



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



D. B. Civil Special Appeal (Writ) No. 250/2024

In

S.B. Civil Writ Petition No. 2797/2024

Rajendra Gupta S/o Chandmal Gupta, Aged about 67 years, R/o 91, Guru Jambeshwar Nagar-B, Gandhi Path, Vaishali Nagar, Jaipur (Raj.)

----Appellant/Petitioner

Versus

1. State of Rajasthan, through Additional Chief Secretary, Department of Urban Development and Housing, Secretariat, Jaipur-302005
2. Director, Local Self Government, Near Civil Lines Phatak, Jaipur (Rajasthan)
3. Nagar Parishad, Bundi, through Commissioner, Near K.N. Singh Circle, Bundi.

----Respondents

For Appellant : Mr. Abhishek Bhardwaj Advocate with Mr. Naman Yadav Advocate, Mr. Piyush Sharma Advocate and Mr. Shantanu Sharma Advocate.

**HON'BLE THE CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE BHUWAN GOYAL
JUDGMENT**

REPORTABLE

09/04/2024

1. Heard on admission.
2. Learned counsel for the appellant would argue that the learned Single Judge committed patent illegality in dismissing writ petition on the ground of delay and laches without taking into consideration the fact that the case of the appellant had remained pending consideration with the respondents ever since 1995 and even in the year 2010, the appellant was given a letter to vacate the plot, in 2013-14, he was informed that his case was pending.



Thereafter, repeated representations were made by the appellant, but when nothing happened, the appellant had to file the writ petition.

3. Present case is a classic example of delay and laches. It is not in dispute that the auction was held way back in the year 1972 and even according to the appellant, in 1974, he had deposited only part of the bid amount. It appears that almost after 20 years, an officer of the Local Body wrote a letter to the Director, Local Self Government, Rajasthan on 21.08.1995 in the stale matter. The appellant even at that stage did not do anything and slept over the matter. On 26.07.2010, a letter was written to the appellant to vacate the plot. He again did not take any remedy. It appears that an authority in the Local Body sent a communication in 2013 to the effect that appellant's case was pending followed by another letter of the Director, Local Self Government in the next year. From 2014 till 2024, the appellant again did not take any prompt remedy.

4. By efflux of time, since 1972 till 2024, a right, if any subsisting in favour of the appellant, came to an end. Repeated representations cannot be made a basis to approach the Court for seeking a direction to decide the representations when there is no subsisting right. Learned Single Judge has relied upon plethora of decisions rendered by the Hon'ble Supreme Court to hold that the writ petition was barred by delay and laches. Answer to repeated representations finds place in the verdict of the Hon'ble Supreme Court in the case of **C. Jacob Vs. Director of Geology & Mining & Another (2008) 10 SCC 115**, wherein it was held thus:



9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any "decision" on rights and obligations of parties. Little do they realise the consequences of such a direction to "consider". If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to "consider". If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

10. Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

11. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do so may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of "acknowledgment of a jural relationship" to give rise to a fresh cause of action.

12. When a government servant abandons service to take up alternative employment or to attend to personal affairs, and does not bother to send any letter seeking leave or letter of resignation or letter of



voluntary retirement, and the records do not show that he is treated as being in service, he cannot after two decades, represent that he should be taken back to duty. Nor can such employee be treated as having continued in service, thereby deeming the entire period as qualifying service for the purpose of pension. That will be a travesty of justice.

13. Where an employee unauthorisedly absents himself and suddenly appears after 20 years and demands that he should be taken back and approaches the court, the department naturally will not or may not have any record relating to the employee at that distance of time. In such cases, when the employer fails to produce the records of the enquiry and the order of dismissal/ removal, court cannot draw an adverse inference against the employer for not producing records, nor direct reinstatement with back wages for 20 years, ignoring the cessation of service or the lucrative alternative employment of the employee. Misplaced sympathy in such matters will encourage indiscipline, lead to unjust enrichment of the employee at fault and result in drain of public exchequer. Many a time there is also no application of mind as to the extent of financial burden, as a result of a routine order for back wages.

14. We are constrained to refer to the several facets of the issue only to emphasise the need for circumspection and care in issuing directions for "consideration". If the representation on the face of it is stale, or does not contain particulars to show that it is regarding a live claim, courts should desist from directing "consideration" of such claims."

5. In view of above, we are of the view that the appellant by filing writ petition sought to raise a stale matter in respect of a right which was no longer subsisting on the date of filing of the writ petition.

6. Appeal is, accordingly, dismissed.

(BHUVAN GOYAL),J

(MANINDRA MOHAN SHRIVASTAVA),CJ

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