

(1995) 05 SC CK 0077

In the Supreme Court Of India

Case No : Civil Appeal No. 6066 of 1995

State of Maharashtra

APPELLANT

Vs

Digambar

RESPONDENT

Date of Decision : 12-05-1995

Acts Referred:

Constitution of India, 1950 — Article 136, 142, 226

Citation : AIR 1995 SC 1991 : (1995) 3 ALT 11 : (1995) 9 JT 310 : (1995) 4 SCALE 98 : (1995) 4 SCC 683 : (1995) 1 SCR 492 Supp

Hon'ble Judges : A. M. Ahmadii, C.J;N. Venkatachala, J;G. T. Nanavati, J

Bench : Full Bench

Advocate : Ashok Desai K. Madhava Reddy, N.M. Ghatate, A.S. Bhasme, S.V. Deshpande N.B. Munjane, S. K. Adkani, P.D. Bhosle, Pramit Saxena and A.M. Khanwilkar, for the Appellant;

Final Decision : allowed

Judgement

N. Venkatachala, J.—Leave granted.

2. During the year 1971-72 when acute scarcity conditions prevailed in nearly 23,000 villages of the State of Maharashtra, large scale scarcity relief works had to be undertaken by the State Government to provide employment to small agriculturists and agricultural labour of those villages for earning their livelihood. Such relief works included 38,000 Km. of road works. As the State Government was not in a position to divert relief funds at its disposal for payment of compensation for lands to be utilised in road works, Collectors, put in-charge of such works, were instructed not to accord sanction to them without ensuring that they did not involve any payment of compensation by the Government. Collectors, were, in deed specially instructed to impress upon the non-official and other social workers to use their good offices in ensuring that the land required for such scarcity relief works were donated to the Government without any claim for compensation.

2A. In the year 1991, respondent, an agriculturist of Vepani village in District

Nandat of Maharashtra, filed a writ petition, W. P. No. 3124/91 under Article 226 of the Constitution of India in the Bombay High Court, Aurangabad Bench against the appellant, the State of Maharashtra. The relief sought in that writ petition was for issue of a direction to the Government of Maharashtra to grant compensation to him for his land alleged to have been utilised by the Government without his consent for Vepana-Gogri Road -- a road work carried out by the agencies of the State Government, in the course of execution of scarcity relief works undertaken by the State Government in the year 1971-72. When the said writ petition, as well as other 191 similar writ petitions, had been set down for admission before the Aurangabad Bench of the Bombay High Court, the Hon'ble Judges constituting that Bench, called upon the concerned Government Pleader to appear for the State by waiving service of notice on it. The learned Government Pleader, who, accordingly, appeared on behalf of the State in those writ petitions, urged for dismissal of the writ petitions on the ground of laches on the part of writ petitioners, i.e., undue delay of 20 years, which had occurred in the filing of the writ petitions. But, the Bench of the High Court refused to entertain the ground of undue delay urged by the learned Government Pleader against the grant of the relief sought for in the writ petitions and allowed the writ petitions by its judgment dated October 10, 1990. The portion of the judgment which could be regarded as material, reads thus:

Mr. Kakade. learned Government Pleader faintly urged that assuming that the petitioner/petitioners were right, but since possession was taken sometime in the year 1972, the present Writ petition filed in the year 1991 are hopelessly time barred and this delay itself is sufficient to reject the petition. We are afraid, in a welfare State, the State Government cannot take such attitude when citizens come before the Courts and complain that they have been deprived of their property without following due process of law and without paying the compensation. It certainly affects the valuable right of the citizen to receive compensation. There is no dispute that the possession of lands was taken sometime in 1972. There is no Investigation on factual aspects by any agency so far. The question as to whether any land of the petitioner has been taken possession of in the year 1971-72 as alleged in the petition will have to be enquired into by a competent Officer. We accordingly direct the Collector or any other Officer nominated by him but not below the rank of Deputy Collector to initiate the proceedings under the Land Acquisition Act, 1894.

3. S. L. P. (C) No. 10723 of 1993 filed by the State of Maharashtra relates to the said judgment rendered in W. P. No. 3124 of 1991 by the High Court. S.L.Ps filed by the State of Maharashtra in respect of judgments in other 191 similar writ petitions rendered by the High Court, following the above judgment, are not yet registered on account of non-removal of defects pointed out by the Registry of this Court in respect of them.

4. When the above SLP No. 10723 of 1993 had come to be listed for hearing before a two- Judge Bench of this Court on 15-11-1993, an order is made by that

Bench which read thus:

The Registry is directed to post the matter before a three-Judge Bench as similar matters in other SLP Nos. 15132-47/90 have already been dismissed on 11-12-1990 by two-Judges Bench of this Court and the matter involves a decision on merit.

5. Having heard the SLP No. 10723 of 1993 which had come up for hearing before us, because of the said order of the Division Bench of this Court, we have granted leave to appeal as sought for therein.

6. The main contention raised on behalf of the appellant -- the State of Maharashtra --against the sustainability of the judgment of the High Court under appeal by Shri Ashok Desai, its learned counsel, relates to exercise of discretionary power conferred on the High Court under Article 226 of the Constitution for grant of relief of payment of compensation to the writ petitioner (respondent here) for his land alleged to have been utilised by officers of the State Government in the year 1971-72 for construction of a public road against his wish refusing to consider the plea of laches or undue delay of 20 years raised on behalf of the State Government as a ground disentitling the writ petitioner for grant of such discretionary relief. According to him, High Court's power under Article 226 of the Constitution to grant relief to a person by issue of directions, orders or writs for any other purpose when was purely discretionary, judgment of the High Court by which such relief is granted becomes unsustainable, if it is shown that the same has not been founded on sound discretion, that is, on consideration of recognised judicial principles governing exercise of such discretion, to wit, laches, undue delay, acquiescence, waiver or the like on the part of the person seeking relief. Further, according to him, when it is well-settled that High Court's discretionary power under Article 226 of the Constitution could be exercised to grant relief only to a person whose conduct does not disentitle him to obtain such discretionary relief, the High Court cannot refuse to take into consideration petitioner's conduct which disentitles him for such relief merely because it is the State against which such relief is sought. When a citizen complains against the State which is interested in protecting his legal rights, by filing a petition under Article 226 of the Constitution, of infringement of his legal right and seeks exercise of High Court's discretionary power to grant him relief, the need for the High Court, to look into the conduct of the citizen disentitling the discretionary relief sought is, if any thing, of great public importance for grant of such relief against the State would result in loss to the State, i.e., public money. His contention, therefore, was that impugned judgment by which relief had been granted to the writ petitioner (respondent here) refusing to consider the ground of laches undue delay of 20 years, urged on behalf of the State against grant of such relief was liable to be interfered with and set aside as that made by the High Court in wrong exercise of its discretionary power under Article 226 of the Constitution. The judgments of the High Court in 191 other writ petitions rendered by following the judgment impugned in this appeal were also

liable to be annulled as a consequence.

7. The said contentions urged against the sustainability to the judgment impugned in this appeal were sought to be refuted by Dr. Ghatate, the learned Counsel appearing for the respondent in this appeal and by learned counsel interested in supporting the judgments in other 191 similar writ petitions rendered following that judgment. Their contention was that when the State of Maharashtra had not preferred appeals to this Court against some of earlier judgments rendered in similar writ petitions filed before the High Court in the year 1987 and when some of the S.L.Ps against a few of the other judgments in similar writ petitions are rejected in limine by this Court, there can be no valid justification for the State of Maharashtra to challenge the judgment -under appeal and the other 191 similar judgments in the writ petitions rendered following that judgment on the ground that the High Court had wrongly exercised its discretion under Article 226 of the Constitution in granting relief to respondent and others similarly situated, without considering their conduct in approaching the High Court after undue delay of about 20 years. It was also their contention that the State Government when had not obtained gift deeds in respect of citizens' lands in relief works carried out in the drought affected areas of the State, it was not open to the State Government to contend that the delay of 20 years on the part of citizens for seeking relief under Article 226 of the Constitution has to be regarded as that which showed that the citizens had either voluntarily given away their lands or acquiesced in the taking of such lands by State without compensation or waived their right to claim compensation for such lands.

8. Shri Ashok Desai, in his reply to the submissions made on behalf of the respondent and others who had obtained judgments in their favour from the High Court on the basis of the judgment impugned in this appeal, did not dispute the position that certain judgments of the High Court in similar matters had not been appealed against by the State in this Court. But, according to him such thing had happened obviously under an impression that they were stray cases and not fit enough to be appealed against before this Court, having regard to smallness of the amounts involved. When the High Court allowed certain other writ petitions based on its earlier judgments in similar matters, the State, according to him, inevitably filed S.L.Ps in this Court in respect of latter judgments, but, unfortunately those S.L.Ps had come to be dismissed. But, when the High Court allowed the writ petition by the judgment under appeal and when that judgment was followed in allowing other 191 writ petitions and when innumerable persons were trying to take advantage of the said judgments of the High Court to file further writ petitions which was estimated to involve an expenditure of about 400 crores of rupees for the State of Maharashtra, there was no escape from filing the SLP out of which the present appeal has arisen and other S.L.P./S.L.Ps to wriggle out of the unanticipated situation. It was his submission that in the peculiar facts and circumstances adverted to by him, the earlier non-questioning of certain judgments of the High Court in this Court and the dismissal of S.L.Ps in

limine by a Division Bench of this Court filed against a few judgments of the High Court, cannot be a bar against the State filing this appeal against the judgment concerned seeking a decision of this Court on merits, when the judgment impugned was wholly unsustainable and called for interference so that the State Government may be saved from the calamitous situation which it had to face otherwise on account of 191 judgments rendered by the High Court by following it and when innumerable persons were waiting to take advantage of the judgment by filing fresh writ petitions in the High Court.

9. When in the year 1987 some villagers of the 'State of Maharashtra filed writ petitions in the Bombay High Court, Aurangabad Bench, claiming compensation for their lands alleged to have been used without acquisition for scarcity relief works got carried out by the State in the year 1971 -72, they were granted some amounts as compensation on ad hoc basis. Such grant of compensation, has not been questioned, by the filing of the appeals in this Court. Non-filing of such appeals may be for the bona fide reason that being stray cases, were regarded not worth appealing as it was stated before us, or for want of proper advice or even sheer negligence of officers of Government concerned, which often would be the cause for non-filing of appeals in time. Later judgments rendered by the High Court in some of the similar matters although have been sought to be appealed against by filing S.L.P.s., such S.L.P.s. are rejected in limine by a two-Judge Bench of this Court obviously refusing to exercise its discretion under Article 136 of the Constitution. Whether the said non-filing of appeals in similar matters or rejection of S.L.Ps in similar matters, could come in the way of this Court entertaining the present appeal of the State under Article 136 of the Constitution even if it relates to a similar matter, is the question.

10. As seen from the judgment under the present appeal, when the writ petition out of which the present appeal has arisen and other 191 similar writ petitions out of which the S.L.Ps, which are yet to be registered by the Registry of this Court, have arisen, were listed before the High Court for preliminary hearing, the High Court has required the Government Pleader to appear for the State of Maharashtra --the common respondent in all of them by waiving service of notice upon it and heard learned counsel appearing for the writ petitioners and the learned counsel-High Court Government Pleader, by treating the writ petitions as listed for final hearing. As the relief claimed in the writ petitions filed under Article 226 of the Constitution in the year 1991 against the State of Maharashtra, the appellant here, was for directing it to pay compensation for writ petitioners' lands alleged to have been used without their consent by the State or its agencies for carrying out the scarcity relief works in the drought stricken villages of the State of Maharashtra, during the year 1971 -72, the grant of that relief by the High Court is resisted by the learned Government Pleader on the ground of laches or undue delay of 20 years on the part of the writ petitioners in seeking such relief.

11. Again, as seen from the judgment, the portion of which is excerpted by us

earlier, the High Court has not chosen to consider the ground of laches or undue delay on the part of the writ petitioners as that which disentitled them to seek relief under Article 226 of the Constitution, because of its view that the ground of laches or undue delay cannot disentitle a citizen to obtain relief from the High Court under Article 226 of the Constitution when he claims compensation from the State for his land alleged to have been taken away by the State or its agencies.

The said view taken by the High Court that the ground of laches or undue delay on the part of a citizen does not disentitle him to obtain relief under Article 226 of the Constitution, when his claim for relief is based on deprivation of his property by the State or its agencies has since made it (High Court) to grant relief to the respondent in this appeal and other similarly situated, sustainability of such view requires our examination in this appeal.

12. 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 well settled by decision 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 blame-worthy 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 unblame worthy 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 the part of the person seeking 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 relief is 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 blame-worthy conduct, such as laches or undue delay .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.)

13. Learned Counsel for the respondent (writ petitioner) and other similarly situated, it must be stated to their credit, even did not choose to address any arguments before us supporting the view of the High Court that a citizen when complains before the High Court under Article 226 of the Constitution of the violation of his legal right by the State, the High court could grant relief to him without examining the question of laches or undue delay on his part in invoking the jurisdiction of the Court for relief thereunder. What was contended on behalf of the respondent and persons similarly situated against whom S.L.Ps filed are not yet registered, was that the State Government when had not chosen to question some judgments of the High Court in writ petitions of the year 1987 whereunder certain ad hoc compensation had been granted on the allegation that their lands had been taken away for scarcity relief works by the agencies of the State in the year 197)-72 and further when a few S.L.Ps filed in -respect of some subsequent judgments of the High Court in similar matters had been rejected in limine by a two-Judge Bench of this Court, the State Government should not be allowed to pursue the present appeal or other S.L.P's filed by it in similar cases.

14. We are unable to appreciate that objection raised against the prosecution of this appeal by the appellant or other S.L.Ps filed in similar matters. Sometimes, as it was stated on behalf of the State, the State Government may not choose to file appeals against certain judgments of the High Court rendered in Writ petitions when they are considered as stray cases and not worthwhile invoking the discretionary jurisdiction of this Court under Article 136 of the Constitution, for seeking redressal therefore. At other times, it is also possible for the State, not to file appeals before this Court in some matters on account of improper advice or negligence or improper conduct of officers concerned. It is further possible, that even where S.L.Ps are filed by the State against judgments of High Court, such S.L.Ps may not be entertained by this Court in exercise of its discretionary jurisdiction under Article 136 of the Constitution either because they are considered as individual cases or because they are considered as cases not involving stakes which may adversely affect the interest of the State. Therefore, the circumstance of the non-filing of the appeals by the State in some similar matters or the rejection of some S.L.Ps in limine by this Court in some other similar matters by itself, in our view, cannot be held as a bar against the State in filing an SLP or S.L.Ps in other similar matters where it is considered on behalf of the State that non-filing of such SLP or S.L.Ps and pursuing them is likely to seriously jeopardise the interest of the State or public interest.

15. in any event, in our considered view, the non-filing of appeals before this Court by the State in similar matters or rejection of S.L.Ps by this Court in limine

or otherwise in similar matters, by them-selves cannot operate as a bar or a fetter for this Court in entertaining S.L.Ps subsequently filed even if they are considered to relate to similar matters where it finds, as in this case, that the High Court was wholly wrong in granting relief of compensation to a writ petitioner by the judgment under appeal by not considering his entitlement for such relief under Article 226 of the Constitution on account of laches or undue delay on his part or where such wrong judgment is followed for granting similar relief by rendering 191 judgments, which are the subject of S.L.P.s in this Court and where there is every possibility of the High Court granting similar relief at the instance of persons who may go before it with similar complaints, which ultimately may result in the estimated loss of Rs. 400 crores to the State, as stated on behalf of the State, and cause grave injustice to the interests of the State. Hence, non-filing of appeals before this Court against certain judgments of the High Court or rejection of appeals filed before this Court against certain judgments of the High Court, cannot be held to come in the way of exercise of this Court's wide discretionary power, with which it is especially invested under Article 136 of the Constitution of entertaining an appeal or appeals against a similar judgment or judgments at the instance of an aggrieved party including the State when it is found necessary to remedy manifest injustice. Therefore, the fact that the State has failed to file appeals in similar matters or this Court has rejected S.L.Ps in similar matters, cannot be held to be a total bar or a fetter for this Court to entertain appeals under Article 136 of the Constitution against similar judgments of High Court where need to entertain such appeals is found necessary to meet the ends of Justice, in that, the ambit of power invested in this Court under Article 136 allows its exercise, whenever and whenever, justice of the matter demands it for redressal of manifest injustice. When by an order, already adverted to by us, a two-Judge Bench of this Court, has got referred the SLP out of which the present appeal has arisen for being entertained and decided on merits by a three-Judge Bench of this Court, notwithstanding the rejection of S.L.Ps 'by another two-Judge Bench of this Court in similar matters, it has desired the exercise of this Court's wide power under Article 136 of the Constitution to meet the ends of Justice and remedy the manifest injustice caused to the State by the judgment of the High Court under Appeal, cannot be overlooked.

16. Coming to the exercise of power conferred upon the High Court under Article 226 of the Constitution for issuing orders, directions or writs for 'any purpose, such power is discretionary, being a matter well-settled, cannot be disputed.

17. 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 unblame worthy 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 blame-worthy conduct.

18. Laches or undue delay, the blame-worthy conduct of a person in approaching a Court of Equity ' in England for obtaining discretionary relief which disentitled him for grant of such relief was explained succinctly by Sir Barnes Peacock, long ago, in *Lindsay Petroleum Co. v. Prosper Armstrong* (1874) 3 PC 221 thus:

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 or 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 it relates to the remedy.

19. Whether the above doctrine of laches which disentitled grant of relief to a party by Equity Court of England, could disentitle the grant of relief to a person by the High Court in exercise of its power under Article 226 of our Constitution, when came up for consideration before a Constitution Bench of this Court in *Moon Mills Ltd. v. M. R. Melier, President, Industrial Court, Bombay* AIR 1967 SC 1450 it was regarded as a principle that disentitled a party for grant of relief from a High Court in exercise of its discretionary power under Article 226 of the Constitution.

20. A three-Judge Bench of this Court in *Maharashtra State Road Transport Corporation Vs. Balwant Regular Motor Service, Amravati and Others*, , reiterated the said principle of laches or undue delay as that which applied in exercise of power by the High Court under Article 226 of the Constitution.

21. Therefore, where a High court in exercise of its power vested under Article 226 of the Constitution issues a direction, order or writ for granting relief to a person including a citizen without considering his disentitlement for such relief due to his blameworthy conduct of undue delay or laches in claiming the same, such a direction, order or writ becomes unsustainable as that not made judiciously and reasonably in exercise of its sound judicial discretion, but as that made arbitrarily.

22. Since we have held earlier that the person seeking grant of relief under Article 226 of the Constitution, even if it be against the State, is required to satisfy the High Court that he was not guilty of laches or undue delay in

approaching it for relief, need arises for us to consider whether respondent in the present appeal (writ petitioner in the High Court) who had sought for relief of compensation on the alleged infringement of his legal right, had satisfied the High Court that he was not guilty of undue delay or laches in approaching it for relief. The allegation of the petitioner in the writ petition, as becomes clear from the judgment under appeal, was that although certain extent of his land was taken away in the year 1971 -72 by the agency of the State for the scarcity relief road works undertaken by the State Government in the year 1971 -72, to find work for small agriculturists and agricultural labourers in the then prevailing severe drought conditions, without his consent, he was not compensated therefore, despite requests made to the State Government and various agencies in that regard ever since till the date of filing of the writ petition by him.

23. In our view, the above allegation is in no way sufficient to hold that the writ petitioner (respondent here) has explained properly and satisfactorily the undue delay of 20 years which had occurred between the alleged taking of possession of his land and the date of filing of writ petition in the High Court. We cannot overlook the fact that it is easy to make such kind of allegations against anybody that too against the State. When such general allegations are made against a State in relation to an event said to have occurred 20 years earlier, and the State's non-compliance with petitioners demands, State may not at all be in a position to dispute such allegation, having regard to the manner in which it is required to carry on its governmental functions. Undue delay of 20 years on the part of the writ petitioner, in invoking the High Court's extraordinary jurisdiction under Article 226 of the Constitution for grant of compensation to his land alleged to have been taken by the Governmental agencies, would suggest that his land was not taken at all, or if it had been taken it could not have been taken without his consent or if it was taken against his consent he had acquiesced in such taking and waived his right to take compensation for it.

24. Thus, when the writ petitioner (respondent here) was guilty of laches or undue delay in approaching the High Court, the principle of laches or undue delay adverted to above, disentitled the writ petitioner (respondent here) for discretionary relief under Article 226 of the Constitution from the High Court, particularly, when virtually no attempt had been made by the writ petitioner to explain his blameworthy conduct of undue delay or laches. The High Court, therefore, was wholly wrong in granting relief in relation to inquiring into the allegation and granting compensation for his land alleged to have been used for scarcity relief road works in the year 1971-72. As seen from the judgment of the High Court, the allegation adverted to above, appear to be the common allegation in other 191 writ petitions where judgments are rendered by the High Court following the judgment under appeal and which are subject of S.L.Ps. in this Court that are yet to be registered. We have, therefore, no hesitation in holding that the High Court had gone wholly wrong in granting the relief which it has given in the judgment under appeal, and judgments rendered following the said judgment in other 191 writ petitions, said to be the subject of S.L.Ps. or

otherwise. All the said judgments of the High Court, having regard to the fact that they were made in writ petitions with common allegation and seeking common relief, are liable to be interfered with and set aside in the interests of Justice even though, only learned counsel appearing for a few writ petitioners were heard by us.

25. In the result, we allow this appeal, set aside the judgment under appeal, dismiss the writ petition of the writ petitioner (respondent here) and also annul all those judgments rendered by the High Court following the judgment under appeal, even though the S.L.Ps filed in respect of them before this Court are yet to be registered or even if no S.L.Ps are filed in respect of them. However, in the facts and circumstances of the present case, we make no order as to costs.