

(2006) 05 DEL CK 0213

In the Delhi High Court

Case No : Writ Petition (C) No. 809 of 1992

Sh. Santosh Kumar and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-05-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 4, 4(1), 5A, 6

Citation : (2006) 89 DRJ 626

Hon'ble Judges : T.S. Thakur, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : P.N. Lekhi, Subhash C. Mittal, N.S. Vashisht, Ravi Gupta and Swati Sinha, for the Appellant; Geeta Luthra, J.J. Sarkar and Rajesh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Thakur, J.—These writ petitions call in question the validity of a preliminary notification, dated 25th November, 1980, issued u/s 4 of the Land Acquisition Act, 1894 (for short "the Act") and a declaration u/s 6 thereof, dated 18th June, 1985. A mandamus, directing the respondents to restore the possession of the land to the petitioners has also been prayed for. The facts giving rise to the petitions may be briefly summarised as under:

2. A large extent of land situate in 13 South Delhi villages including that situate in Villages Shayoorpur, Maidan Garhi, Saidul-Ajaib, Rajpur Khurd, Satbari and Chattarpur, Delhi was notified for acquisition in terms of a preliminary notification dated 25th November, 1980. A declaration u/s 6 followed on 18th June, 1985. Different awards were, on the basis of the said notifications, made from time to time, including the awards impugned in these petitions. Much after the completion of the proceedings in terms of the notifications mentioned above, the petitioners filed the present batch of writ petitions, in which the petitioners originally prayed for a writ of mandamus simpliciter, directing the respondents to

hand over the physical possession of the land acquired from them in view of the judgment delivered by a Division Bench of this Court in Balak Ram Gupta v. Union of India C.W.P.1639/85 and the directions issued by another Bench in Balbir Singh v. Union of India and Ors. C.W.P. No.51/89. Some of the petitions were subsequently amended in the year 1992 to include a prayer for a writ of certiorari, quashing the notifications aforementioned, as also the award made in respect of the lands acquired from the petitioners. What is significant is that even after the amendment, the case of the petitioners continues to rest entirely on the premise that the judgment of this Court in Balak Ram Gupta's case (supra) had the effect of quashing the acquisition proceedings in their entirety, regardless whether or not the owners were parties to the said petitions or any one of them. Support, for that plea, is drawn mainly from the order passed by this Court in Balbir Singh's case (supra), whereby the respondents were directed to hand over the possession of the land to all those from whom the same had been acquired after the owners had deposited back the compensation, received by them together with interest at the rate of 12% p.a.

3. Suffice it to say that apart from the plea urged on the strength of the aforementioned two decisions of this Court, no foundation has been laid in the writ petitions, filed by the petitioners, for an effective challenge to the validity of the impugned notifications except in the case of Santosh Kumar v. Union of India W.P.(C) No.809/92, in which it is additionally pleaded that since the notifications in question have been quashed qua interests of Shri Banwari Lal Sharma, co-owner of the petitioner in the said case, the same is liable to be quashed even qua the petitioner.

4. The respondents have, in the counter-affidavit, filed on their behalf, inter alia, asserted that the petitions are barred by unexplained delay and laches. The impugned notifications, having been issued in the years 1980 and 1985 respectively, any challenge coming belatedly in the year 1991, when the petitions were first filed or 1992, when some of them were amended is, according to the respondents, legally barred. In the absence of any Explanation for the intervening delay, the petitions are, according to the respondents, liable to be dismissed, especially when the petitioners had acquiesced in the proceedings and allowed the same to be completed without any demur. It is also asserted that possession of the land acquired under Award No.23/87-88 was taken and handed over to Delhi Development Authority except land, measuring 2 bighas and 7 bids was in Khasra No.259 of village Maidan Garhi, Delhi. The allegation that the possession of the land had not been taken over from the petitioners or that the petitioners had not received any compensation for the same has thus been denied. It is alleged that the respondents are in lawful possession of the land acquired from the petitioners and that the judgment of this Court in Balak Ram Gupta's case (supra) was applicable only to the cases disposed of by the said judgment.

5. In the additional affidavit filed on behalf of respondents No.1 to 3, it is stated

that the judgment delivered in Balak Ram Gupta's case could be cited as an analogy only in cases in which the owners had filed objections u/s 5A of the Land Acquisition Act. The decision delivered in that case was not Therefore, applicable to the petitioners, as the petitioners had nowhere stated that they had filed objections u/s 5A or that the same were not properly considered. It is also alleged that the petitioners had received the compensation without any protest and, were, Therefore, estopped from challenging the acquisition proceedings.

6. In the rejoinder, filed by the petitioners, reliance is placed upon the decision of the Supreme Court in DDA v. Sudan Singh and Ors. and Union of India v. Balbir Singh and Ors. Reliance is also placed upon a Division Bench judgment of this Court, dated 6th December, 1990, in Banwari Lal Sharma v. Union of India and Ors. C.W. No. 2365/90. It is stated that these decisions had treated the judgment delivered by this Court in Balak Ram Gupta's case as a judgment in rem so as to benefit even such of the owners, as had not come to the Court to make any grievance against the acquisition proceedings. On merits, it is stated that the petitioners, challenging the acquisition proceedings relating to village Maidan Garhi, had filed objections and were called for a hearing on 12th June, 1985 in the office of the Land Acquisition Collector. This hearing did not, according to the petitioners, last more than a few minutes. The Land Acquisition Collector had thereafter made a report to the Lt. Governor who without application of mind mechanically directed the issue of a declaration u/s 6 of the Act.

7. We have heard learned Counsel for the parties at considerable length and perused the record.

8. On behalf of the petitioners, it was argued that the orders passed by this Court in Balak Ram Gupta's and Balbir Singh's cases (supra) had been upheld by the Supreme Court and that the judgment in Balak Ram Gupta's case had been understood to be a judgment in rem not only by the respondents but also by the Courts at different stages in relation to the impugned acquisition proceedings. There was, in that view, no justification for treating the cases of the petitioners differently and denying to them a benefit which had been granted to all those who were similarly situate. It was also contended that there was no delay in the filing of the petitions, keeping in view the decision, rendered by this Court in Balak Ram Gupta's case, declaring the entire acquisition proceedings to be invalid and the directions issued in Balbir Singh's case for return of the possession to all the owners, subject to their depositing the amount of compensation paid to them. It was, in the light of the said direction, unnecessary, for the petitioners, to seek any relief from the Court, in relation to the notifications that stood already quashed. All that was required was to deposit the amount of compensation back with the authorities to enable them to return the possession of the land to the owners concerned. Since the petitioners had not been given relief in terms of the direction of this Court issued in Balbir Singh's case, they had to file the present petitions, seeking a mandamus against

the respondents, directing them to comply with the directions of the Court in the two cases mentioned above. It was also argued by Mr.Lekhi, learned senior counsel for the petitioners in W.P.No.809/92 that the authorities having returned possession to Banwari Lal Sharma, the co-owner of the petitioner, in obedience to the direction issued by this Court in a writ petition filed by Shri Sharma, the petitioner, who happens to be his co-owner could not be denied a similar relief.

9. On behalf of the respondents, it was, on the other hand, contended that the relief granted in Balak Ram Gupta's case was confined only to the petitioners in the said batch of cases. This position was made clear by the Supreme Court in *Abhey Ram (dead) by LRs. and others Vs. Union of India and others*, and in *Delhi Administration Vs. Gurdip Singh Uban and Others*, . It was also argued that there was no Explanation whatsoever for the delay in filing of the petitions and the acquiescence of the petitioners in the proceedings. There was, Therefore, no question of examining, at the instance of the petitioners, the validity of the acquisition at this belated point of time. It was argued that a Division Bench of this Court had, in *Raghubir Singh v. Union of India and Ors.* dismissed similar petitions on the ground of unexplained delay and laches for the silence of the petitioners in that case between 1985 when the declaration u/s 6 of the Act was issued and 1988 when Balak Ram Gupta's judgment was delivered. It was submitted that the petitioners, having acquiesced in the proceedings, allowed the same to be completed and received compensation, could not belatedly assail the validity thereof.

10. Responding to the submissions of Mr.Lekhi in Santosh Kumar's case, it was argued that while the acquisition proceedings qua Banwari Lal Sharma had been quashed by the Court, the petitioner, Santosh Kumar, who happens to be his co-owner had the option of accepting the said proceedings and receiving the compensation. Just because one of the co-owners had challenged the proceedings does not, according to the learned Counsel, ipso facto, mean that the proceedings qua the other co-owners should also be quashed, no matter the other co-owner has no grievance to make against the same.

11. Three precise questions arise for our consideration. These are:

(i)Whether the judgment delivered by this Court in *Balak Ram Gupta v. Union of India*, has the effect of quashing the acquisition proceedings qua the land owned by the petitioners in the present batch of cases?

(ii)Whether the writ petitions are liable to be dismissed on the ground of unexplained delay and laches on the part of the petitioners? and

(iii)Whether the petitioner-Santosh Kumar in W.P.(C) No.809/92 is entitled to challenge the validity of the impugned notifications and claim a relief similar to the one given to his co-owner-Sh.Banwari Lal Sharma? We shall deal with the question ad-seriatim. Reg: Question No. 1.

12. In Balak Ram Gupta's case, this Court heard and disposed of by a short

order, dated 14th October, 1988, a batch of 73 writ petitions, in the following terms:

The orders of Land Acquisition Collector u/s 5A and the notifications issued by the Lt.Governor u/s 6 of the Land Acquisition Act together with further land acquisition proceedings in all the above writ petitions are quashed and set aside with cost. There shall be two sets of counsel's fees at Rs.1500 each as the group of petitions were heard mainly in the two writ petitions. The respondents have also not filed the counter- affidavits in all the petitions as it was agreed to complete two sets of petitions with counter-affidavits. The rule is made absolute. Reasons to follow.

13. The above short order was followed by reasons stated in an elaborate order delivered by the Division Bench of this Court on 18th November, 1988 B.R. Gupta Vs. Union of India and Others, . In the latter order, the Division Bench made certain wide observations including observation regarding the manner in which Section 5A inquiry was conducted and held that the entire inquiry u/s 5A was vitiated in respect of all the 50,000 bighas of land, notified in terms of the notifications made before it. The detailed reasons given by the Division Bench in its latter order dated 18th November, 1988 were understood by the petitioners in Balbir Singh's case to mean that the acquisition proceedings qua the entire land stood quashed. It was on that assumption that certain directions of a general character were issued in Balbir Singh's case under which the owners could deposit the amount of compensation received by them with interest at 12% p.a. and recover the possession of the land back from the authorities. These directions were upheld by a two-Judge Bench of the Apex Court in Delhi Development Authority Vs. Sudan Singh and Others, . A three-Judge Bench of the Supreme Court in Abhey Ram (dead) by LRs. and others Vs. Union of India and others, , however, struck a discordant note. The Court in that case held that while deciding Sudan Singh's case, its attention was not drawn to the short order dated 14th October, 1988, passed by the High Court in Balak Ram Gupta's case. The Court observed:

It is true that a Bench of this Court has considered the effect of such a quashing in Delhi Development Authority v. Sudan Singh. But, unfortunately, in that case the operative part of the judgment referred to earlier has not been brought to the notice of this Court. Therefore, the ratio therein has no application to the facts in this case. It is also true that in Yusufbhai Noormohmed Nendoliya case this Court had also observed that it would ensure the benefit to those petitioners. In view of the fact that the notification u/s 4(1) is a composite one and equally the declaration u/s 6 is also a composite one, unless the declaration u/s 6 is quashed in toto, it does not operate as if the entire declaration requires to be quashed. It is seen that the appellants had not filed any objections to the notice issued u/s 5A.

14. The above view was reiterated by their Lordships in Delhi Administration Vs. Gurdip Singh Uban and Others etc., where the Court held that it was bound to

follow the view taken in Abhey Ram's case (supra) in preference to that taken in Sudan Singh's case. The Court observed:

Then coming to the effect of the judgment of the Division Bench dated 18-11-1988 of the High Court, we are of the view that the three Judge Bench judgment in Abhey Ram's case has interpreted or declared the effect of the said High Court judgment dated 18-11-88. That judgment is binding on us. We cannot go by the two Judge Bench judgment in Sudan Singh's case 43 1991 D LT 602 because we are bound by the judgment of the three Judge Bench in Abhey Ram (dead) by LRs. and others Vs. Union of India and others, . Further, the judgment in Abhey Ram's case takes notice of Sudan Singh's case and it cannot be contended that they have not looked fully into the judgment in Sudan Singh's case or fully into the judgment of the Division Bench of the High Court dated 18-11-88 in B.R. Gupta Vs. Union of India and Others, .

15. The issue was once again examined by their Lordships of the Supreme Court in a review petition filed against the above judgment reported in Delhi Administration v. Gurdip Singh Uban and Ors. AIR 2000 SC 3737. The Court framed eight points for consideration in the said review petition. Point No.3 related to the effect of the short order passed by the High Court in Balak Ram Gupta's case on 14th October, 1988 and the subsequent reasoned order passed by it on 18th November, 1988 and whether in the latter order, the High Court could have quashed the land acquisition proceedings even in writ petitions which were not before it. Question No.3 was framed in the following words:

3). Whether the order of the Division Bench in Balak Ram Gupta's case, where there are two orders, the order D/- 14-10-88 allowing the writ petitions in 73 Civil Writ Petitions (reasons to follow) controlled the subsequent order passed in those cases on 18-11-98 containing the reasons and whether in the latter order, the High Court could have quashed land acquisition proceedings in writ petitions which were not before them?

16. Answering the above question, the Court held that order dated 18th November, 1998, passed in Balak Ram Gupta's case which contained detailed reasons for the operative order passed by the High Court on 14th October, 1988 could not go beyond the four corners of the operative order by which the writ petitions were disposed of. In paras 32 and 34 of the report the Court held:

32. In our view, if the Court allows a writ petition and reasons were to follow later, the first order allowing the writ petition and issuing the writ absolute is the operative order. If reasons Therefore are supplied later, as a matter of convenience, the latter order containing reasons cannot go beyond the four corners of the rule absolute already issued.

34. Obviously, in law, the order dated 14-10-88 extracted above is the operative order as the rule was made absolute in each of the 73 cases only. Thus, this operative order dated 14-10-88 could apply in each of the 73 writ petitions to the land covered thereby.

17. It is, in the light of the above authoritative pronouncement, futile for the petitioners to argue that the judgment delivered by the Division Bench of this Court in Balak Ram Gupta's case had the effect of quashing the acquisition proceedings in their entirety and even qua co-owners who had not even filed writ petitions or even if such petitions had been filed the same were not before the Court. Question No.1 is, accordingly, answered in the negative and against the petitioners. Reg:Question No.2

18. As noticed earlier, the preliminary notification u/s 4 of the Land Acquisition Act was, in the present case, issued as early as in the year 1980. A final declaration came five years later in the year 1985. The petitioners did not make any move to challenge the said two notifications with the result that the Land Acquisition Collector proceeded to make and publish different awards in respect of different villages covered by the said notifications. No attempt was made even after the making of the award to assail the validity of the acquisition proceedings in any Court or Forum till the year 1991 when the petitioners, inspired by the judgment delivered in the Balak Ram Gupta's and Balbir Singh's cases, delivered three years earlier, filed the present petitions, seeking return of the lands to them upon deposit of the compensation which they had already received. From a reading of the writ petition, as originally filed, it is evident that the immediate cause for coming to the Court was not any illegality attached to the acquisition proceedings but the judgment of the Division Bench of this Court in Balak Ram Gupta's case as understood and enforced by the latter order, passed in Balbir Singh's case. Even the amendment to the writ petition made in the year 1992 did not introduce any ground alleging illegality in the proceedings which stood completed long before the filing of the writ petition. It is, Therefore, reasonable to hold that but for the judgment delivered in Balak Ram Gupta's case and later in Balbir Singh's case, the petitioners had no grievance against the acquisition of their lands in terms of the impugned notifications and the awards made pursuant thereto. The petitioners came to the Court only to reap the benefit which they believed was flowing to them from the judgment in Balak Ram Gupta's case. Even in the amended petitions the challenge to the said proceedings remains confined to the prayer made by them.

19. While dealing with question No.1 above, we have already noticed that the judgment in Balak Ram Gupta's case did not have the effect of quashing the acquisition proceedings in their entirety. The said judgment was confined only to the lands owned by the petitioners in the batch of 73 petitions that were disposed of by this Court by order dated 14th October, 1988. The very substratum of the petitioners' case as set out in the writ petitions, Therefore, stands knocked out.

20. What remains then to be considered is whether the petitioners could, after a long gap of ten years or so, file a writ petition to challenge the validity of the proceedings that stood completed with the publication of the award and disbursement of compensation in terms thereof. While, according to the

respondents, the petitioners cannot maintain the petitions after they had acquiesced in the proceedings and allowed the Collector to make an award and even received compensation determined thereby, according to the petitioners, the judgment in Balak Ram Gupta's case and the understanding of this Court as also that of the Apex Court in Sudan Singh's case regarding the effect of that judgment rendered it unnecessary for them to file any petition independently, challenging the proceedings. There is, thus, an Explanation worthy of acceptance by the Court for the inaction, if any, of the petitioners in challenging the acquisition proceedings. Two aspects need be considered at this stage. The first is whether the judgment in Balak Ram Gupta's case followed in Balbir Singh's and Sudan Singh's cases could lead the owners to believe that an independent challenge to the validity of the proceedings had become unnecessary. The second and more important aspect is whether a party who had already lost by inaction, indolence or acquiescence the right to challenge the acquisition proceedings could bring such a challenge on the strength of a judgment that came subsequent to such acquiescence or acceptance by the owners.

21. There is, in our opinion, no difficulty in so far as the first of the two aspects mentioned above is concerned. It is possible that a litigant is misled into a belief, by reason of a judgment delivered by a competent Court, that an independent challenge to the proceedings is unnecessary in view of a declaration made by a competent Court which declaration the litigant believes to ensure for his benefit also. There is no manner of doubt that the reasoned order in Balak Ram Gupta's case, the direction issued in Balbir Singh's case and the order passed by the Supreme Court in Sudan Singh's case (*supra*), could create a bona fide impression in the minds of the owners that the judgment in Balak Ram Gupta's case had the effect of nullifying the process of acquisition in toto even qua those who had not challenged the said proceedings or whose petitions had not yet been heard and disposed of. There may, Therefore, be an acceptable Explanation for the period after 1988 till the legal position regarding effect of the judgment in Balak Ram Gupta's case was authoritatively stated by the Supreme Court in Abhey Ram's and Gurdip Singh Uban's cases (*supra*). That, however, does not conclude the matter for an Explanation which may have been available from the year 1988 onwards may not rescue the petitioners' challenge from laches and acquiescence implicit in their silence and inaction for the period prior to 1988. That is so because if the petitioners had by reason of their inaction, acquiescence or indolence lost the right to challenge the validity of the acquisition proceedings before the judgment in Balak Ram Gupta's case was delivered, it would be immaterial whether or not they had any Explanation for not challenging the proceedings after the delivery of the said judgment. If a remedy available to a litigant against any injury is lost by passage of time, it cannot be revived or restored merely because a competent Court has in an action brought before it by some other litigant granted relief in circumstances similar to those in which the petitioner is asking for the same. A litigant cannot sit on the fence and wait for the result of a legal action brought by another and depending upon what the

result is, belatedly seek redress. He can do so only at his peril inevitably incurring in the process the risk of the action being defeated on the ground of delay and laches.

22. The petitioners, in the instant case, had the first opportunity of challenging the impugned notifications in the year 1985. There is no Explanation leave alone a cogent one for their inaction or failure to do so. They, on the contrary, allowed the proceedings to go on and culminate in awards under which payment of compensation was also disbursed to them. This conduct clearly suggests acquiescence in the proceedings, if not indolence on the part of the owners whose lands were being acquired by the State. Receipt of compensation, particularly, is indicative of the owners being content with the validity of the proceedings. If that be so, it is difficult to see how petitions filed six years after the issuance of a declaration can be said to have been filed within reasonable time. On the contrary, even if the same had been filed in the year 1988 before the judgment in Balak Ram Gupta's case was delivered, they would have been liable to be dismissed on the ground of delay and laches. The fact that Balak Ram Gupta's case was understood to be quashing, the proceedings in their entirety also loses significance in that situation. In order that the writ petitions may be treated to have been filed within reasonable time, the petitioners were bound to offer a cogent Explanation for their inaction for a long period of three years between 1985 and 1988 which they have failed to offer in the present cases.

23. The legal position regarding interference by writ courts with land acquisition proceedings is fairly well settled by a long line of decisions rendered by the Supreme Court.

24. In *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, , one of the questions that fell for consideration before their lordships was whether the petitioners could be allowed to challenge the validity of the notifications even after publication of a declaration u/s 6 of the Land Acquisition Act. The challenge to the acquisition proceedings in that case was primarily on the ground that the preliminary notification did not specify the particular public purpose for which the acquisition had become necessary. Repelling the attack, the Supreme Court held that a valid notification u/s 4 being a *sine qua non* for initiation of the proceedings for property, there was no reason why the petitioners should have waited to challenge the validity of such a notification on the ground that the particulars of public purpose were not specified therein. The court held that the petitioners were sitting on the fence and had allowed the Government to complete the acquisition proceedings on the basis that the notification u/s 4 and the declaration u/s 6 were valid. They could not, Therefore, turn around and attack the notification on the grounds belatedly since such grounds were available to them at the time when the notification was published. Granting relief to the petitioner, observed their lordships, would in such circumstances amount to putting a premium on their dilatory tactics.

25. The above reasoning applies with full force in the present case also. If the

petitioners were in any way prejudiced or aggrieved by the non- conduct of a proper inquiry u/s 5A and non-consideration of the report submitted to the Lt.Governor, the proper stage at which that grievance could and ought to have been made was immediately after the issuance of the declaration u/s 6 of the Act. The cause of action for challenging the acquisition proceedings was complete, the moment the declaration u/s 6 was issued. The petitioners did not, however, do so. On the contrary, they allowed the authorities to proceed with the acquisition treating the inquiry u/s 5A and the declaration u/s 6 to be legally valid so as to provide a sound basis for completion of the proceedings. Having done so, it is difficult to countenance the challenge coming much after the proceedings were completed.

26. In *State of Rajasthan and Others Vs. D.R. Laxmi and Others*, , the award had been made and possession of the land taken over. The High Court had, notwithstanding the completion of the acquisition proceedings, interfered with the same on the ground that no third party rights have been created. In appeal, the Supreme Court reversed the judgment holding that the High Court should not exercise its powers to quash the proceedings when the award had been made and the possession of the land taken over. Discretionary power of the Court under Article 226 of the Constitution, observed their lordships, had to be exercised taking the relevant factors into pragmatic consideration. The following passage in this regard is apposite :

When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case, is hardly a ground for interference. The order or action, if ultra virus the power, becomes void and it does not confer any right. But the action need not necessarily be set at naught in all events. Though the order may be void, if the party does not approach the Court within reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner. When the discretion has been conferred on the Court, the Court may in appropriate case decline to grant the relief, even if it holds that the order was void. The net result is that extraordinary jurisdiction of the Court may not be exercised in such circumstances.

27. Applying the ratio of the above decision in the instant case, it is evident that having allowed the proceedings to progress to the stage of making the award and having received compensation under the same, the petitioners cannot at a belated stage challenge the validity of the proceedings.

28. To the same effect is the decision of the Supreme Court in *Market Committee, Hodal Vs. Krishan Murari and Others*, , where the Supreme Court has, in similar circumstances, observed :

The award having been validly made on May 19, 1984 and possession of the

lands having been taken, the lands vest in the Government u/s. 16 absolutely free from all encumbrances. The High Court was not justified in interfering with the exercise of power by the Government u/s. 17(4) dispensing with the enquiry u/s. 5A at that belated stage.

Reference may also be made to the decision of the Supreme Court in *Senjeevanagar Medical and Health Employees Co-operative Housing Society Vs. Mohd. Abdul Wahab and Others*, , where the Apex Court did not approve of the High Court's interference with the acquisition proceedings after the possession of the land had been taken over from the owners and the land stood vested in the Government. The following observations made by the Apex Court in *The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others*, , are also instructive:

It is now a well-settled principle of law and we need not dilate on this score to the effect that while no period of limitation is fixed but in the normal course of events, the period the party is required for filing a civil proceeding ought to be the guiding factor. While it is true that this extraordinary jurisdiction is available to mitigate the sufferings of the people in general but it is not out of place to mention that this extraordinary jurisdiction has been conferred on to the law courts under Article 226 of the Constitution on a very sound equitable principle. Hence, the equitable doctrine, namely, "delay defeats equity" has its fullest application in the matter of grant of relief under Article 226 of the Constitution. The discretionary relief can be had provided one has not by his act or conduct given a go-by to his rights. Equity favors a vigilant rather than an indolent litigant and this being the basic tenet of law, the question of grant of an order as has been passed in the matter as regards restoration of possession upon cancellation of the notification does not and cannot arise.

29. To the same effect are the decisions of the Supreme Court in *Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd.*, and others, , *Northern Indian Glass Industries Vs. Jaswant Singh and Others*, and *M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others*, .

30. The legal position that emerges from all the above decisions is that while the High Courts have the discretion to entertain a petition under Article 226 of the Constitution, it would be sound exercise of that discretion if the Court refuses to interfere with land acquisition proceedings in cases where the land owners have allowed the authorities to complete the said proceedings and challenge the same at a belated stage. The land owners cannot allow the proceedings to go on, accepting by their silence, the validity of the notifications under Sections 4 and 6 of the Act and then turn around to challenge the same after the Collector has made his award or dispossessed the owners on the basis thereof. Even if the period post-Balak Ram Gupta's judgment is deemed to have been explained, there is no Explanation for the pre-Balak Ram Gupta period of three years, which is sufficient to justify the dismissal of these petitions on the ground of delay and laches.

31. Question No.2 is also for the above reasons answered against the petitioners.
Reg:Question No.3

32. Mr. Lekhi, learned senior counsel appearing for the petitioner, in *Santosh Kumar v. Union of India W.P.(C) No.809/92*, vehemently argued that the acquisition proceedings in respect of the land owned by the petitioner in that petition having been quashed by this Court at the instance of the petitioner's co-owner Shri Banwari Lal Sharma, a similar relief cannot be refused to the petitioner especially when the State cannot take possession of the land in question except after seeking partition qua Banwari Lal. In other words, the question is whether a challenge to acquisition proceedings by one of the co-owners must necessarily ensure for the benefit of the other co-owners also. If it does not, whether a challenge to such proceedings qua one co-owner can succeed while it may fail qua the other. The issue is, in our view, no longer rest integra in view of the decision of the Supreme Court in *Ashwani Kumar Dhingra Vs. State of Punjab*, . In that case also, the acquisition proceedings were quashed by the High Court in so far as two of the co-owners were concerned. The third co-owner had then filed an independent writ petition challenging the very same notifications. The argument advanced on behalf of the petitioner was that the notifications could not have been quashed only qua some of the co-owners. That submission was repelled by the High Court against which the matter was brought to the Supreme Court by special leave. Affirming the view taken by the High Court, the Apex Court held that it was open to one of the co-owners to challenge the acquisition proceedings just as it was open to the other co-owner to accept such proceedings as valid and ask for enhancement of compensation. Each one of the co-owners, observed the Court, had an independent right to choose the option of either challenging or accepting the proceedings. Merely because one co-owner accepts the compensation did not prevent the other from challenging the acquisition proceedings or vice-versa. The following passage is in this regard apposite :-

One co-owner may challenge the acquisition whereas the other co-owner may be satisfied with the acquisition and ask for compensation and even for enhancement of compensation; other brother may challenge the acquisition proceedings in his own right; merely because one brother accepts compensation, other brother is not estopped from challenging acquisition. Similarly, where one co-owner challenges acquisition, his rights will not be affected merely because other co-owner had accepted acquisition and the compensation.

33. In the present case, Banwari Lal as the co-owner of the property had exercised his option and challenged the acquisition proceedings successfully. That challenge was bound to be limited to the extent of the interest which the petitioner in that case had in the land in question. It could not ensure for the benefit of the petitioner Santosh Kumar the other co- owner who had the option of accepting the acquisition proceedings as valid and receiving the compensation determined in his favor. In the circumstances, just because Banwari Lal was

successful did not necessarily mean that even Santosh Kumar must succeed no matter the latter had, because of acquiescence, delay or unexplained laches, lost the right to challenge the said proceedings. If the petitioner is not diligent and does not come to the Court at the appropriate time, the Court may refuse to come to his rescue even when in similar circumstances, relief has been granted to his co-owner in the very same land under acquisition. It is fairly well-settled that even an order that may be void shall have to be declared to be so by the competent court and that the court may decline to grant relief to the person assailing such an order, if he has not acted diligently or approached the Court with clean hands in the appropriate manner and at the appropriate stage. As observed by the Supreme Court in B.R. Laxmi's case (supra), even if an order is ultra vires, the power of the authority making the same and, Therefore, void, the Court may not come to the aid of the party and declare the same to be so unless it has been approached within a reasonable time which is always a question of fact. The Court has in such cases the discretion to decline the grant of leave in appropriate cases even if it holds that the order was void.

34. Reference may also be made to the following observations made on the subject. Dealing with the question of invalidation of an order, H.W.R. Wade and C.F. Forsyth have in their treatise Administrative Law - Eighth Edition observed :

The truth is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be "a nullity" and "void" but these terms have no absolute sense: their meaning is relative, depending upon the court's willingness to grant relief in any particular situation. If this principle of legal relativity is borne in mind, the law can be made to operate justly and reasonably in cases where the doctrine of ultra vires, rigidly applied, would produce unacceptable results.

35. In the present case, the petitioner has not assailed the impugned notifications on the ground that they were void ab initio. The argument was that since the said notifications have been quashed at the instance of a co-owner, they ought to be quashed qua the petitioner also. That contention cannot in the light of the settled legal position prevail. The fact that the notifications have been quashed at the instance of a co-owner who had diligently pursued the matter does not ipso facto render the same void qua the other co-owner. Even if one were by any stretch of reasoning, to hold the notifications to be void ab initio, this Court would be justified in refusing to intervene and grant a declaration of invalidity where it comes to the conclusion that the party had either acquiesced or failed to seek appropriate redress at the appropriate stage. That precisely is the position in the present case also. The petitioner having allowed the authorities to complete the proceedings and thus acquiesced in the same cannot belatedly challenge the notifications on the ground that the co-owner had in respect of the very same land succeeded in doing so.

36. In the result, there is no merit in these petitions, which fail and are hereby dismissed but in the circumstances without any orders as to costs.