

SWAIKA PROPERTIES PVT. LTD. AND ANR.

v.

STATE OF RAJASTHAN AND ORS.

(Civil Appeal No.1081 of 2008)

FEBRUARY 7, 2008

[ASHOK BHAN AND DALVEER BHANDARI, JJ.]

*Urban development:*

*Rajasthan Urban Improvement Act, 1959 – ss. 52(1), 52(2), 52(5) – Writ Petition challenging notification for acquisition of land after possession was taken over and award became final – Maintainability of – Held: Not maintainable on the ground of delay and laches – Land Acquisition Act, 1894 – ss.4, 18 – Delay and laches.*

On 23.6.1975, a notice was issued under s.52(2) of the Rajasthan Urban Improvement Act, 1959, for acquiring the land of the appellants for improvement and for extension of Jaipur Town. The appellants filed objections to the acquisition of their land which were rejected by the Land Acquisition Officer. On 8.2.1984, the Government issued declaration under s.52(1). Pursuant to the said declaration, notice dated 17/18.2.1984 under s.52(5) was issued asking the appellants to hand over possession of the land. After these notices, the appellants filed writ petition in Calcutta High Court. High Court granted stay of the acquisition proceeding restraining authorities from taking possession of the land. The respondents filed SLP before this Court. This Court did not go into the merits of the case and while granting leave, set aside the orders of Calcutta High Court and held that the Calcutta High Court did not have territorial jurisdiction to entertain writ petition in respect of land situated in the State of Rajasthan.

On 17.2.1987, possession of the land in question

A allegedly was taken by the respondents and the same was handed over to Jaipur Development Authority. However, according to the appellants, possession was not taken. The appellants filed writ petition in the High Court of Rajasthan but withdrew it with liberty to file a fresh writ  
B petition. On 26.6.1989, the Land Acquisition Officer passed an award. In the meantime, the appellants filed a writ petition seeking quashing of Notification dated 8.2.1984 and notices dated 17/18.2.2007. Single Judge of High  
C Court dismissed the writ petition holding that there was a genuine public purpose behind initiating the acquisition proceedings. On appeal, Division Bench of High Court held that since the appellants had filed an application  
D under s.18 of the Land Acquisition Act, 1894 for enhancement of the compensation, they were not entitled to the relief sought for in the writ petition. Hence the present appeal.

Dismissing the appeal, the Court

E HELD: The appellants had filed a writ petition before the Calcutta High Court challenging the acquisition proceedings, but the said writ petition was dismissed by this Court on 8.4. 1985 holding that the Calcutta High Court did not have the territorial jurisdiction to entertain the writ  
F petition. Thereafter, till 1987 the appellants did not challenge the acquisition proceedings and the writ petition was filed by it before the Rajasthan High Court which had the territorial jurisdiction in the matter and the same was withdrawn which was again filed within the next four months thereof, meaning thereby, during the  
G interregnum the appellants slept over the matter. However, the appellants have not been able to give any explanation for the same. Insofar as the contention regarding the possession having not been taken is concerned, the respondents submitted that the possession of the land in dispute has already been taken. Be that as it may, the  
H award in respect of the land having become final, the State

Government is vested with the powers to take possession of the land concerned and, therefore, there is no reason to disbelieve the claim of the State Government that the possession had been taken before the filing of the writ petition. Moreover, the appellants sought enhancement of compensation by filing reference application under s.18 of the Land Acquisition Act, 1894. Simultaneously, the appellants filed writ petition before the High Court of Rajasthan after passing of the award. A writ petition challenging the notification for acquisition of land, if filed after the possession having been taken, is not maintainable. The writ petition having been filed after taking over the possession and the award having become final, the same deserves to be dismissed on the ground of delay and laches. [Paras 13,17] [527-A-F; 529-G; 530-A]

*Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. Pvt. Ltd. & Ors. (1996) 11 SCC 501; State of Rajasthan & Ors. v. D.R. Laxmi & Ors. (1996) 6 SCC 445; Municipal Council Ahmednagar & Anr. v. Shah Hyder Beig & Ors. (2000) 2 SCC 48; C. Padma v. Dy. Secy. to the Govt. of T.N. (1997) 2 SCC 627 – relied on.*

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 1081 of 2008.

From the final Judgment and Order dated 4.9.2006 of the High Court of Judicature for Rajasthan, Jaipur Bench, Jaipur in D.B. Special Appeal (Writ) No. 134/2006.

Dr. A.M. Singhvi, Dr. Manish Singhvi and P.V. Yogeswaran for the Appellants.

Bharat Vyas, A.A.G., C.S. Vaidyanathan, Manish Kumar and Ansar Ahmad Chaudhary for the Respondents.

The Judgment of the Court was delivered by

**ASHOK BHAN, J.** 1. Leave granted.

2. Challenge in the present appeal is to the order passed H

A on 04<sup>th</sup> September 2006 in D.B. Special Appeal (W) No.134 of  
2006 by a Division Bench of the High Court of Rajasthan  
dismissing the appeal filed by the appellants whereby the  
Division Bench has upheld the judgment and order passed by  
a learned Single Judge of the same High Court dismissing the  
B writ petition filed by the appellants thereby upholding the  
acquisition proceedings in respect of the land of the appellants.

3. In order to appreciate the grievance of the appellants,  
facts leading to the filing of the appeal are necessary to be  
indicated.

C 4. Notice under Section 52(2) [which is equivalent to  
Section 4 of the Land Acquisition Act, 1894] of the Rajasthan  
Urban Improvement Act 1959 (for short, 'the Act') was issued  
on 25<sup>th</sup> June 1975 for acquiring the land of the appellants bearing  
D Khasra No.383 measuring 14 bighas and 16 biswas situated  
at Madrampura, Jaipur, Rajasthan. As per the said notice, land  
was sought to be acquired for improvement and purposes of  
Jaipur Town – extension of Civil Lines Area for construction of  
buildings. On 23<sup>rd</sup> August 1975, another notice was issued by  
the State under Section 52(2) of the Act indicating the purpose  
E of acquisition of land for extension of civil lines and planning of  
housing scheme. Appellants, on 08<sup>th</sup> September 1975, filed  
objections to the acquisition of their land. The appellants also  
submitted their representation from time to time. The Land  
Acquisition Officer, however, rejected the objections. On 08<sup>th</sup>  
F February 1984, the Government issued declaration under  
Section 52(1) of the Act [which is equivalent to Section 6 of the  
Land Acquisition Act, 1894]. Pursuant to the said declaration,  
notice under Section 52(5) of the Act was issued asking the  
appellants to hand over possession of the land.

G 5. After these notices were issued, the appellants filed Writ  
Petition No.5972 of 1984 before the High Court of Calcutta. A  
learned Single Judge of the High Court of Calcutta, while issuing  
*rule nisi*, granted stay of the acquisition proceedings and  
restrained the respondents from taking possession of the land.  
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Aggrieved against the said order the respondents filed Special Leave Petition before this Court, inter alia, challenging the jurisdiction of the Calcutta High Court to entertain the writ petition. Since the Special Leave Petition was filed against an interim order, this Court did not go into the merits of the case and while granting leave, by order dated 08<sup>th</sup> April 1985, set aside the order of the Calcutta High Court and held that the Calcutta High Court did not have the territorial jurisdiction to entertain the writ petition in respect of a land situated in the State of Rajasthan. Thus, the proceedings before the Calcutta High Court came to an end.

6. On 17.02.1987, possession of the land in question is alleged to have been taken by the respondents and the same was handed over to Jaipur Development Authority. However, according to the the appellants, possession was not taken.

7. The appellants filed Writ Petition No.1507 of 1987 in the High Court of Rajasthan which was withdrawn by them on 10<sup>th</sup> March 1989 with liberty to file a fresh writ petition.

8. On 26<sup>th</sup> June 1989, the Land Acquisition Officer passed the award and forwarded the same for approval to the State Government. According to the respondents, the State Government accorded its approval on 29<sup>th</sup> July 1989 which was declared by the Land Acquisition Officer on 30<sup>th</sup> July 1989 in accordance with law.

9. In the meantime, the appellants filed S.B.Civil Writ Petition No.2911 of 1989 seeking quashing of Notification dated 08<sup>th</sup> February 1984 and also notice dated 17<sup>th</sup>/18<sup>th</sup> February 2007 by which the possession is alleged to have been taken. One of the objections taken by the respondents before the High Court was that the writ petition could not be entertained after taking over of the possession of the land and handing over the same to Jaipur Development Authority and the award having been passed in respect of the said land in accordance with law. It was also alleged that the award was not the subject-matter of the writ petition. It was also pointed out that the appellants were

A simultaneously pursuing Reference Application for enhancement  
of compensation. Ultimately, a learned Single Judge of the High  
Court of Rajasthan, accepting the submissions of the  
respondents, dismissed the writ petition holding that there  
was a genuine public purpose behind initiating the acquisition  
B proceedings.

10. Being aggrieved, the appellants carried the matter in  
appeal before the Division Bench of the High Court of Rajasthan.  
The Division Bench, agreeing with the view taken by the learned  
Single Judge, dismissed the appeal and held that since the  
C appellants had filed an application under Section 18 of the Land  
Acquisition Act, 1894 for enhancement of the compensation they  
are not entitled to the relief sought for in the writ petition. The  
said order is under challenge before us.

D 11. A preliminary objection has been taken by the  
respondents to the effect that the appeal is liable to be dismissed  
on the ground of the delay on the part of the appellants to  
challenge the acquisition proceedings. It is also submitted that  
the acquisition of the land cannot be challenged after taking  
over of the possession and after the award having become final.  
E In support of this submission, the respondents have relied upon  
a number of judgments of this Court.

12. Counsel for the appellants, however, strenuously  
contended that there was no delay on the part of the appellants  
F in filing the writ petition challenging the acquisition proceedings.  
He submitted that soon after the notice under Section 52(5) was  
issued by the respondents, the appellants filed writ petition  
before the High Court of Calcutta which stood dismissed  
pursuant to an order of this Court, as noted above. Thereafter  
G the appellants filed another writ petition before the High Court  
of Rajasthan which was withdrawn. Within a period of four  
months thereof, i.e., on 05<sup>th</sup> July 1989, another writ petition  
bearing No.2911 of 1989 was filed. Counsel also submitted that  
these acts of the appellants demonstrate that there was no delay  
H on the part of the appellants to seek redressal of their grievance.

It was contended that actual possession of the land was never taken by the respondents on 17<sup>th</sup>/18<sup>th</sup> February 1987. A

13. We do not find any substance in the submissions of the counsel for the appellants. No doubt, the appellants had filed a writ petition before the Calcutta High Court challenging the acquisition proceedings, but the said writ petition was dismissed by this Court on 08<sup>th</sup> April 1985 holding that the Calcutta High Court did not have the territorial jurisdiction to entertain the writ petition. Thereafter, till 1987 the appellants did not challenge the acquisition proceedings and the writ petition was filed by it before the Rajasthan High Court which had the territorial jurisdiction in the matter and the same was withdrawn which was again filed within the next four months thereof, meaning thereby, during the interregnum the appellants slept over the matter. However, the appellants have not been able to give any explanation for the same. Insofar as the contention regarding the possession having not been taken is concerned, the respondents submit that the possession of the land in dispute has already been taken. Be that as it may, the award in respect of the land having become final, the State Government is vested with the powers to take possession of the land concerned and, therefore, there is no reason to disbelieve the claim of the State Government that the possession had been taken before the filing of the writ petition. Moreover, the appellants sought enhancement of compensation by filing reference application under Section 18 of the Land Acquisition Act, 1894. Simultaneously, the appellants filed writ petition before the High Court of Rajasthan after passing of the award. This Court has repeatedly held that a writ petition challenging the notification for acquisition of land, if filed after the possession having been taken, is not maintainable. In the case of *Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. Pvt. Ltd. & Ors.* (1996) 11 SCC 501 where K. Ramaswamy, J. speaking for a Bench consisting of His Lordship and S.B. Majmudar, J. held : B  
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"It is thus well-settled law that when there is inordinate H

A delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification under Section 4(1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. 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 Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches.”

D 14. In the concurring judgment, S.B. Majmudar, J. held as under :

E “..... Such a belated writ petition, therefore, was rightly rejected by the learned Single Judge on the ground of gross delay and laches. The respondent-writ petitioners can be said to have waived their objections to the acquisition on the ground of extinction of public purpose by their own inaction, lethargy and indolent conduct. The Division Bench of the High Court had taken the view that because of their inaction no vested rights of third parties are created. That finding is obviously incorrect for the simple reason that because of the indolent conduct of the writ petitioners land got acquired, award was passed, compensation was handed over to various claimants including the landlord. Reference applications came to be filed for larger compensation by claimants including writ petitioners themselves. The acquired land got vested in the State Government and the Municipal Corporation free from all encumbrances as enjoined by Section 16 of the

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Land Acquisition Act. Thus right to get more compensation got vested in diverse claimants by passing of the award, as well as vested right was created in favour of the Bombay Municipal Corporation by virtue of the vesting of the land in the State Government for being handed over to the Corporation. All these events could not be wished away by observing that no third party rights were created by them. The writ petition came to be filed after all these events had taken place. Such a writ petition was clearly stillborn due to gross delay and laches. ....”

15. Similarly, in the case of *State of Rajasthan & Ors. v. D.R. Laxmi & Ors.* (1996) 6 SCC 445 following the decision of this Court in the case of *Municipal Corporation of Greater Bombay* (supra) it was held :

“.... 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 Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches. ....”

16. To the similar effect is the judgment of this Court in the case of *Municipal Council, Ahmednagar & Anr. v. Shah Hyder Beig & Ors.* (2000) 2 SCC 48 this Court, following the decision of this Court in the case of *C. Padma v. Dy. Secy. to the Govt. of T.N.* (1997) 2 SCC 627 held :

“In any event, after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder. This has been the consistent view taken by this Court and in one of the recent cases (*C. Padma v. Dy. Secy. to the Govt. of T.N.*) ....”

17. In the present case also, the writ petition having been

- A filed after taking over the possession and the award having become final, the same deserves to be dismissed on the ground of delay and laches. Accordingly, the order of the learned Single Judge and that of the Division Bench are affirmed to the extent of dismissal of the writ petition and the special appeal without
- B going into the merits thereof. This appeal also deserves to be dismissed without going into the merits of the case and is dismissed as such. No costs.

D.G.

Appeal dismissed.