It limitation for filling of petitions under

It was held by K. B. Asthana J. that- 1.

The objection that the petition has been filed almost a year after the publication of the notification under Sec. 6 of the Land Acquisition Act and no sufficient cause has been made out explaining the delay, has no substance. 2. In such matters, it should always be borne in mind that there is no rule of law laying down any period of limitation for filling of petitions under Art. 226 of the Constitution 3.

The question of delay or latches is only one of the circumstances which the High Court, while exercising its discretion under Art. 226, takes into consideration. 4. Again, whether, in particular cases, the petitioner for its the exercise of discretion in his favour on account of latches of undue delay, would depend on- (a) The peculiar circumstances of that case, (b) Nature of the executive action prejudicing its rights, and (c) The nature of the relief which the High Court can give under Art. 226. 5.

There is no hard and fast rule laid down in this respect by the Allahabad High Court or by the Supreme Court which is applicable universally in all circumstances. The learned Judge observed: “ The effect of a notification under Sec. 6 of the Act is that a declaration is made that the land is needed either for public purpose or for a company and nothing more. Though such a notification would cast a cloud on the future right of the person whose land is needed and, to a limited extent, effect of transfer or otherwise to deal with that land, but it offers no impediment with his rights of property for keeping that land in his possession and enjoying its benefits.

I cannot blame a citizen if he does not rush to the Court immediately or soon after the publication of a notification under Sec. 6 of the Act, for it may even be withdrawn. After the publication of a notification under Sec.

6 of the Act, many other proceeding as provided under the Act has to be gone into and complete before the title of the person affected is extinguished." It was held by the Supreme Court that- (a) The High Court of Allahabad has not framed any rule prescribing a period of limitation for filing petitions for writs of certiorari under Art. 226 of the Constitution. (b) Ordinarily, in the absence of a specific statutory rule, the High Court may be justified in rejecting a petition for a writ of certiorari against the Judgement of a subordinate court or tribunal if, on, a consideration of all circumstances it appears that there is undue delay. But the aggrieved party should have a reasonable time within which to move the High Court for certiorari. (c) But, in the absence of a statutory rule, the period of 90 days prescribed for preferring an appeal to the Allahabad High Court is a rough measure in each case. The primary question is whether the applicant has been guilty of latches or undue delay.

(d) A rule of practice of the Allahabad High Court cannot prescribe a binding rule of limitation. It may only indicate how discretion will be exercised by the Court in determining whether having regard to the circumstances of the case; the applicant has been guilty of latches or undue delay. In this case— 1.

A revision application under Sec. 48 of the U. P. Consolidation of Holdings Act filed by the appellant against the order of the Settlement Officer

(Consolidation) was dismissed by the Deputy Director of Consolidation by order dated 19-7-1961. 2. A petition for review of that order dated 15-7-61, was rejected on 22-9-61. 3. The appellant had to secure certified copies of the impugned orders.

4. Under the Rules of the Allahabad High Court, the appellant had to serve upon the Standing Counsel to the State of Uttar Pradesh a notice of the intention to move a petition before the High Court. 5. Taking into consideration these two periods, the appellant should have, according to practice of the High Court, moved the petition on 7-11-61. But the petition was moved on 13-11-61.

6. The petition was summarily dismissed by D. S. Mathur J. of the Allahabad High Court who observed that: (a) The period of limitation expired on 7-11-61; (b) No explanation had been furnished why the writ petition could not be filed on 7-11-61; and (c) The writ petition was filed beyond 90 days from the date of the impugned order, excluding the time: (i) Taken in obtaining a certified copy of the order and (ii) Requisite for giving notice to the Standing Counsel under rules of the Court. It was observed by the Supreme Court that: “ D. S.

Mathur, J., was of the opinion that the rule of practice prescribes a rule of limitation. He did not consider whether, on a review of the circumstances, the appellant was guilty of latches or undue delay.” There are certain special circumstances which would have normally justified the Court in not insisting upon strict compliance even with its own rule of practice. They are:- (a) Mathur, J.

regarded the rule of practice as a rule of limitation. (b) Originally, 7-11-61 was declared a working day by the High Court, but, by notice issued by the Court on 7-11-61 the High Court and its offices were, without previous intimation, closed some time about mid-day (at 1 P. M.) for the Diwali holidays; (c) The appellant had completed all preliminary steps for filing the petition before 7-11-61; (d) The Court and its offices re-opened on 13-11-61. There is no reason to think that the appellant would not have presented the petition on 7-11-61 if the offices of the High Court were not closed at 1 P. M.

. It is true that normally the question whether a petition under Art. 226 for the issue of a writ of certiorari had been presented without undue delay or latch is a question for the High Court to decide, and the Supreme Court would not interfere with the exercise of the discretion of the High Court. But, in the present case, there are special circumstances which justify departure from the rule. These circumstances have not been considered by the High Court.

The High Court appears to have exalted a rule of practice into a rule of limitation and rejected the petition of the appellant without considering whether the appellant could be said to be guilty of latches or undue delay. It may be mentioned that, apart from the ground that the petition was not presented within 90 days- (i) There is nothing which indicates that the appellant was guilty of latches or undue delay; (ii) Nor are there grounds which justify the High Court in holding that it would be unjust to permit a departure from the practice of the Court. The appeal will, therefore, be allowed and the order of the High Court set aside. The proceedings will be remanded to the High Court for hearing and disposal according to law.”