

CASE NO.:
Appeal (civil) 1081 of 2008

PETITIONER:
Swaika Properties Pvt. Ltd. & Anr.

RESPONDENT:
State of Rajasthan & Ors.

DATE OF JUDGMENT: 07/02/2008

BENCH:
ASHOK BHAN & DALVEER BHANDARI

JUDGMENT:
J U D G M E N T
[Arising out of S.L.P.(C)No.16910 of 2006]

ASHOK BHAN, J.

1. Leave granted.
2. Challenge in the present appeal is to the order passed on 04th 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 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.
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

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25th June 1975 for acquiring the land of the appellants bearing 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 \026 extension of Civil Lines Area for construction of buildings. On 23rd August 1975, another notice was issued by the State under Section 52(2) of the Act indicating the purpose of acquisition of land for extension of civil lines and planning of housing scheme. Appellants, on 08th 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 08th 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.

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. Aggrieved against the said order the respondents filed Special Leave Petition before this Court, inter alia,

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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 08th 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 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 10th March 1989 with liberty to file a fresh writ petition.

8. On 26th 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 29th July 1989 which was declared by the Land Acquisition Officer on 30th 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 08th February 1984 and also notice dated 17th/18th February 2007

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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 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 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 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.

11. A preliminary objection has been taken by the respondents to the effect that the appeal is liable to be

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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. 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 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 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 05th 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 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 17th/18th February 1987.

13. We do not find any substance in the submissions of the counsel for the appellants.

No
doubt, the appellants had filed

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a writ petition before the Calcutta High Court challenging the acquisition proceedings, but the said writ petition was dismissed by this Court on 08th 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.

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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 :

"It is thus well-settled law that when there is inordinate 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."

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

"..... 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

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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 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 SC C 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."

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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 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 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.