

YUNUS (BABOOBHAI) A HAMID PADVEKAR

v.

STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND ORS.

(Civil Appeal No. 486 of 2009)

JANUARY 28, 2009

[DR. ARIJIT PASAYAT AND ASOK KUMAR
GANGULY, JJ.]

LAND ACQUISITION:

Land acquired for Industrial development – Representation of release of the land – Committee appointed by Legislative Assembly for considering the representation – Meanwhile Writ Petition filed in High Court – High Court dismissing the Writ Petition on the ground that it was highly belated – On appeal, Held: Unexplained delay coupled with creation of third party rights in the meantime is an important factor which weighs with the High Court – Hence no interference called for – Maharashtra Industrial Development Act, 1961 – S.39(2a).

Maharashtra Industrial Development Corporation acquired certain lands including that of the appellant. A representation was made by the appellant to the Collector for release of the land. A Committee was appointed by the Legislative Assembly to consider such representations. Meanwhile, appellant filed a Writ Petition in the High Court and it was dismissed on the ground that it was highly belated. Hence the appeal.

Dismissing the appeal, the Court

HELD: 1.1. Delay or laches is one of the factors which is to be borne in mind by the High Courts when they exercise their discretionary powers under Article 226 of

A the Constitution of India, 1950. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes
 B prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court. [Para 8] [693-D-F]

C 1.2. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its trail new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also
 D injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such
 E jurisdiction. [Para 11] [695-A-C]

F *Durga Prasad v. Chief Controller of Imports and Exports AIR 1970 SC 769; Moon Mills Ltd. v. Industrial Courts AIR 1967 SC 1450; Maharashtra State Transport Corporation v. Balwant Regular Motor Service AIR 1969 SC 329; R.N Bose v. Union of India AIR 1970 SC 470 and State of M.P. v. Nandlal AIR 1987 SC 251, relied on.*

Lindsay Petroleum Company v. Prosper Armstrong Hurde etc. (1874) 5 PC 221, referred to.

G Case Law Reference:

	AIR 1970 SC 769	relied on	Para 8
	AIR 1967 SC 1450	relied on	Para 9
H	AIR 1969 SC 329	relied on	Para 9

AIR 1970 SC 470 relied on Para 10 A

AIR 1987 SC 251 relied on Para 11

(1874) 5 PC 221 referred to Para 8

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From the Judgment and Order dated 15.7.2004 of the High
Court of Judicature at Bombay in writ Petition No. 1300 of
2004.

Rana Mukherjee, Bishwajeet Swain and Abhilash Kumar
for the Appellant. C

Shruti Chaudhary, Swati Sinha, Jayasree Singh (for M/s.
Fox Mandal and Co.) Aniruddha P. Mayee and Abhilash Kumar
for the respondents. D

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J.1. Leave granted.

2. Challenge in this appeal is to the order passed by a
Division Bench of the Bombay High Court dismissing the Writ
Petition filed by the appellant on the ground that it was highly
belated. It also noted that the appellant had received
compensation in respect of the land which was acquired. E

3. Background facts in a nutshell are as follows: F

In the year 1971 Maharashtra Industrial Development
Corporation (in short 'MIDC') acquired about 1250 acres of
agricultural land situated at four villages in Ratnagiri district of
Maharashtra. Thirty eight acres of land belonging to the
appellant were acquired. It is the stand of the appellant that out
of the acquired area, about 50% was under paddy cultivation
and 25% was under cultivation of mango crops. In the
appellant's land about 175 mango trees were there. In the year G

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A 1973, the Revenue and Forest Department of the Maharashtra Government passed a resolution inter-alia deciding to take steps in respect of surplus acquired land which remained unused for a period of three years from the date of taking over possession for resumption of such lands in accordance with the applicable rules and orders. In 1974, a Writ Petition was filed by the appellant challenging the Notification for acquisition and an arrangement was worked out in which 20 acres of appellant's land out of 38 acres were released. The lands were acquired for a Govt. company-Balco for setting up a manufacturing unit. Since Balco did not set up any unit, license issued to it was cancelled. In the year 1982, appellant claims to have made representations alongwith similarly situated land owners for restoration of the acquired land to the original owners. In the year 1983, compensation was paid to 686 land owners. In 1984, again the appellant made a representation to the Collector of Ratnagiri for release of the land. On 20.7.1989 a Committee was appointed by the Legislative Assembly for consideration of the proposal for handing back the acquired land to the original owners. Certain recommendations were made by the said Committee. On 20.8.1992 the land acquired for Balco was allotted to another industrial group. Subsequently, the State Government asked the industrial group not to continue the construction activities in view of pendency of cases. On 12.11.2002, representations were again made to hand back the land not utilized. It was the specific stand of the appellant that in view of Section 39(2a) of the Maharashtra Industrial Development Act, 1961 (in short the 'Act') the land should be restored. The High Court dismissed the writ petition on the ground that it was highly belated.

G 4. In support of the appeal, learned counsel for the appellant stated that the appellant was all through representing to the authorities and because of the recommendations by the Committee, the appellant waited for some time and ultimately when no worthwhile action was taken, he filed the writ petition.

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5. Learned counsel for the respondent on the other hand supported the judgment of the High Court. A

6. It is pointed out that the recommendations made in terms of the resolution were not accepted by the Government. It was decided that since definite policy has been formulated the land is to be utilized for the industrial development, the same cannot be surrendered to the original owners for cultivation purposes. It is also pointed out that the so called representations do not in any way assist the appellant to explain the long delay in filing the writ petition. B

7. It is also pointed out that Section 39(2a) is applicable only in respect of the undeveloped land, and in the instant case the land in question is developed land. C

8. Delay or laches is one of the factors which is to be borne in mind by the High Courts when they exercise their discretionary powers under Article 226 of the Constitution of India, 1950 (in short the 'Constitution'). In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in *Durga Prasad v. Chief Controller of Imports and Exports* (AIR 1970 SC 769). Of course, the discretion has to be exercised judicially and reasonably. D
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9. What was stated in this regard by Sir Barnes Peacock in *Lindsay Petroleum Company v. Prosper Armstrong Hurde etc.* (1874) 5 PC 221 at page 239 was approved by this Court in *Moon Mills Ltd. v. Industrial Courts* (AIR 1967 SC 1450) and *Maharashtra State Transport Corporation v. Balwant Regular Motor Service* (AIR 1969 SC 329), Sir Barnes had stated: G

"Now the doctrine of laches in Courts of Equity is not an H

A arbitrary or 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
B 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,
C if founded upon mere delay, that delay of course not
amounting to a bar by any statute of limitation, 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
D done during the interval which might affect either party and
cause a balance of justice or injustice in taking the one
course or the other, so far as relates to the remedy."

10. It would be appropriate to note certain decisions of this
Court in which this aspect has been dealt with in relation with
E Article 32 of the Constitution. It is apparent that what has been
stated as regards that Article would apply, a fortiori, to Article
226. It was observed in *R.N Bose v. Union of India* (AIR 1970
SC 470) that no relief can be given to the petitioner who without
any reasonable explanation approaches this Court under Article
F 32 after inordinate delay. It was stated that though Article 32 is
itself a guaranteed right, it does not follow from this that it was
the intention of the Constitution makers that this Court should
disregard all principles and grant relief in petitions filed after
inordinate delay.

G 11. It was stated in *State of M.P. v. Nandlal* (AIR 1987 SC
251) that the High Court in exercise of its discretion does not
ordinarily assist the tardy and the indolent or the acquiescent
and the lethargic. If there is inordinate delay on the part of the
petitioner and such delay is not satisfactorily explained, the
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High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its trail new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

12. In view of the aforesaid position we are not inclined to interfere in this appeal which is dismissed accordingly.

G.N.

Appeal dismissed.