

2022 LiveLaw (SC) 232

**IN THE SUPREME COURT OF INDIA
EXTRA-ORDINARY APPELLATE JURISDICTION
M.R. SHAH; B.V. NAGARATHNA, JJ.**

SPECIAL LEAVE PETITION (C) NO. 3008 OF 2022; FEBRUARY 28, 2022

Surjeet Singh Sahni *Versus* State of U.P. and Ors.

Constitution of India, 1950 - Article 226 - Writ Petitions - Delay and latches - High Courts directing the authorities to decide the representation though the representations are made belatedly - Mere representation does not extend the period of limitation - If it is found that the writ petitioner is guilty of delay and latches, the High Court should dismiss it at the threshold and ought not to dispose of the writ petition by relegating the writ petitioner to file a representation and/or directing the authority to decide the representation - Such order shall not give an opportunity to the petitioner to thereafter contend that rejection of the representation subsequently has given a fresh cause of action. (Para 4, 5)

Constitution of India, 1950 - Article 226 - Writ Petitions - No writ under Article 226 of the Constitution of India shall be maintainable and/or entertainable for specific performance of the contract and that too after a period of 10 years by which time even the suit for specific performance would have been barred by limitation. (Para 6)

Summary: After a period of 10 years from the date of execution of the Sale Deed with NOIDA, the petitioner made a representation to it requesting to allot a plot as agreed in terms of the Sale Deed - High Court directed NOIDA to consider the representation - NOIDA rejected it - This was again challenged before High Court by the Petitioner - High Court dismissed writ petition - SLP challenging the said High Court judgment dismissed.

(Arising out of impugned final judgment and order dated 09-09-2021 in WC No. 40336/2017 passed by the High Court of Judicature at Allahabad)

For Petitioner(s) Mr. Dhruv Mehta, Sr. Adv. Mr. Rajesh Kumar Gautam, AOR. Mr. Anant Gautam Adv. Mr. Nipun Sharma, Adv. Mr. Ravi Solanki, Adv. Mr. Shanshank Shekar, Adv.

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 09.09.2021 passed by the High Court of Judicature at Allahabad in Writ C No.40336 of 2017 by which the High Court has dismissed the said writ petition preferred by the

petitioner herein, the original writ petitioner has preferred the present special leave petition.

2. The facts leading to the present special leave petition in nutshell are as under:-

2.1 That the petitioner entered into a Sale Deed with the respondent – NOIDA vide Sale Deed dated 19.09.2001 whereby the petitioner sold a Plot No. 163 of Khata No. 254 to the NOIDA under the provisions of Section 6 of the U.P. Industrial Area Development Act, 1976 and in terms of the Resolution in 102nd meeting of NOIDA. According to the petitioner, Clause No. 12 of the Sale Deed clearly provided that a plot of 10% area (to be calculated of the total land sold) shall be allotted to the petitioner on payment of 10% of the amount as being paid under the Sale Deed. In addition, it clearly recorded that "Original Farmer" shall also be entitled to "Rehabilitation Bonus".

2.2 That after a period of 10 years from the date of execution of the Sale Deed, the petitioner made a representation to NOIDA vide representation dated 10.03.2010 requesting to allot a plot as agreed in terms of the Sale Deed. That thereafter the petitioner preferred Writ Petition No.5599 of 2011 before the High Court of Allahabad inter alia praying that directions to the NOIDA to allot 10% of the land of the acquired area of the land of the petitioner for Abadi purposes in terms of Clause 12 of the Sale Deed dated 19.09.2001 and as per Resolution in 102nd meeting of NOIDA Board held on 07.01.1998. Though the said writ petition was filed after a period of 11 years from the date of execution of the Sale Deed and though the said writ petition was barred by delay and laches, the High Court entertained the said writ petition, however, disposed of the said writ petition vide order dated 07.04.2017 directing the NOIDA to decide the representation of the petitioner expeditiously and preferably within a period of six weeks.

2.3 That thereafter vide order dated 23.05.2017, the NOIDA rejected the said representation. Feeling aggrieved and dissatisfied with the order passed by the NOIDA dated 23.05.2017 rejecting the representation, the petitioner filed Writ Petition No.40336 of 2017 by which the petitioner again prayed to allot 10% plot to him as provided under Clause 12 of the Sale Deed dated 19.09.2001 and as per the Resolution passed in 102nd meeting of NOIDA Board on 07.01.1998. The High Court by the impugned judgment and order has dismissed the said writ petition inter alia holding firstly, that Writ Petition arising out of contract between parties is not maintainable and petitioner should have filed a Suit for specific performance; secondly, Writ Petition has been filed after a delay of 16 years and delay is fatal for challenge to acquisition or for any claim arising out of it; thirdly, Clause 12 of Sale Deed provided for allotment of land to original Khatedar and as the petitioner has purchased land in 1970 therefore it's clear that petitioner is not original agriculturist; and the establishment of NOIDA in 1976 shall have no bearing on the matter.

2.4 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court dismissing the writ petition, the original writ petitioner has preferred the present special leave petition.

3. We have heard Shri Dhruv Mehta, learned Senior Advocate appearing on behalf of the petitioner at length. We have also gone through the impugned judgment and order passed by the High Court.

4. At the outset, it is required to be noted that by way of writ petition under Article 226 of the Constitution of India as such the petitioner prayed for a specific performance of Clause 12 of the Sale Deed dated 19.09.2001. For the first time, the petitioner made a representation for allotment of 10% plot as per Clause 12 of the Sale Deed dated 19.09.2001 in the year 2010, i.e., after a period of 10 years from the date of execution of the Sale Deed. Therefore, as such if the suit would have been filed for specific performance, the same would have been barred by limitation. Despite the above, the petitioner filed a writ petition before the High Court and as observed hereinabove prayed for specific performance of Clause 12 of the Sale Deed dated 19.09.2001 being Writ Petition No.37443 of 2011, which was also filed after a period of 11 years from the date of execution of the Sale Deed. Therefore, as such when the earlier writ petition was filed in the year 2011 which was also barred by delay and laches, the High Court ought not to have entertained the same. Instead, the High Court entertained the said writ petition and directed the NOIDA to decide the representation of the petitioner, which as such was made after a period of 10 years, expeditiously and it gave the fresh blood to the litigation, which otherwise was barred by delay and laches. The High Court by passing the order dated 07.04.2017 as such did not realise and/or appreciated that the writ petition itself was required to be dismissed on the ground of delay and laches as the same was filed after a period of 11 years from the date of execution of the Sale Deed under which the right was claimed. We have come across number of such orders passed by the High Courts directing the authorities to decide the representation though the representations are made belatedly and thereafter when a decision is taken on such representation, thereafter it can be said on behalf of the petitioner that the fresh cause of action has arisen on rejection of the representation. Therefore, when such orders are passed by the High Courts either relegating the petitioner to make a representation and/or directing the appropriate authority to decide the representation, the High Courts have to consider whether the writ petition is filed belatedly and/or the same is barred by laches and/or not, so that in future the person who has approached belatedly may not contend that the fresh cause of action has arisen on rejection of the representation. Even in a case where earlier representation is rejected, the High Court shall decide the matter on merits.

5. As observed by this Court in catena of decisions, mere representation does not extend the period of limitation and the aggrieved person has to approach the Court

expeditiously and within reasonable time. If it is found that the writ petitioner is guilty of delay and latches, the High Court should dismiss it at the threshold and ought not to dispose of the writ petition by relegating the writ petitioner to file a representation and/or directing the authority to decide the representation, once it is found that the original writ petitioner is guilty of delay and latches. Such order shall not give an opportunity to the petitioner to thereafter contend that rejection of the representation subsequently has given a fresh cause of action.

6. Even otherwise on merits also, we are in complete agreement with the view taken by the High Court. The High Court has rightly refused to grant any relief which as such was in the form of specific performance of the contract. No writ under Article 226 of the Constitution of India shall be maintainable and/or entertainable for specific performance of the contract and that too after a period of 10 years by which time even the suit for specific performance would have been barred by limitation.

7. In view of the above and for the reasons stated above, there is no substance in the present special leave petition and the same deserves to be dismissed and is accordingly dismissed.

Pending applications, if any, also stand disposed of.

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