

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/WRIT PETITION (PIL) NO. 26 of 2022****FOR APPROVAL AND SIGNATURE:****HONOURABLE THE CHIEF JUSTICE MR. JUSTICE ARAVIND KUMAR****and****HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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NILESHBHAI NARAYANBHAI MISTRY
Versus
STATE OF GUJARAT

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Appearance:

MR VIVEK V BHAMARE(6710) for the Applicant(s) No. 1
for the Opponent(s) No. 2,3,4,5,6MR K.M. ANTANI, ASSISTANT GOVERNMENT PLEADER/PP for the
Opponent(s) No. 1

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CORAM:HONOURABLE THE CHIEF JUSTICE MR. JUSTICE ARAVIND KUMAR
and
HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI

Date : 13/06/2022**ORAL JUDGMENT**

**(PER : HONOURABLE THE CHIEF JUSTICE MR. JUSTICE
ARAVIND KUMAR)**

1. Petitioner is seeking following reliefs:

- "12A. YOUR LORDSHIPS may kindly be please to issue directions to respondent No.3 to identify public plot marked for public purpose in the City of Ahmedabad as mentioned at ANNEX-A herein above;
- B. YOUR LORDSHIPS be pleased to direct respondent No.3 to maintain list of such plot at the office and further erect big notice board on public plots mentioning the purpose for which they are reserved;
- C. YOUR LORDSHIPS be pleased to issue directions to respondent No.3 for removing encroachment on the plot reserved for public purpose as mentioned in the list at ANNEX-A herein and further be pleased to issue directions to respondent No.3 for imposing penalty on encroachers and amount recovered from penalty be used for welfare of public at large;
- D. YOUR LORDSHIPS may kindly be pleased to may kindly be please to issue an writ of mandamus and/or any other appropriate writ, order or direction in nature of mandamus directing respondent authorities to ensure strict compliance of GDCR Rules in accordance with law by not extending undue favors to anyone;
- E. YOUR LORDSHIPS may be pleased to direct respondent No.3 to develop public gardens on vacant as well as encroached plots reserved for public purpose and further be pleased to issue direction to respondent No.3 for framing policy for construction of garden on the basis of population of surrounding area;
- E. YOUR LORDSHIPS be pleased to direct respondent No.3 and respondent No.6 be directed to initiate strict actions against all persons responsible for encroachment on public plot including official of respondent No.3 & 6 if any;"

2. We have heard the arguments of Mr. Vivek Bhamare, learned counsel appearing for the petitioner. Perused the

records.

3. This petition is not entertained and it is being dismissed at the threshold without issuing notice to the respondent for the following reasons.

4. Petitioner claims to be a freelance reporter, social worker, RTI activist and is also said to have preferred several writ petitions before this Court which are either disposed of or pending and name of few viz. they are Writ Petition (PIL) Nos.31/2017, 200/2017, 180/2018 and as such contending, *inter alia*, that prayer sought for in the petition is purely in the public interest and this litigation is initiated not at the instance of any other person or organisation, but on his own interest, the present petition has been filed.

5. It the grievance of the petitioner that in the year 2007 area of Ahmedabad Urban Development Authority ('AUDA' for short) got merged with Ahmedabad Municipal Corporation ('AMC' for short) and during the year 2011 various plots have been handed over to AMC along with list of plots and the said list would disclose that the purpose for which the lands were earmarked, such as 'open space', 'local market', centre',

'educational purpose' but not to different use. It is contended that as per the sanctioned Final T.P. Scheme of AMC, the said lands are required to be used for the purpose of which it is reserved and petitioner claiming to be an RTI activist and public spirited person is said to have obtained information under the Right to Information Act which he claims would reveal that plots reserved are being used against the purpose for which it is earmarked. It is further contended that officials of the corporation have shown complete dereliction of their duty in not maintaining such plots by preventing encroachment, as a result of which the encroachers are able to unauthorisedly use the government land for years together. It is also contended that there is a scarcity of the garden in the city of Ahmeadbad and the gardens already developed are mostly crowded during morning and evening hours which would indicate that there is scarcity of gardens contending that such development of garden is the requirement of the day for lawns space and to prevent air pollution which is not being executed by the instrumentalities of the State. Hence, petitioner is seeking for issuance of writ by seeking the prayers as already noticed hereinabove.

6. Learned counsel appearing for the petitioner Mr. Vivek

Bhamare by reiterating the pleas put forward and grounds urged in the petition would contend that plots which were earmarked for establishment of 'local market' has been allotted to third parties who are constructed commercial complex and thereby it has frustrated the very purposes of reservation of area. He would also elaborate his submission by contending that though 'local market', i.e. not defined under the Municipal Law, the local market in effect is for providing the daily requirement of the people residing in the vicinity of the area or plot earmarked for the said purpose and establishment of a local market for such purposes is mandatory and not putting the land to the use by establishing a local market is itself sufficient for this Court to issue the writ as sought for. Hence, he has prayed to the writ petition being allowed.

7. In order to buttress his argument that the plots which have been transferred by AUDA to AMC and it was earmarked under the local planning area as reserved for a particular purpose, he has drawn our attention to Annexure-A and its annexures. It is trite law that a person who invokes the extraordinary jurisdiction under Article 226 of the Constitution of India has to come to the court at the earliest reasonable and

possible opportunity. Inordinate delay in making the motion for a writ is indeed an adequate ground for refusing to exercise discretion in favour of the writ applicant. For this proposition, the judgment of the Hon'ble Apex Court in the case of *Eastern Coalfields Limited vs. Dugal Kumar [(2008) 4 SCC 295]* can be looked up. The Hon'ble Apex Court has held:

"24. As to delay and laches on the part of the writ petitioner, there is substance in the argument of learned counsel for the appellant-Company. It is well-settled that under Article 226 of the Constitution, the power of a High Court to issue an appropriate writ, order or direction is discretionary. One of the grounds to refuse relief by a writ Court is that the petitioner is guilty of delay and laches. It is imperative, where the petitioner invokes extra-ordinary remedy under Article 226 of the Constitution, that he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ is indeed an adequate ground for refusing to exercise discretion in favour of the applicant."

8. It is true that there is no specific period of limitation where the High Court may refuse to exercise this extraordinary power. However, if the petitioner is guilty of laches and undue delay for which there is no satisfactory explanation, in such circumstances, the delay and laches cannot be ignored. No doubt there cannot be any strait-jacket formula prescribed for exercise of extraordinary jurisdiction. The Court will refuse to exercise its extraordinary jurisdiction or power in the case of persons who stand by and allow things to happen and then

approach the Court, to put forward stale claims and try to unsettle the settled matters. It would depend upon on facts and circumstances of each case. The Hon'ble Apex Court in the case of *Tridip Kumar Dingal & Ors. vs. State of West Bengal & Ors* [(2009) 1 SCC 768] has held:

“56. We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ-Court. It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches.

57. If the petitioner wants to invoke jurisdiction of a writ-Court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhumed matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime [vide *State of M.P. & Anr. V. Bhailal Bhai*, (1964) 6 SCR 261; *Moon Mills v. Industrial Court, Bombay*, AIR 1967 SC 1450; *Bhoop Singh v. Union of India & Ors.*, (1992) 2 SCR 969]. This principle applies even in case of an infringement of fundamental right [vide *Trilokchand Motichand v. H.B. Munshi*, (1969) 1 SCC 110; *Durga Prasad v. Chief Controller*, (1969) 1 SCC 185; *Rabindranath Bose v. Union of India*, (1970) 1 SCC 84].

58. There is no upper limit and there is no lower limit as to when a person can approach a Court. The question is one of discretion and has to be decided on the basis of facts before the Court depending on and vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose.

59. We are in respectful agreement with the following observations of this Court in *P.S. Sadasivaswamy v. State of T.N.*, (1975) 1 SCC 152;

"2. ... 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 would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extra-ordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters." (emphasis supplied)

9. The above authoritative principles of law laid down by the Hon'ble Apex Court would indicate that in the circumstances where a petitioner or a writ applicant approaches the writ court for exercise of extraordinary jurisdiction belatedly or had allowed to certain things to happen which would create third party rights cannot be heard to contend that even in such circumstances, the extraordinary jurisdiction of the Court vested under Article 226 of the Constitution of India is to be exercised as it would unsettle the settled things. In a given circumstance, a plot allotted to a person may result in construction being put up, hands having changed, further improvements having been made to the building and in such circumstances, the allotment of the land made cannot be challenged after long lapse of period and even without whispering a word regarding cause for not appealing the Court at earlier point of time in the petition for such inordinate delay.

In other words, even if there were circumstances where there is delay and writ court is required to exercise the extraordinary jurisdiction, it would be incumbent upon the writ applicant to *prima facie* establish that there was no delay and if there is delay, there was sufficient cause for such delay and there are no third party rights which has intervened during the interregnum. Keeping these principles in mind when we look at the facts and circumstances narrated in the petition on hand and particularly the grounds urged by the petitioner and reiterated by learned counsel appearing for the petitioner in his arguments by drawing the attention of the Court to paragraph 4.4 whereunder petitioner has contended that the plots described in paragraph 4.4(i) to paragraph 4.4 (viii) are the instances where those plots having been put to use for other than for which it was reserved or earmarked is an argument which looks attractive at the first blush but not so on a slight deeper examination and is liable to be rejected in *limine* for myriad reasons which we have narrated hereinbelow.

10. Insofar as Plot No.529 which is at Sr.No.16 in the list produced at Annexure-A, it would clearly indicate that it is a plot earmarked for 'local market'. Though petitioner claims in

the petition that said plot was allotted to a third party as per Annexure-B, the fact remains that said plot was auctioned by the instrumentality of the State by conducting a public auction and the highest bidder was granted the said land who was the highest bidder in such public auction held during January 2003, pursuant to which formalities thereunder got concluded in the year 2006 resulting in a copy of the allotment letter being issued to the bidder and as such, the exercise undertaken by the instrumentality of the State cannot be construed as one resulting in an allotment being made to any particular individual. It is also not in dispute and even according to learned counsel appearing for the petitioner, in the land so purchased by the bidder in public auction, a commercial complex has been put up, wherein shops have been established which include the local market which would cater to the needs of the local people. Hence, it cannot be contended by learned counsel appearing for the petitioner that land earmarked for being used as a 'local market' was being put to use for a different purpose or it would not fall within the definition of 'local market'. The purpose for which the said plot was earmarked having met or in other words, the said commercial

shops established in the plot meeting the requirement of the local populace, it cannot be contended by the petitioner that there has been divulgence of the use of the plot or in other words the plots which were earmarked for a particular purpose have been utilised for a different purpose. Even otherwise, accepting for a moment that contention of the petitioner deserves to be accepted, it would not stand the second test viz. the delay in approaching the court which would disentitle the petitioner to contend that this Court even in such circumstances this Court will have to exercise the extraordinary jurisdiction. According to the records made available, the auction having been conducted in the year 2003 and allotment having been made in the year 2006, petitioner after lapse of 19 years / 16 years cannot contend that such delay is to be ignored or condoned. In fact, there is not even a whisper in the petition as to why the petitioner did not raise his little finger from 2003 / 2006 till the filing of the present petition in the year 2022, particularly when petitioner claims to be an RTI activist, a public spirited person and espousing the cause of the public. Hence, we are of the view that it cannot be gainsaid by petitioner that there is no delay in approaching this Court. On

the other hand, the delay of 19 years / 16 years would disentitle the petitioner to claim any relief at the hands of this Court. In fact, to a pointed question to the learned counsel appearing for the petitioner posed by the Court as to whether the shops have already been established or confronted, the answer has been in the affirmative. If it were to be so, there might be a third party rights which would have crept in and undisputedly, the owners of the shops not being party to the present proceedings no order prejudicial to their interest can be passed and in the event of there being change of ownership of shops / establishments by sale of their ownership rights, third party rights which have crept in cannot be allowed to be unsettled after long lapse of 19 years / 16 years at the instance of a so-called public spirited person. For this reason also, the relief sought for by the petitioner cannot be granted.

11. Insofar as the claim made in paragraphs 4.4 (ii) to 4.4 (viii) which relates to different plots in the city of Ahmedabad are concerned, they stand on the same footing as that of Plot No.529 which we have discussed herein above and any further elaboration on this would only be repetition or burdening this judgment with additional paragraphs, which we desist from

doing so, except to the extent extracting the details of the plots, plot number, date of auction and nature of the land used specified in Annexure-A and the nature of land, it has been put to use:

Plot No.	Nature of use as reflected in Annexure-A	Date of Auction	Details of Plot put to use
529	Local Market	January 2003	Shops and Offices
381	Local Market	19.1.2004	Commercial Building
84	Local Market	2006	Commercial Building
180	Local Market	3.5.2004	Commercial Building
229	Local Market	3.5.2006	Commercial Building
31	Local Market	22.1.2006	Retail Outlet of Petrol Pump
528	Local Market	11.7.2006	Commercial Building

12. Insofar as Final Plot No.31 referred to hereinabove in the tabular column is concerned, it is no doubt earmarked for local market and said land having been allotted to Hindustan Petroleum Corporation Limited, a Government of India Undertaking for establishing its retail outlet (petrol pump) and it is stated that a retail outlet has been established and the said allotment having taken place on 22.1.2003 and the retail outlet

of HPCL having been established which definitely caters to the need of the local population, it cannot be held that there is a deviation of the land use.

13. In that view of the matter, we do not see any good ground to entertain this petition and for the reasons aforesaid, we proceed to pass the following

ORDER

(i) The writ petition is dismissed.

(ARAVIND KUMAR,CJ)

(ASHUTOSH J. SHASTRI, J)

Bharat

