lieu of the monetary compensation. In passing the aforesaid order, he may give full opportunity of hearing to the petitioners also. In this connection, he may examine the record of the Sub-Registrar, if necessary, to find out if any agreement or sale deed was executed/registered. The Deputy Commissioner/District Collector, Jammu shall complete the above exercise as expeditiously as possible preferably within a period of six months from the date a copy of this order is produced before him and if he finds that the petitioners are entitled to any compensation to ensure its payment on proper assessment within a further period of six months thereafter.

40. The writ petition stands disposed of accordingly with no order as to costs.