

(1984) 03 AP CK 0015

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 1180 of 1983

G. Narsi Reddy and Others

APPELLANT

Vs

District Collector, Guntur and Others

RESPONDENT

Date of Decision : 27-03-1984

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition (Andhra Pradesh Amendment and Validation) Act, 1983 — Section 4(1)

Land Acquisition Act, 1894 — Section 17(4), 17(5), 4, 4(1), 5

Limitation Act, 1963 — Section 5

Citation : AIR 1984 AP 335

Hon'ble Judges : K. Madhava Reddy, C.J.;Sardar Ali Khan, J

Bench : Division Bench

Advocate : G.V.L. Narasimha Rao, for the Appellant; Govt. Pleader, for the Respondent

Judgement

Reddy, C.J.—The acquisition of Acs. 4-66 cents in Survey No. 177 and Acs. 4-59 cents in Survey No. 176 of Ramidicherla Village which was published under S. 4(1) notification on 11-7-1977 in the official gazette was called in question by the appellants herein in Writ Petition No. 5335 of 1979. That writ petition was dismissed by a judgment dt. 6-9-1982. Aggrieved by the judgment, the writ petitioners preferred an appeal on 1-9-1983. Along with the appeal they filed a petition W. P. M. P. No. 1466 of 1983 to condone the delay of 266 days in preferring the appeal. The petition for condonation of delay was supported by a medical certificate in which it is stated that the petitioner met with an accident. Notice was served on the respondents. But, no counter affidavit was filed. Therefore, the petition for condonation of delay in preferring the appeal was allowed. Thereafter, the learned Counsel for the appellants represented that the points arising in the Writ Appeals are covered by a Full Bench decision of this Court in K. Gangaram v. Tahsildar, Metapally, (1983) 1 AnWR 354 : (AIR 1984 NOC 5). The Full Bench laid down that if the substance of the notification under S. 4(1) is not published in the locality simultaneously with the publications of the

same in the official gazette, the land acquisition proceedings under the Land Acquisition Act would be void and no further steps could be taken thereof. In this case S. 4(1) notification was published in the official gazette on 11-7-1977 and the substance thereof was admittedly published in the locality on 17-11-1977. In view of the Full Bench that notification must be quashed. Even the Land Acquisition (Andhra Pradesh Amendment and Validation) Act, 1983 (Act 9 of 1983) does not save such a notification, for under the Amendment Act the substance of the notification should have been published at least within forty days of the publication of the notification in the official gazette. In this case the substance of the notification in the official gazette was published in the locality more than 120 days after the publication in the official gazette. Even keeping in view the Amended Act, the notification cannot be sustained and the acquisition proceedings must be quashed. It may be noticed that pursuant to the notification neither possession was taken nor any award passed so far. Even though S. 5A was dispensed with possession was not taken within three months, the acquisition must be quashed even on this ground. S. 6 notification was published simultaneously with the notification under S. 4. This again cannot be sustained, and now enquiry under S. 5A also cannot be ordered to be made, for S. 6 notification has to be published within three years of the publication of the notification under S. 4(1) as laid down in the proviso to S. 6. A Division Bench of this Court to which both of us were parties to Review W. P. M. P. No. 10523 of 1983 in W. P. No. 3192 of 1919 on 26-3-1984 (reported in AIR 1984 Andh Pra 33) held that where S. 6 notification was not published within three years of notification under S. 4(1), the proceedings cannot be proceeded with. In *Ambalal Purshottam etc. Vs. Ahmedabad Municipal Corporation and Others*, , the Supreme Court held that where there is inordinate delay in pursuing the acquisition, the proceedings cannot be allowed to be continued. Following the judgment of the Supreme Court, a Division Bench of this Court to which one of us (myself) was a party in *Singareni Collieries v. V. S. Murthy*, (1984) 1 ALT 108 : (AIR 1984 NOC 271) quashed the acquisition proceedings. For all the above reasons the acquisition cannot be sustained.

2. the learned Govt. Pleader, however, contends that the delay in preferring the appeal must be deemed to be laches on the part of the appellants. Therefore, the discretionary relief must be refused. In a case like this we are unable to hold that the Court will be justified in refusing the relief and denying the appellants the just relief which they are entitled to under the Full Bench decision in *K. Gangaram v. Tahsildar, Metpally*, (AIR 1984 NOC 5) (Andh Pra). Moreover, this is not a case where the appellants were guilty of any laches in moving the Court by way of a petition under Art. 226 of the Constitution. The relief prayed for was not refused by the learned single Judge on the ground of laches. The learned Government Pleader says that the laches on the part of the appellants was in preferring the appeal. When the appeal is preferred beyond the prescribed period of limitation, unless the Court condones the delay, the appeal would not be entertained. In this case the delay was condoned after notice to the respondents

and respondents had not filed any counter controverting the facts stated by the petitioner. The petitioner had met with an accident and could not attend to his normal duties. That representation was accepted by the Court and that was found to be a sufficient cause for condoning the delay. As held by the Supreme Court in *Rajendra Nath Kar Vs. Gangadas and Others*, when a Court condones the delay caused in filing a proceeding, it does not extend the period of limitation prescribed by law for filing it. It treats the proceedings as if it is filed within limitation which it has the power to do, if sufficient cause is shown for not filing the proceedings within the prescribed period. This judgment squarely supports the appellants contention that the appeal preferred though with a delay of 266 days must be treated to have been filed within time. The learned Government Pleader, however, relies upon a judgment of the Supreme Court in *State of Mysore and Others Vs. V.K. Kangan and Others*, in which the Court held that if a party is guilty of laches, the discretionary relief under Art. 226 should be refused. That was a case of delay in invoking the jurisdiction of the Court under Art. 226 of the Constitution. In the present case there is no allegation that there was any unreasonable delay in moving the Court under Art. 226. The delay, if any, was in preferring the appeal and that delay having been condoned, it cannot be said that there is any unreasonable delay so as to disentitle him to the relief.

3. For all the above reasons, the Writ Appeal is allowed. There will be no order as to costs. Advocate's Fee Rs. 150/-.

4. Appeal allowed.