person. Both these pleas were found to be baseless. In the light of this, I do not find any good ground for interference with the well reasoned award of the Tribunal.

(14) The claimants have also filed cross-objections. No meaningful argument could be addressed by the learned counsel for the claimants-respondents that the compensation amount awarded was inadequate or there is any error in the conclusion arrived at by the learned Tribunal while determining the dependency of the claimants. However, I find that the Tribunal erred in awarding the interest on the amount awarded as compensation, at the rate of 6 per cent per annum. This Court has been awarding interest on the amount of compensation at the rate of 12 per cent per annum and I do not find any good ground for making any deviation in the instant case. Accordingly, I maintain the award but modify it to the extent that the claimants are entitled to the amount of compensation awarded, with interest at the rate of 12 per cent per annum from the date of application till realisation. However, in the circumstances of the case, I leave the parties to bear their own costs.

S.C.K.

*Before : V. Ramaswami, C.J. and G. R. Majithia, J.*

BANTO RAM AND OTHERS,—*Petitioners.*

*versus*

UNION OF INDIA AND OTHERS,—*Respondents.*

*Civil Writ Petition No. 10800 of 1988*

April 12, 1989.

*Constitution of India, 1950—Arts. 226 and 227—Requisitioning and Acquisition of Immovable Property Act ( of 1952)—S. 8(1) (h)—Delay and laches—Compensation payable for acquired land could not be fixed by agreement—Statutory obligation to appoint arbitrator—Arbitrator not appointed—Petitioners filing writ after 18 years—Such inordinate delay—Whether the petitioners precluded from claiming writ.*

*Held*, that this Court will be disinclined to exercise its discretionary powers under Arts. 226/227 of the Constitution of India, 1950 on the ground of laches. The authorities under the Act have to appoint an arbitrator if the compensation payable for the acquired land could not be fixed by agreement but if the authorities failed to

appoint the arbitrator within a reasonable time, it was incumbent upon the landowner to approach this Court expeditiously for a direction to the respondents to comply with a statutory duty as enjoined by clause (b) of section 8(1) of the Act. It is not explained by the petitioners why they did not move this Court for a long period of 18 years. The inaction and delay on their part disentitle them of the discretionary relief. A party may by his conduct preclude himself from claiming the writ *ex debito justitiate*, no matter whether the proceedings which he seeks to quash are void and voidable. If they are void, it is true that no conduct of his will validate them, but such considerations do not affect the principle on which the court acts in granting or refusing the writs.

(Para 4)

*Held*, that we have to examine the conduct of the party approaching this Court and his conduct may, in the circumstances of the given case, disentitle him of the relief. We are not concerning here with the negligence on the part of the respondents. What is to be seen is whether the conduct of the writ petitioners disentitle them from claiming the writ *ex debito justitiate*.

(Para 10).

*Petition under Articles 226 and 227 of the Constitution of India praying that* :—

(a) *That this writ petition be admitted.*

(b) *That the records and the Respondents be summoned and after hearing, parties or their counsel this Hon'ble Court may be pleased to issue a writ in the nature of* mandamus *or such other appropriate writ order or direction directing the Respondents to appoint an Arbitrator in the case of the Petitioner.*

(c) *The Petitioners may also be awarded the costs of this Writ Petition.*

Mr. Rajiv Bhalla, Advocate, *for the Petitioners.*

Mrs. Jaishree Anand, Advocate for U.O.I., *for the Respondents.*

JUDGMENT

*G. R. Majithia, J.*

(1) This judgment will dispose of Civil Writ Petitions No. 4422 of 1987, 3904, 4421, 4423 to 4427, 4595, 4972 to 4976, 6270 to 6279, 8047 to 8050, 8787, 8788, 8789, 8790, 8791, 8935, 9074, 9080, 10297,

10586, 10595, 10799 and 10800 of 1988, as common question of law and fact arise in all these cases. We will refer to the facts as given in C.W.P. No. 10800 of 1988, for appreciating the points in controversy arising therein.

(2) After having heard the learned counsel for the parties at length, we have decided to dispose of all these writ petitions on merits at the motion stage.

Facts first :—

(3) A notice dated August 21, 1970 was issued under sub-section (1) of section 7 of the Requisitioning and Acquisition of Immovable Property Act, 1952 (for short the Act), by the competent authority to the landowners to show cause why the property mentioned in the schedule appended to the notice be not acquired for the public purpose mentioned therein. After the expiry of the period mentioned in the notice and after considering the cause shown against the said notice, the appropriate authority acquired the land and notification to this effect was published in the Punjab Government Gazette dated December 11, 1970. On November 24, 1988, the petitioners filed writ petition in this Court under Articles 226/227 of the Constitution of India, for seeking a mandate to the respondents to perform the statutory duties enjoined by section 8(1) of the Act. It will be useful to reproduce section 8 of the Act for the purpose of appreciating the submission of the learned counsel for the petitioners :—

"Principles and method of determining compensation:—
(1) Where any property is requisitioned or acquired under this Act, there shall be paid compensation the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say,—

(a) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement ;

(b) where no such agreement can be reached, the Central Government shall appoint as arbitrator a person who is, or has been, or is qualified for appointment as, a Judge of a High Court ;

(c) the Central Government may, in any particular case, nominate a person having expert knowledge as to the nature of the property requisitioned or acquired to assist the arbitrator and where such nomination is made, the person to be compensated may also nominate an assessor for the same purpose ;

(d) at the commencement of the proceedings before the arbitrator, the Central Government and the person to be compensated shall state what in their respective opinion is a fair amount of compensation.

(e) the arbitrator shall, after hearing the dispute, make an award determining the amount of compensation which appears to him to be just and specifying the person or persons to whom such compensation shall be paid; and in making the award, he shall have regard to the circumstances of each case and the provisions of subsections (2) and (3), so far as they are applicable ;

(f) where there is any dispute as to the person or persons who are entitled to the compensation, the arbitrator shall decide such dispute and if the arbitrator finds that more persons than one are entitled to compensation, he shall apportion the amount thereof amongst such persons ;

(g) nothing in the Arbitration Act, 1940, shall apply to arbitrations under this section.

(2) The amount of compensation payable for the requisitioning of any property shall, subject to the provisions of subsections (2A) and (2B) consist of—

(a) a recurring payment, in respect of the period of requisition, of a sum equal to the rent which would have been payable for the use and occupation of the property, if it had been taken on lease for that period ; and

(b) such sum or sums, if any, as may be found necessary to compensate the person interested for all or any of the following matters, namely:—

(i) pecuniary loss due to requisitioning;

(ii) expenses on account of vacating the requisitioned premises ;

(iii) expenses on account of reoccupying the premises upon release from requisition ; and

(iv) damages (other than normal wear and tear) caused to the property during the period of requisition, including the expenses that may have to be incurred for restoring the property to the condition in which it was at the time of requisition.

(2A) The recurring payment, referred to in clause (a) of sub-section (2), in respect of any property shall, unless the property is sooner released from requisition under section 6 or acquired under section 7, be revised in accordance with the the provisions of sub-section (2B)—

(a) in a case where such property has been subject to requisition under this Act for the period of five years or a longer period immediately preceding the commencement of the Requisitioning and Acquisition of Immovable Property (Amendment) Act, 1975—

(i) first with effect from the date of such commencement, and

(ii) again with effect from the expiry of five years from such commencement;

(b) in a case where such property has been subject to requisition under this Act immediately before such commencement for a period shorter than five years and the maximum period within which such property shall, in accordance with the provisions of sub-section (1A) of section 6, be released from requisition or acquired, extends beyond five years from such commencement,—

(i) first with effect from the date of expiry of five years from the date on which possession of such property has been surrendered or delivered to, or taken by, the competent authority under section 4, and

(ii) again with effect from the date of expiry of a period of five years from the date on which the revision made under sub clause (i) takes effect ;

(c) in any other case, with effect from the date of expiry of five years from the date on which possession of such property has been surrendered or delivered to, or taken by, the competent authority under section 4,

(2B) The recurring payment in respect of any property shall be revised by re-determining such payment in the manner and in accordance with the principles set out in sub-section (1) read with clause (a) of sub-section (2), as if such property had been requisitioned under this Act on the date with effect from which the revision has to be made under sub-section (2A)

(3) The compensation payable for the acquisition of any property under section 7 shall be the price which the requisitioned property would have fetched in open market, if it had remained on the same condition as it was at the time of requisitioning and been sold on the date of acquisition."

(4) A landowner whose property is acquired is entitled to compensation which shall be determined in accordance with the principles of this section. If the amount of compensation can be fixed by agreement then landowner is entitled to be paid the same in accordance with such agreement. If no such agreement is arrived at, the Central Government shall appoint an arbitrator who shall determine the compensation which appears to him to be just but in making the award, he must have regard to the circumstances of each case and to sub-section (2) and (3). In the petition it is not stated as to on which date the compensation was offered by the competent authority and when the intimation was given by the landowners that they were not satisfied with the compensation offered and desired that the appropriate Government may appoint an arbitrator as enjoined by clause (b) of Section 8(1) of the Act. There is no explanation for not moving the appropriate authority for the appointment of an arbitrator for such a long period. In the instant case, this Court will be disinclined to exercise its discretionary powers under Articles 226/227 of the Constitution of India on the ground of laches. The

authorities under the Act have to appoint an arbitrator if the compensation payable for the acquired land could not be fixed by agreement but if the authorities failed to appoint the arbitrator within a reasonable time, it was incumbent upon the landowner to approach this Court expeditiously for a direction to the respondents to comply with a statutory duty as enjoined by Clause (b) of section 8(1) of the Act. It is not explained by the petitioners why they did not move this Court for a long period of 18 years. The inaction and delay on their part disentitle them of the discretionary relief. A party may by his conduct preclude himself from claiming the writ *ex debito justitiae*, no matter whether the proceedings which he seeks to quash are void or voidable. If they are void, it is true that no conduct of his will validate them, but such considerations do not effect the principle on which the Court acts in granting or refusing the writs. This matter is no more *res integra*. In *Aflatoon and others* v. *Lt. Governor of Delhi and others* (1), the writ petitioners challenged the validity of the declaration issued under Section 6 of the Land Acquisition Act in the year 1966 by filing a writ petition in the year 1972. The Apex Court held thus :—

> "There was apparently no reason why the writ petitioners should have waited till 1972 to come to this Court for challenging the validity of the notification issued in 1959 on the ground that the particulars of the public purpose were not specified. A valid notification under Section 4 is a *sine qua non* for initiation of proceedings for acquisition of property. To have sat on the fence and allowed the Government to complete the acquisition proceedings on the basis that the notification under Section 4 and the declaration under Section 6 were valid and then to attack the notification on the grounds which were available to them at the time when the notification was published would be putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners (see *Tilokchand Motichand* v. *H. B. Munshi*, (1969) 2, SCR 824 = (A.I.R. 1970 S.C. 898) and *Rabindranath Bose* v. *Union of India* (1970)2 SCR 697 = (A.I.R. 1970 S.C. 470 = 1970 Lab I.C. 402)."

(5) This judgment was again followed in *Indrapuri Griha Nirman Sahakari Samiti Ltd.* v. *The State of Rajasthan and Others* (2), and

(1) A.I.R. 1974 S.C. 2077.

(2) A.I.R. 1974 S.C. 2085.

*Smt. Rani Devi and another* v. *Chief Commission Delhi and others* (3). The learned counsel for the petitioners relied upon the following authorities in support of their claim that this Court must issue a writ of *mandamus* to the appropriate authority to appoint an arbitrator:—

> "*Shanker Singh and others* v. *Union of India and another* 1975 R.L.R. 6, *Balwant Singh and others* v. *Union of India and another* C.W.P. No. 1890 of 1986, decided on September 16, 1986, *Dalip Singh* v. *Union of India and others*, C.W.P. No. 2025 of 1982, decided on January 14, 1988, and *Darbari Lal and others* v. *Union of India and others*, C.W.P. No. 5551 of 1986, decided on August 24, 1987.

(6) In *Shanker Singh 's case* (supra), the landowner moved this Court for a direction to appoint the arbitrator immediately after the compensation offered by the competent authority was not accepted by him since the same could not be fixed by agreement. The following observations in the judgment negatived the plea raised by the learned counsel :—

> "The petitioner was offered compensation for the acquired land which he received under protest. The compensation was not fixed by agreement of the petitioner. He was intimated orally that in case it was not acceptable to him then he could apply for the appointment of an Arbitrator to assess the same. Immediately thereafter the petitioner through application moved the Central Government through the Land Acquisition Collector, Pathankot, on March 15, 1971, for the appointment of an Arbitrator. No Arbitrator was appointed under section 8(b) of the Act inspite of repeated requests."

This Court was moved in the year 1973. Thus, the question of delay did not arise in this case.

(7) In *Balwant Singh's case* (supra), no representation was made on behalf of the Union of India despite service and the Bench accepted the writ petition only on the ground that the facts stated in the petition were not controverted. The objection now raised was not

(3) A.I.R. 1975 S.C. 1699.

agitated before the Bench. Thus this judgment is no authority for the proposition canvassed in the present case.

(8) In *Dalip Singh's case* (supra), the question of delay or laches was never agitated before the learned Judge. This judgment is also no authority for the proposition arising for determination in this case.

(9) In *Darbari Lal's case* (supra), the learned Single Judge disposed of the objections regarding delay with the following observations:—

> "The defence of delay and bar of limitation in the circumstances do not hold good. When the law requires a thing to be done in a certain way, then it has to be done in that way and no other. It is rather the respondents who have been negligent in not giving their attention to the matter it rightly deserved. The defence is thus discarded."

(10) The learned Judge did not appreciate that in writ jurisdiction we have to examine the conduct of the party approaching this Court and his conduct may, in the circumstances of the given case disentitle him of the relief. We are not concerned here with the negligence on the part of the respondents. What is to be seen is whether the conduct of the writ petitioners disentitle them from claiming the writ *ex debito justitiae*.

(11) For the reasons aforesaid, these writ petitions are dismissed.

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*S.C.K.*

*Before D. V. Sehgal, J.*

PIARA SINGH,—*Petitioner.*

*versus*

SARMUKH SINGH and others,—*Respondents.*

*Civil Revision No.* 1181 *of* 1987

October 31, 1988.

*Civil Procedure Code* (V of 1908)—*S.* 115, *O.* 21 *Rls.* 37 *and* 40—*Judgment debtor detained in civil prison in execution proceedings—Release ordered on furnishing security—Petitioner furnishing such*