

(2014) 10 MEG CK 0003
In the Meghalaya High Court
Case No : WP (C) No. 93/2013

Sohbar Sirdarship

APPELLANT

Vs

The State of Meghalaya

RESPONDENT

Date of Decision : 29-10-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 294
Limitation Act, 1963 — Section 23

Citation : (2014) 10 MEG CK 0003

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Judgement

T. Nandakumar Singh, J.—Heard Mr. H.L. Shangreiso, learned counsel for the petitioner, Mr. N.D. Chullai, learned Sr. GA assisted by Mr. J.M. Thangkhiew, learned GA appearing for the respondents No. 1-5 and Ms. P.S. Nongbri, learned counsel for the respondent No. 6. None appears for the respondent No. 7 without showing any cause.

2. The main relief sought for in the present writ petition is for a direction to the State respondents to pay 50% share of the royalty to the writ petitioner prospectively w.e.f. the date of filing the said representation dated 12.04.2012 being the owner of the limestone quarry. Mr. N.D. Chullai, learned Sr. GA appearing for the respondents No. 1-5 submits at the Bar that the issue/claim of the petitioner for sharing 50% of the royalty on limestone along with the State Govt. had already been decided by the learned Single Judge in writ petition i.e. WP (C) No. (SH)323/2009 vide judgment and order of the erstwhile Gauhati High Court, Shillong Bench dated 26.08.2011. The copy of the said judgment and order of the erstwhile Gauhati High Court, Shillong Bench dated 26.08.2011 is available at Annexure-O to the present writ petition. The relevant portions of the judgment and order of the erstwhile Gauhati High Court, Shillong Bench dated 26.08.2011 are reproduced hereunder:-

"1. The sole question which falls for consideration in this writ petition is, whether

the writ petition is barred by the principle of laches. The undisputed facts material for the purpose of disposal of this writ petition may be recorded straightaway. The elders, Sirdars and inhabitants of the Sohbar Sirdarship had entered the agreement dated 29-10-1829 with the Agent of the erstwhile Governor General of India, who was then representing the East India Company. By this agreement, the people of the Sohbar Sirdarship divided the share of the limestone production in the Sirdarship and allowed the East India Company to receive 50% of the royalty while the remaining 50% was reserved for payment to the people of Sohbar Sirdarship itself as consideration for exploiting/extracting the limestone deposited in the Sirdarship. On 29-5-1940, the then Provincial Government of Assam entered into an agreement with the Assam Bengal Cement Company Ltd. for extraction of the limestone in the Sirdarship. This company thereafter started extraction of the limestone in the Sridarship. The Provincial Government of Assam had since then been paying 50% of the royalty to the Sohbar Sirdarship in accordance with the agreement dated 29-5-1940 till 1952 when this Provincial Government stopped the payment. In the year 1971, the State of Meghalaya came into being with the coming into force of the North Eastern Areas (Re-organization) Act, 1971. On 25-6-1973, the State of Meghalaya entered into a Mining Lease Agreement with the Komorrah Limestone Mining Company Ltd. whereby 50% royalty came to be paid to the District Council instead of paying it to the Sohbar Sirdarship.

2. Aggrieved by the non-payment of the royalty to the Sirdarship, the petitioner filed W.P. (C) No. 42(SH) of 1991 before this Court, which by the judgment and order dated 25-5-1995 had allowed the writ petition and directed the State-respondents to pay the royalty of 50% to the petitioner in terms of the agreement dated 29-10-1829 read with Article 294 of the Constitution of India. Aggrieved by this judgment and order, the District Council carried the matter in appeal before the Division Bench of this Court in W.A. No. 20(SH) of 1999. According to the learned counsel for the petitioner, the then counsel appearing for the petitioner, without instruction from the Sohbar Sirdarship, made a prayer before this Court for allowing him to withdraw the writ petition notwithstanding the adjudication of the writ petition by the learned Single Judge of this Court in favour of the petitioner. In terms of this prayer, the Division Bench of this Court by the order dated 6-12-2007 dismissed the writ petition with a liberty to file a fresh case and accordingly closed the writ appeal as infructuous. It is the case of the petitioner that as Sirdarship could not file a review petition of the order closing the appeal due to delay, he is now approaching this Court for appropriate relief under Article 226 of the Constitution.

3. Mr. H.L. Shangreiso, the learned counsel for the petitioner, submits that the writ petition does not suffer from laches inasmuch as the grievance projected by the petitioner in this case is a continuing wrong or recurring wrong inasmuch as it creates a continuing source of injury and renders the doer of the wrong responsible and liable. According to the learned counsel, continuing wrong is based on recurring cause of action and not one time action: the petitioner is not

aggrieved by one time action of the State-respondents but with the continuous exploitation of its mineral resources and the continuous deprivation of the royalty legitimately due to it under the agreement dated 29-10-1829 and the provisions of the Mineral and Mines Minerals (Development and Regulation) Act, 1957. In any case, argues the learned counsel, no third party right has been created in the meantime, which is a valid and relevant ground for overlooking the principle of laches. He also contends that the Division Bench of this Court in the writ appeal granted the petitioner the liberty to file a fresh case and the writ petition may not, therefore, be dismissed at the threshold and may be heard on merit in the interest of justice, equity and good conscience. To fortify his contentions, the learned counsel relies on the following decisions of the Apex Court:- (1) Union of India (UOI) and Others Vs. Tarsem Singh, ; (2) M.R. Gupta v. UOI, (1995) 5 SCC 628; (3) M/s. Dehri Rohtas Light Railway Company Limited Vs. District Board, Bhojpur and District Board, Shahabad and others, ; (4) H.D. Vora Vs. State of Maharashtra and Others, ; (5) Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others, ; (6) Balkrishna Savalram Pujari and Others Vs. Shree Dnyaneshwar Maharaj Sansthan and Others, and (7) State of Meghalaya v. U. William Mynsong, (1987) 2 GLR 221. On the other hand, Mr. K.S. Kynjing, the learned Advocate General, submits that the writ petition is liable to be dismissed at the very threshold on the ground of laches. According to him, condoning the delay, on the facts and circumstances of this case, will be most inadvisable and will send a wrong signal to other potential litigants, who have slept over their rights for decades and will open a floodgate of litigations involving stale claims.

4. In my opinion, the writ petition is barred by the principle of laches and is covered by the decisions of the Apex Court in Syed Maqbul Ali v. Sate of U.P., 2011 AIR SCW 3195 and State of Maharashtra Vs. Digambar, . On the own showing of the petitioner that the Provincial Government of Assam had stopped payment of the royalty to him since 1952, there is no room for doubt that the petitioner has waived his right to claim the royalty in question or has acquiesced in to the deprivation of his right to claim the royalty by the State respondents by long passage of time. That apart, there is no satisfactory explanation for the delay spanning over six decades in filing the writ petition. Repeated representations, it is trite, does not and cannot extend the cause of action. The principle of laches has been elaborately explained by a three-Judge Bench of the Apex Court in Digambar case (supra) at paragraph 14 of the judgment. This is what it said:

"14. How a person who alleges against the State of deprivation of his legal right, can get relief of compensation from the State by invoking writ jurisdiction of the High Court under Article 226 of the Constitution even though, he is guilty of laches or undue delay is difficult to comprehend, when it is settled by decisions of this Court that no person, be he a citizen or otherwise, is entitled to obtain the equitable relief under Article 226 of the Constitution if his conduct is blameworthy because of laches, undue delay, acquiescence, waiver and the like.

Moreover, how a citizen claiming discretionary relief under Article 226 of the Constitution against a State, could be relieved of his obligation to establish his unblameworthy conduct for getting such relief, where the State against which relief is sought is a Welfare State, is also difficult to comprehend. Where the relief sought under Article 226 of the Constitution by a person against the Welfare State is founded on its alleged illegal or wrongful executive action, the need to explain laches or undue delay on his part to obtain such relief, should, if anything, be more stringent than in other cases, for the reason that the State due to laches or undue delay on his part to obtain such relief, may not be able to show that the executive action complained of was legal or correct for want of records pertaining to the action or for the officers who were responsible for such action not being available later on. Further, where granting of reliefs claimed against the State on alleged unwarranted executive action, is bound to result in loss to the public exchequer of the State or in damage to other public interest, the High Court before granting such relief is required to satisfy itself that the delay or laches on the part of a citizen or any other person in approaching for relief under Article 226 of the Constitution on the alleged violation of his legal right, was wholly justified in the facts and circumstances instead of ignoring the same or leniently considering it. Thus, in our view, persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot get discretionary relief obtainable thereunder unless they fully satisfy the High Court that the facts and circumstances of the case clearly justified the laches or undue delay on their part in approaching the Court for grant of such discretionary relief. Therefore, where a High Court grants relief to a citizen or any other person under Article 226 of the Constitution against any person including the State without considering his blameworthy conduct, such as laches or undue, acquiescence or waiver, the relief so granted becomes unsustainable even if the relief was granted in respect of alleged deprivation of his legal right by the State."

5. As for the contention of the learned counsel for the petitioner that the act complained of in the writ petition is a continuing wrong for which there can be no laches, I have carefully perused the judgments of the Apex Court in *Tarsem Singh*, *Balkrishna*, *M.R. Gupta* cases, etc. relied upon by him, but am unable to persuade myself to hold that they have relevancy to the instant case for the simple reason that the facts of the case in the three-Judge Bench decision of *Digambar* case are virtually on *pari materia* with the facts in this case, which is about the alleged deprivation of property without authority of law. It is not known at this time as to what actually prompted the learned counsel for the petitioner to withdraw the earlier writ petition whereupon the writ appeal had been closed by the Division Bench of this Court, but the fact remains that even then the writ petition suffered from the same defect of laches. Filing a writ petition after writ petition cannot cure the infirmity of the nature under discussion herein. Resultantly, this writ petition is barred by the principle of laches or undue delay, acquiescence or waiver.

6. For what has been stated in the foregoing discussion, this writ petition is not

maintainable and is accordingly dismissed. However, on the facts and in the circumstances of the case, I direct the parties to bear their respective costs."

3. The petitioner being aggrieved by the said judgment and order of the erstwhile Gauhati High Court dated 26.08.2011 passed in WP (C) No. 323/2009 preferred an appeal being WA No. (SH)40/2011 before the Division Bench of the erstwhile Gauhati High Court. The Division Bench of the erstwhile Gauhati High Court vide judgment and order dated 01.11.2011 dismissed the writ appeal. Paras 3, 4, 5, 6, 11 & 12 of the said judgment and order of the Division Bench of the erstwhile Gauhati High Court dated 01.11.2011 are reproduced hereunder:-

"3. The writ petitioner claim is for a 50% share of royalty on limestone, in pursuant to the agreement dated 29.10.1829 executed between the elders/Sirdars of the Sohbar Sirdarship (the Writ Appellant) with the British Governor General Mr. David Scott. Initially the appellants received their share of the royalty and post independence too, the Assam Government continued to pay the royalty share to the appellant till 1952. But the same was abruptly stopped from 1953.

4. Since effort of the appellant to elicit a positive response from the Government did not fructify and royalty payment was not resumed despite alleged assurance given by the State authorities, a writ petition i.e. WP (C) No. (SH)42/1991 was filed by the appellants.

5. This Court vide judgment and order dated 25.05.1995 allowed the case and directed the respondents to pay royalty to the appellant, as per the agreement of 1829. Aggrieved the District Council authorities challenged the order before a Division Bench through W.A. No. (SH)20/1999. But during the pendency of the writ appeal, on 06.12.2007, the learned counsel appearing for the writ petitioner (appellants before us) made a prayer for withdrawal of the writ petition with liberty to file a fresh petition. Accordingly on 06.12.2007 WA No. (SH)20/1999 was disposed of by allowing the withdrawal of the writ petition. Simultaneously the judgment dated 25.05.1995 of the learned Single Judge passed in favour of the appellant in Civil Rule No. (SH)42/1991 was held to be non est. Consequently, the writ appeal was closed as infructuous with liberty to file fresh petition.

6. The writ petitioner however failed to file any fresh case for nearly two years. But eventually WP (C) No. (SH)323/2009 came to be filed, which was dismissed by the learned Single Judge on 26.08.2011, resulting in the present appeal.

11. The petitioner also refers to the case of M/s. Bengal Waterproof Limited Vs. M/s. Bombay Waterproof Manufacturing Company and Another, where the Court was considering trade mark violation by the defendant in the suit. A reading of this decision shows that the first suit was disposed of as technically not maintainable in absence of proper relief. Subsequently when the trade mark infringement continued the plaintiff filed the second suit. The Apex Court then held that the Courts below erred in taking the view that the second suit of the

plaintiff was barred. The facts in this case are clearly distinguishable and the ratio in our view has no bearing in this Appeal.

12. The learned counsel for the appellant has relied upon another decision of the Apex Court in the case of Balkrishna Savalram Pujari and Others Vs. Shree Dnyaneshwar Maharaj Sansthan and Others, . Here the Court held that where the wrongful act complained of amounts to ouster, there is no scope for application of Section 23 of the Limitation Act. We have considered the decision in Balakrishna (supra) and are of the opinion that facts of that case can't be used to support the appellant's contentions in the present case, where royalty payment was discontinued since 1952.

13. The learned Single Judge found support for the impugned decision in the case of State of Maharashtra Vs. Digambar, . In this case compensation was claimed by an agriculturist for his land utilized by the government without his consent in the course of execution of relief work. Thus deprivation of property without following the due process was alleged against the government. The claim was resisted on the ground of laches. The Supreme Court held that the discretionary relief under Article 226 of the Constitution is to be considered reasonably and laches or undue delay on the part of the petitioner in approaching the Court would result in denial of relief for alleged deprivation of the legal right claimed by the petitioner. The facts in this decision of the Apex Court are more relevant for the present case and the ratio in our view was correctly applied for the impugned order.

14. Having considered the reasoning given by the learned Single Judge we are of the considered opinion that since the royalty payment was stopped in the year 1953 and the petitioner had belatedly approached the Court with the excuse of making repeated representation(s) and considering further that the second case was filed only in the year 2009 after withdrawal of the first writ petition on 06.12.2007, the absence of vigilance on the part of the writ petitioners is writ large as they slept over their rights if any through many decades. Consequently, we find no reason for taking a different view than the one taken by the learned Single Judge. Accordingly, we dismiss the Appeal without any order of cost."

4. The said writ petition did not end before the High Court as the present writ petitioner continued to pursue the matter by filing an SLP being No. 7799/2012 before the Apex Court. The Apex Court had also dismissed the said SLP vide order dated 19.03.2012; the Apex Court, in that order, observed that "however, it is made clear that the petitioner shall be free to avail any other remedy which may be available to it including the one by way of making representation to the State Govt." The claims of the petitioner to share 50% of the royalty on limestone with the State Govt. had already been decided finally by the said judgments and orders of the erstwhile Gauhati High Court and the Apex Court did not interfere with the said judgment and order of the erstwhile Gauhati High Court in the said SLP No. 7799/2012 inasmuch as, the Apex Court had dismissed the said SLP.

5. Mr. H.L. Shangreiso, learned counsel for the petitioner strenuously contended that the claims of the petitioner to share 50% of the royalty on limestone with the State Govt. had not been decided on merit. The erstwhile Gauhati High Court in the said two judgments and orders clearly held that the claims of the petitioner for sharing 50% of the royalty on limestone with the State Govt. cannot be considered because it is barred by the principle of laches and acquiescence. This point had already been discussed elaborately by the erstwhile Gauhati High Court (Single Bench) in the judgment and order dated 26.08.2011 passed in WP (C) No. (SH)323/2009 and also by the Division Bench of the erstwhile Gauhati High Court in its judgment and order dated 01.11.2011 passed in WA No. (SH)40/2011. In such circumstances, this Court is of the considered view that the claims of the petitioner for sharing 50% of the royalty on limestone with the State Govt. with prospective effect cannot be decided in the present writ petition. In other words, right of the petitioner which had already barred by the principle of laches and acquiescence cannot be opened indirectly by filing the present writ petition for a direction to the State respondents to pay 50% shared of the royalty to the writ petitioner prospectively. For granting the relief sought for in the present writ petition, the Court has to open and decide again the claims of the petitioner for sharing 50% of the royalty on limestone with the State Govt. which had finally been considered and decided by the erstwhile Gauhati High Court in the said writ petition as well as writ appeal. The petitioner has to understand that his claim for sharing 50% of the royalty on limestone with the State Govt. cannot be opened even after the said decisions of the erstwhile Gauhati High Court in the said writ petition as well as the said writ appeal only on the pretext that the claims of the petitioner in the present writ petition for sharing 50% of the royalty on limestone with the State Govt. is only w.e.f. the date of filing the representation dated 12.04.2012.

6. It is fairly well settled law that the right or claim of the party which is barred by the principle of laches and acquiescence cannot be decided on merit inasmuch as because of the principle of laches, acquiescence and waiver, the Court itself cannot take decision on such right on merit. By the principle of laches, acquiescence and waiver, concerned party is barred from seeking the relief basing on the right, which had already been waived and the Court also cannot decide the said claim or right on merit. When the judgment is about to complete, Mr. H.L. Shangreiso, learned counsel for the petitioner contended that the lease agreement between the State Govt. and the private respondent No. 7 for carrying out the mining activities in the leased area had already been expired. Regarding this point, the Court is not making any observation; and validity of any lease agreement between the State Govt. and the private respondent No. 7 is to be decided under the relevant provision of law in the appropriate forum. The parties are left to seek appropriate remedy under the appropriate provision of law in the appropriate forum.

7. Writ petition is disposed of accordingly.