Before Ajay Kumar Mittal & Raj Rahul Garg, JJ.

DASHNAM AKHARA SANYASIAN, SHIV GANGA MANDIR, DURGIANA ABADI, AMRITSAR THROUGH ITS MAHANT SANJAY GIR CHELA MAHANT SRI RAVI DUTT GIR—*Petitioner*

versus

STATE OF PUNJAB AND ANOTHER—*Respondents*

CWP No. 12164 of 2015

March 29, 2016

Constitution of India, 1950—Art.226—Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013—S.24 (2) Punjab Town Improvement Act, 1922—S.36—Delay and latches—Applicability of Section 24(2) of 2013 Act—Land Acquired vide Notification dated 13.5.2005 of Punjab Town Improvement Act— Petitioner claiming release of acquired land in terms of Section 24(2) of Land Acquisition Act because neither possession was taken nor compensation paid to the owner before commencement of 2013 Act and till the date Writ Petition was filed in 2015—Held, that the challenge to the acquisition proceedings cannot be accepted at such a belated stage, not the provisions of Section 24(2) of 2013 Act are not applicable where the land was acquired under section 36 of Town Improvement Act—Petition dismissed as not maintainable.

Held, that the benefit of provisions of Section 24(2) of the 2013 Act is not available to the landowner in respect of acquisition under 1922 Act.

(Para 9)

Further held, that the petitioner has not been able to justify maintainability of the writ petition under Article 226 of the Constitution of India by Shri Sanjay Gir. Thus, no interference is called for with the impugned notifications and the award. Consequently, finding no merit in the writ petition, the same is hereby dismissed.

(Para 11)

Arun Gosain, Advocate, *for the petitioner.*

J.S.Toor, Advocate, *for the applicant*

in CM No.2845 of 2016 and respondent No.2 in the main writ petition.

Sudeepiti Sharma, DAG, Punjab.

AJAY KUMAR MITTAL, J.

CM No.2845 of 2016

(1) This is an application under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure for impleading the applicant i.e. Improvement Trust, Amritsar as respondent in the main writ petition.

(2) Learned counsel for the applicant prays for permission to withdraw the application. Dismissed as withdrawn.

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(3) The petitioner prays for quashing the compulsory acquisition proceedings comprising notice/notification dated 13.5.2005 under section 36 of the Punjab Town Improvement Act, 1922, (in short, "the 1922 Act") Annexure P.1, notification dated 22/23.5.2006, Annexure P.2 under section 42 of the 1922 Act, Annexure P.2 and award dated 21.5.2008, Annexure P.3. Further prayer has been made for a direction to the respondent authorities to release the land of the petitioner in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short, "the 2013 Act") as the petitioner is in actual physical possession of land and compensation has not been paid.

(4) A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The Government of Punjab issued notification dated 13.5.2005, Annexure P.1 under section 36 of the 1922 Act proposing to acquire amongst others the land owned and possessed by the petitioner for a public purpose namely the development scheme of 3.03 acre known as "Durgiana Mandir Complex". The notice under section 36 of the 1922 Act was published in the newspaper on different dates. According to the petitioner, the notice was not published in the provincial language. The petitioner filed objections to the notice on 10.6.2005. Thereafter, notification under section 42 of the 1922 Act which corresponds to section 6 of the Land Acquisition Act, 1894 (in short, "the 1894 Act") was issued on 22/23.5.2006, Annexure P.2. Award was announced on 21.5.2008,

Annexure P.3. According to the petitioner, it is still in actual physical possession of its land although the structures have been demolished and the Amritsar Improvement Trust has been entered as owner in the revenue record. The petitioner filed Civil Miscellaneous application No.12611 of 2013 in CWP No.19548 of 2012 for ex parte stay of dispossession on the basis of non payment of the compensation amount. This court vide order dated 9.10.2013 ordered to maintain status quo. Further, according to the petitioner, since compensation has not been given and possession is still with it, acquisition proceedings are deemed to have lapsed in view of Section 24(2) of the 2013 Act. Hence the instant writ petition.

(5) A written statement has been filed on behalf of respondent No.2 i.e. Land Acquisition Collector-cum-Regional deputy Director, Local Bodies, Improvement Trust Amritsar wherein it has been inter alia stated that as per the award, the ownership of land is in the names of Akhara Dashnamiya and Akhara Sanyasia and not in the individual name of Mahant Sanjay Gir, i.e. the petitioner. The notice under Section 36 of the 1922 Act was published in the regional language i.e. Punjabi and also National language i.e. Hindi besides English. The Trust had deposited the total amount of award i.e. ` 29,42,34,135/- at the disposal of respondent No.2 for disbursement but respondent No.2 did not make the payment to the petitioner in his individual name being not the owner of the land and as per the revenue record, there is no Akhara namely Dashnam Punch Juna Khara Shiv Ganga Mandir, Abadi Durgiana Mandir, Amritsar. However, there was one "Dashnami Akhara Sanyasian" of which Ravi Dutt Giri was recorded as Saparast i.e. representative. The petitioner being only representative, he has no right to sell the land in his individual capacity and use the amount for his personal use. The Deputy Commissioner. Amritsar vide order dated 27.5.2011 constituted a committee of five members i.e. (i) Sub Divisional Magistrate, Magistrate – A, (ii) Tehsildar, Amritsar-I, (iii) Chairman, Amritsar Improvement Trust, Amritsar, (iv) Secretary, Durgiana Mandir Committee, Amritsar and (v) Baitmam Mahant Sanjay Gir to receive the amount of compensation. It was also directed that a bank account be got opened which will be operated by the above said five members and the amount of compensation received be deposited in the said account. Further, possession from the petitioner has been taken on different dates as per details given in para 6 of the reply. It has been further stated that since the award under section 11 of

the 1894 Act has been passed, the possession has been taken and compensation has been deposited, the writ petition deserves to be dismissed.

(6) After hearing learned counsel for the parties and perusing the averments made in the writ petition and the written statement, we do not find any merit in the writ petition. Firstly, the petitioner has laid challenge to the compulsory acquisition proceedings initiated vide notification dated 13.5.2005 under Section 36 of 1922 Act (Annexure P.1), notification dated 22/23.5.2006 (Annexure P.2) issued under Section 42 of 1922 Act and also the award dated 21.5.2008 (Annexure P.3). The challenge to the acquisition proceedings and the award at this belated stage after the announcement of the award would not be maintainable under Articles 226/227 of the Constitution of India. The Apex Court in ***Municipal Council, Ahmednagar and antoher*** *versus* ***Shah Hyder Beig and others***[1] while considering the issue of maintainability of the writ petition after the announcement of the award held thus:-

> "16.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 recent cases ***(C. Padma & Ors. v. Dy Secretary to the Govt of T.N. & Ors, reported in [1997] 2 SCC 627,*** this court observed as below :-
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> "The admitted position is that pursuant to the notification published under Section 4(1) of the Land Acquisition Act, 1894 (for short "the Act") in GOM No. 1392 Industries dated 17.10.1962, total extent of 6 areas 41 cents of land in Madhavaram Village, Saidapet Taluk, Chengalpattu District in Tamil Nadu was acquired under Chapter VII of the Act for the manufacture of Synthetic Rasiua by Tvl. Reichold Chemicals India Ltd., Madras. The acquisition proceedings had become final and possession of the land was taken on 10.4.1964. Pursuant to the agreement executed by the company, it was handed over to Tvl, Simpson and General Finance Co. which is a subsidiary of Reichold Chemicals India Ltd, It would appear that at a request made by the said company, 66 cents of land out of one acre 37 cents in respect of which the appellants originally had ownership,

[1] (2000) 2 SCC 48

> was transferred in GOMs No. 816. Industries dated 24.3.1971 in favour of another subsidiary company, Shri Rama Vilas Service Ltd., the 5th respondent Which is also another subsidiary of the company had requested for two acres 75 cents of land; the same came to be assigned on leasehold basis by the Government after resumption in terms of the agreement in GOMs No. 439 Industries dated 10.5.1985. In GOMs 546 Industries dated 30.3.86, the same came to be approved of. Then the appellants challenged the original GOMs No. 1392 Industries dated 17.10.62 contending that since the Original purpose for which the land was acquired had ceased to be in operation, the appellants are entitled to restitution of the possession taken from them. The learned Single Judge and the Division Bench have held that the acquired land having already vested in the State, after receipt of compensation by the predecessor-in-title of the appellants, they have no right to challenge the notification. Thus the writ petition and the writ appeal came to be dismissed."

(7) This Court in ***Prahlad Singh and others*** *versus* ***Union of India and others***[2] delving into the issue of maintainability of the writ petition after the passing of the award recorded as under:-

> "5. Considering the issue of maintainability of the writ petition after declaration under Section 6 of the Act and passing of the award, Hon'ble the Supreme Court in the case of ***Municipal Council, Ahmednagar*** *versus* ***Shaah Hyder Beig,*** (2000) 2 SCC 48, in para 17 has held that after the award is passed, no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder "

Further, in ***Des Raj Chela Satguru Kirpa Nand Ji*** *versus* ***State of Haryana and others***[3] this court observed:-

> "3. After hearing learned counsel for the parties at a considerable length we are of the considered view that by a catena of judgments, Hon'ble the Supreme Court has now held that a writ petition after announcement of award

[2] (2010) 3 RCR (Civil) 756
[3] (2009) 1 PLR 771

> is not maintainable to challenge acquisition proceedings. In that regard reliance may be placed on the judgments of Hon'ble the Supreme Court rendered in the cases of ***Star Wire (India) Ltd. v. State of Haryana, (1996)11 SCC 698; Municipal Council Ahmednagar v. Shah Hyder Beig, (2000)2 SCC 48; C. Padma v. Dy. Secretary to the Government of Tamil Nadu, (1997)2 SCC 627 and M/s Swaika Properties Pvt. Ltd. v. State of Rajasthan, 2008(2) RCR(Civil) 96 : 2008(2) RAJ 82 : JT 2008(2) SC 280.*** However, learned counsel for the petitioner has placed reliance on an order dated 25.9.2008 passed by a Division Bench of this Court in C.W.P. No. 18851 of 2006 (Jagdish Rai and others v. State of Haryana and others) and other connected matters, which belongs to the same acquisition. The Division Bench has directed the respondents to decide the representations of the petitioners in that case."

(8) Further, there is delay in approaching the Court as well and, therefore, the petitioner would not be entitled to any relief. The notifications under Sections 36 and 42 of 1922 Act were issued on 13.5.2005 and 22/23.5.2006 respectively and the award was announced on 21.5.2008 whereas the present writ petition has been filed in 2015. The Apex Court in ***State of Jammu & Kashmir*** *versus* ***R.K.Zalpuri and others***[4] while delving into the issue of delay in approaching the court summed up the relevant case law as under:-

> "21. In this regard reference to a passage from ***KarnatakaPower Corpn. Ltd Through its Chairman & Managing Director & Anr Vs. K. Thangappan and Anr, (2006) 4 SCC 322*** would be apposite:-
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> "Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of 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".
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> After so stating the Court after referring to the authority in

[4] (2015) 4 SCT 457

State of M.P. v. Nandalal Jaiswal, (1986) 4 SCC 566 restated the principle articulated in earlier pronouncements, which is to the following effect:-

"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 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 train 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".

22. In ***State of Maharashtra V Digambar, (1995) 4 SCC 683*** a three-judge bench laid down that:-

"19. 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 unblameworthy 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 blameworthy conduct."

23. Recently in ***Chennai Metropolitan Water Supply and Sewerage Board & Ors. Vs. T.T. Murali Babu, (2014) 4 SCC 108***, it has been ruled thus:

"Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant — a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis".

24. At this juncture, we are obliged to state that the question of delay and laches in all kinds of cases would not curb or curtail the power of writ court to exercise the discretion. In ***Tukaram Kana Joshi And Ors. Vs. Maharashtra Industrial Development Corporation & Ors, (2013) 1 SCC 353*** it has been ruled that:-

"Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if the whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third- party interest is involved. Thus analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience".

And again:-

> "No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The court should not harm innocent parties if their rights have in fact emerged by delay on the part of the petitioners. **(Vide *Durga Prashad* v.*Chief Controller of Imports and Exports*, (1969) 1 SCC 185, *Collector (LA)* v. *Katiji (1987) 2 SCC 107, Dehri Rohtas Light Railway Co.Ltd.* v. *District Board, Bhojpur, (1992) 2 SCC 598, Dayal Singh* v.*Union of India, (2003) 2 SCC 593* and *Shankara Coop. Housing Society Ltd.* v. *M. Prabhakar, (2011) 5 SCC 607*)".**

(9) Still further, the petitioner has also made prayer claiming benefit of Section 24(2) of the 2013 Act in respect of acquisition proceedings under the 1922 Act. It has been authoritatively pronounced by three Judges Bench of the Supreme Court in ***Gurcharan Singh and others*** *versus* ***State of Punjab and others,*** SLP(C) Nos.8565-8567 of 2011 vide order dated 4.7.2014 that the benefit of provisions of Section 24(2) of the 2013 Act is not available to the landowner in respect of acquisition under 1922 Act. It has been laid down as under:-

> "A close reading of Section 24 makes it clear that land acquisition proceedings under Land Acquisition Act, 1894 (for short, 'the 1894 Act') are deemed to have lapsed in certain cases which are indicated in the provision. Since the acquisition of the subject land has taken place under the 1922 Act and not under the 1894 Act, Section 24 has no application at all.

> The argument concerning Section 24 of the 2013 Act and lapsing of the acquisition proceedings has no merit and is overruled."

(10) Furthermore, in view of the written statement filed by respondents No.1 and 2 as noticed above, the petitioner through the alleged Mahant Sanjay Gir has no locus standi to file the present writ petition. Learned counsel for the petitioner had referred to Sections 44 and 45 of the Punjab Land Revenue Act, 1887 (in short, "the 1887 Act'). In our opinion, these provisions have no applicability to the instant case and, therefore, no advantage can be derived by the petitioner therefrom as Section 44 of the 1887 Act provides that an entry made in record of rights in accordance with law shall be presumed to be correct until the contrary is proved whereas according to Section 45 of the 1887 Act, if any person considers himself aggrieved as to any right of which he is in possession by an entry in record of rights, he may institute a suit for a declaration of his right under Chapter VI of the Specific Relief Act, 1877. No documentary evidence with regard to the title or ownership of the petitioner through the alleged Mahant Sanjay Gir could be produced by learned counsel for the petitioner inspite of repeated queries put to him. Moreover, in view of the order passed by the Deputy Commissioner on 27.5.2011, committee of five members, namely, Sub Divisional Magistrate, Magistrate-A, Tehsildar, Amritsar-1, Chairman, Amritsar Improvement Trust, Amritsar, Secretary, Durgiana Mandir Committee, Amritsar and Baitmam Mahant Sanjay Gir has been constituted to receive the amount of compensation by deposit in a bank account which can be withdrawn by any four members of aforesaid committee for the following works:-

> "1. For welfare works and to make arrangements for care/stay/meals for the travellers coming there.
>
> 2. For taking care and maintenance of Akhara.
>
> 3. For purchasing land, property in the name of the Akhara."

Accordingly, the present petition through Shri Sanjay Gir would not be maintainable. It is well settled that ordinarily a writ petition can only be filed by someone who is personally aggrieved. The powers under Article 226 of the Constitution of India should be sparingly used and only in those clear cases where the rights of a person have been seriously infringed and he has no other adequate and specific remedy

available to him. In ***Vinoy Kumar*** *versus* ***State of U.P***[5] while delving into the issue of locus standi of a person to file a writ petition under Article 226 of the Constitution of India, it was observed by the Apex Court as under:-

> "Generally speaking, a person shall have no locus standi to file a writ petition if he is not personally affected by the impugned order or his fundamental rights have neither been directly or substantially invaded nor is there any imminent danger of such rights being invaded or his acquired interests having been violated ignoring the applicable rules. The relief under Article 226 of the Constitution is based on the existence of a right in favour of the person invoking the jurisdiction. The exception to the general rule is only in cases where the writ applied for is a writ of habeas corpus or quo warrant or filed in public interest. It is a matter of prudence that the court confines the exercise of writ jurisdiction to cases where legal wrong or legal injuries are caused to a particular person or his fundamental rights are violated, and not to entertain cases of individual wrong or injury at the instance of a third party where there is an effective legal aid organization which can take care of such cases. Even in cases filed in public interest, the court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal burden is threatened and such person or determined class of persons is, by reason of poverty, helplessness or disability or socially or economically disadvantaged position. Unable to approach the court for relief."

(11) In the present case, keeping in view the factual matrix noticed hereinbefore, the petitioner has not been able to justify maintainability of the writ petition under Article 226 of the Constitution of India by Shri Sanjay Gir. Thus, no interference is called for with the impugned notifications and the award. Consequently, finding no merit in the writ petition, the same is hereby dismissed.

Dr. Sumati Jund

[5] (2001) 4 SCC 734