

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 7876 of 2024**

KAPURAJI SHANKARJI GARODA

Versus

STATE OF GUJARAT &amp; ORS.

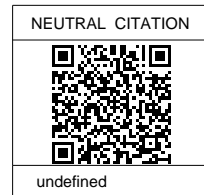
Appearance:

MR APURVA R KAPADIA(5012) for the Petitioner(s) No. 1  
for the Respondent(s) No. 2,3MR AAKASH GUPTA, ASST. GOVERNMENT PLEADER/PP for the  
Respondent(s) No. 1**CORAM:HONOURABLE MR. JUSTICE NIKHIL S. KARIEL****Date : 18/06/2024****ORAL ORDER**

1. Heard learned advocate Mr.Karan Patel for learned advocate Mr.A.R.Kapadia on behalf of the petitioner and learned Assistant Government Pleader Mr.Aakash Gupta on behalf of the respondent - State.

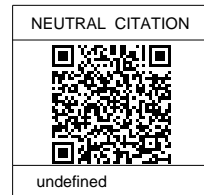
2. By way of this petition, the petitioner challenges an order passed by the learned SSRD dated 25.06.2014 under Rule 108(6A) of the Land Revenue Rules.

3. At the outset, considering the fact that the order in question was of the year 2014, learned advocate had been called upon to satisfy the Court as regards the entertainability



of the matter after delay of approximately a decade. Learned advocate would rely upon a document dated 05.10.2023 to submit that since the papers of the original application preferred before the Deputy Collector were not traceable, therefore, the delay in question has arisen. No further explanation is coming forth and whereas even perusal of the petition also would not reveal any reasons for which this Court should condone the delay.

4. It appears that the petitioners had applied for re-grant of the land before the Deputy Collector and whereas vide order dated 22.06.2009 the Deputy Collector had rejected the application more particularly by observing that the petitioners have to establish before a competent Court as being legal heirs of the original grantee Harijan Kapura Bechara. The said order had in a challenge by the petitioners not interfered with by the Collector even as the Collector had held that the land stood vested in the State as far as back in the year 1955 and the same had been reflected in entry no.43 certified on 14.08.1956. The said decision of the Collector dated 30.01.2011 had been challenged before the learned SSRD by filing Revision Application No.37/2012 which came to be



rejected vide order dated 25.06.2014.

4.1. As such insofar as the explanation tendered, the order of the Deputy Collector had been sought for only in the year 2023 i.e. approximately nine years after the order was passed by the learned Special Secretary.

4.2. Having regard to the same, this Court does not find any reason whatsoever for condoning the delay in approaching this Court more particularly the application having been preferred after a decade as referred to hereinabove.

4.3. At this stage, this Court seeks to rely upon the observations of the Hon'ble Supreme Court in case of **State of Orissa and Ors. vs. Lakshmi Narayan Das (Dead) Through Legal Heirs**, reported in **2023 SCC OnLine SC 825**. Paragraph nos.23 to 34 being relevant for the present purpose, is being reproduced hereinbelow for benefit:-

*“23. Before applying the principles laid down by this Court on delay and laches. We deem it appropriate to refer the legal position.*

*24. In P. S. Sadasivaswamy v. State of Tamil Nadu, (1975) 1 SCC 152, it was laid down that a person aggrieved by an order of promoting a junior over his head should approach the court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the*



*Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time, but it should be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for the relief.*

**25.** *In New Delhi Municipal Council v. Pan Singh and others, (2007) 9 SCC 278, this Court has opined that though there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, yet ordinarily a writ petition should be filed within a reasonable time. In the said case the respondents had filed the writ petition after seventeen years and the court, as stated earlier, took note of the delay and laches as relevant factors and set aside the order passed by the High Court which had exercised the discretionary jurisdiction.*

**26.** *In State of Uttaranchal and another v. Sri Shiv Charan Singh Bhandari and others, (2013) 12 SCC 179, this Court, while considering the issue regarding delay and laches observed that even if there is no period prescribed for filing the writ petition under Article 226 of the Constitution of India, yet it should be filed within a reasonable time. Relief to a person, who puts forward a stale claim can certainly be refused relief on account of delay and laches. Anyone who sleeps over his rights is bound to suffer.*

**27.** *In Chennai Metropolitan Water Supply and Sewerage Board and others v. T. T. Murali Babu, (2014) 4 SCC 108, this Court opined as under:-*

*"13. First, we shall deal with the facet of delay. In Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, Amravati and others, AIR 1969 SC 329, the Court referred to the principle that has been stated by Sir Barnes Peacock in Lindsay Petroleum Co. v.*



*Prosper Armstrong Hurd, Abram Farewall, and John Kemp, (1874) 5 PC 221, which is as follows:-*

*"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 of 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 relates to the remedy."*

*15. In State of M. P. and others etc. etc. vs. Nandlal Jaiswal and others etc. etc., AIR 1987 SC 251, the Court observed that it is well settled that power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. It has been further stated therein that if there is inordinate delay on the part of the petitioner in filing a petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. Emphasis was laid on the principle of delay and laches stating that resort to the extraordinary*



*remedy under the writ jurisdiction at a belated stage is likely to cause confusion and public inconvenience and bring in injustice.*

*16. 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 scrutinize 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. ... .. A court is not expected to give indulgence to such indolent persons- who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold."*

**28.** *In State of Jammu & Kashmir vs. R. K. Zalpuri and others, (2015) 15 SCC 602, this Court considered the issue regarding delay and laches while initiating a dispute before the Court. It was opined that the issue sought to be raised by the petitioners therein was not required to be addressed on merits on*



*account of delay and laches. The relevant paras thereof are extracted below:-*

*"27. The grievance agitated by the respondent did not deserve to be addressed on merits, for doctrine of delay and laches had already visited his claim like the chill of death which does not spare anyone even the one who fosters the idea and nurtures the attitude that he can sleep to avoid death and eventually proclaim "Deo gratias - thanks to God".*

*28. Another aspect needs to be stated. A writ court while deciding a writ petition is required to remain alive to the nature of the claim and the unexplained delay on the part of the writ petitioner. Stale claims are not to be adjudicated unless non-interference would cause grave injustice. The present case, need less to emphasise, did not justify adjudication. It deserves to be thrown overboard at the very threshold, for the writ petitioner had accepted the order of dismissal for half a decade and cultivated the feeling that he could freeze time and forever remain in the realm of constant present."*

**29.** *The aforesaid view was followed by this Court in Union of India and others v. Chaman Rana, (2018) 5 SCC 798.*

**30.** *Subsequently, a Constitution Bench of this Court in Senior Divisional Manager, Life Insurance Corporation of India Ltd. and others v. Shree Lal Meena, (2019) 4 SCC 479, considering the principle of delay and laches, opined as under:-*

*"36. We may also find that the appellant remained silent for years together and that this Court, taking a particular view subsequently, in Sheel Kumar Jain v. New India Assurance Company Limited, (2011)12 SCC 197 would not entitle stale claims to be raised on this behalf, like that of the appellant. In fact the appellant slept over the matter for almost a little over two*



*years even after the pronouncement of the judgment.*

*37. Thus, the endeavour of the appellant, to approach this Court seeking the relief, as prayed for, is clearly a misadventure, which is liable to be rejected, and the appeal is dismissed.”*

**31.** *In Bharat Coking Coal Ltd. and others v. Shyam Kishore Singh - (2020) 3 SCC 411, the issue regarding the delay and laches was considered by this Court while dismissing the petition filed belatedly, seeking change in the date of birth in the service record.*

**32.** *The issue of delay and laches was considered by this Court in Union of India and others vs. N. Murugesan and others, (2022) 2 SCC 25. Therein it was observed that a neglect on the part of a party to do an act which law requires must stand in his way for getting the relief or remedy. The Court laid down two essential factors i.e. first, the length of the delay and second, the developments during the intervening period. Delay in availing the remedy would amount to waiver of such right. Relevant paras 20 to 22 of the above mentioned case are extracted below:*

*“20. The principles governing delay, laches, and acquiescence are overlapping and interconnected on many occasions. However, they have their distinct characters and distinct elements. One can say that delay is the genus to which laches and acquiescence are species. Similarly, laches might be called a genus to a species by name acquiescence. However, there may be a case where acquiescence is involved, but not laches. These principles are common law principles, and perhaps one could identify that these principles find place in various statutes which restrict the period of limitation and create non-consideration of condonation in certain circumstances. They are bound to be applied by way of practice requiring prudence of the court than of a strict application of law. The underlying principle governing these concepts would be one*





*of estoppel. The question of prejudice is also an important issue to be taken note of by the court.*

*21. The word “laches” is derived from the French language meaning “remissness and slackness”. It thus involves unreasonable delay or negligence in pursuing a claim involving an equitable relief while causing prejudice to the other party. It is neglect on the part of a party to do an act which law requires while asserting a right, and therefore, must stand in the way of the party getting relief or remedy.*

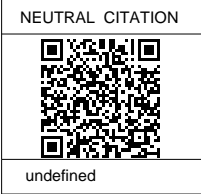
*22. Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a Court of Equity to confer a remedy on a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a particular position, and therefore, it would be unreasonable to facilitate a challenge before the court. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.”*

**33.** *Finally, in paras 37 and 38, it was observed as under :*

*“37. We have already dealt with the principles of law that may have a bearing on this case. ... there was an unexplained and studied reluctance to raise the issue ....*

*38. ....Hence, on the principle governing delay, laches ... Respondent No. 1 ought not to have been granted any relief by invoking Article 226 of the Constitution of India.”.*

**34.** *If the aforesaid principles of law are applied in the facts of the case in hand from the table of list of dates as available in para no. 12, it is evident that there is huge delay on the part of the respondents to avail of their appropriate remedy. Record of rights*



*was finalised in the year 1962. As admitted in the writ petition, objections were filed by the respondents or their predecessors-in-interest before that. Remedy, after publication of final record of rights, was revision under Section 15(b) of the 1958 Act, to be filed within one year. No remedy was availed of. Nearly three decades after finalisation of record of rights, application was filed before the Settlement Officer, which was not maintainable after final record of rights is published. When no relief was granted by the Settlement Officer, the respondents kept quiet for 13 years before filing a civil suit in the year 2003. It was dismissed as withdrawn in the year 2007. The writ petition was filed in the year 2008, which is subject matter of dispute in the present appeal. The aforesaid facts show that the writ petition to claim relief was filed after 46 years of finalisation of record of rights, which was highly belated. Hence, the respondents were not entitled to any relief.”*

5. Considering the law laid down by the Hon'ble Apex Court more particularly since no reasonable cause is made out for condoning the delay, the present application stands disposed of as rejected.

Bhoomi

**(NIKHIL S. KARIEL,J)**