
(2009) 08 AP CK 0045

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 1079 of 2008

M.Y. Maharshi and Another

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 05-08-2009

Acts Referred:

Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 — Section 9
Constitution of India, 1950 — Article 226

Citation : (2009) 6 ALD 96 : (2009) 6 ALT 224

Hon'ble Judges : R. Kantha Rao, J;B. Prakash Rao, J

Bench : Division Bench

Advocate : P. Venugopal, for the Appellant; G.P. for Revenue for Respondent
Nos. 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

B. Prakash Rao, J.—The appellants herein are the unsuccessful petitioners, who sought to invoke the extraordinary jurisdiction under Article 226 of the Constitution of India aggrieved by the orders of the learned Single Judge in W.P. No. 6598 of 2007, dated 22-4-2007 dismissing their writ petition where they sought for Mandamus directing the 2nd respondent herein to dispose of the revision petition stated to have been filed by them vide D1/3/2007/DI/ROR/848 u/s 9 of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 as expeditiously as possible.

2. The grievance of the petitioners, in short, was that even though they filed the said revision on 8-2-2007, the same is not being disposed of and therefore they sought for expeditious disposal. The learned Single Judge did not accede to the said relief on the ground that extraordinary jurisdiction under Article 226 of the Constitution of India cannot be exercised for such purpose whereby imposing specified time on the authorities, which cannot be found place in the statute, and especially, there being no inordinate delay as such on the part of the said authority in taking up the proceedings, no direction can be given.

3. The brief facts, which gave rise to the present proceedings, especially, as a, aged in the affidavit sworn to by the petitioner No. 1 in support of the writ petition are that the petitioners are the owners and possessors of the land to an extent of Acs. 10-07 gts in Sy. No. 305/2 situated at Penjerla village and Gram Panchayat, Kothur Mandal, Mahabubnagar district, having purchased the same under registered sale deed under Document No. 20454 of 2006 dated 19-10-2006. According to the petitioners, the land originally belongs to one Smt. Zainab Begum and her husband predeceased her. She died in the year 1975 leaving behind her one Mr. Syed Fazal Hussain Khan as sole legal heir whose petition in O.P. No. 391 of 2006 on the file of VIII Junior Civil Judge, City Civil Court, Hyderabad was decreed on 26-4-2006 holding that he is the sole surviving successor son of Smt. Zainab Begum. Accordingly, he seems to have filed an application for issuance of pattadar pass books on 9-9-2004. Later the said Mr. Syed Fazal Hussain Khan executed an Agreement of Sale-Cum-General Power of Attorney vide registered Doc. No. 867 of 2007, dated 22-8-2006 in favour of the 2nd appellant, who in turn executed a sale deed in favour of the petitioner No. 1 vide registered document dated 19-10-2006. Since, no action was taken for issuance of pattadar pass books, proceedings were initiated and the petitioner No. 1 seems to have filed a revision before the 2nd respondent herein on 8-2-2007. The grievance of the petitioners is that even though there is a persuasion all along even from the side of his vendors and the original owners, however, no action is taken; hence they sought for a direction to issue pattadar pass books and dispose of the said revision. The writ petition has been filed on 22-3-2007.

4. After hearing the learned Counsel for the petitioners, the learned Single Judge did not find favour with the petitioners' request and dismissed the same at the admission stage by placing reliance on the decision of the learned Single Judge in *Mir Fazle Ali Nasiri Vs. State of A.P. and Others*, where it was opined that it would be impermissible to the Court in every case to issue such direction introducing a requirement which is not found in the statute and more so when there is no laches on the part of the said authorities, hence, the appeal.

5. The learned Counsel Sri P. Venugopal, appearing on behalf of the appellants submitted that having regard to the facts and circumstances, the direction as sought for is only for disposal of the revision and therefore there are no impediments or any restrictions as such in exercise of powers under Article 226 of the Constitution of India. In support, he sought to place reliance in *T. Vijayalakshmi and Others Vs. Town Planning Member and Another*, *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others*, and *Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another*, .

6. The learned Government Pleader appearing on behalf of the respondents submitted that having regard to the principles laid down in *Mir Fazle Ali Nasiri* (supra), the question of giving such directions does not arise and is not proper

within the limitations of extraordinary jurisdiction.

7. Having considered the submissions and also on perusal of the material, the only point, which arises for consideration in this appeal is, as to whether on the facts and circumstances, this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India can give any directions for disposal of any proceedings before the authorities:

8. Before taking up the issue, it is to be noticed that apparently no lis is sought to be raised nor any question affecting any rights or interest of the parties is sought to be involved or any warranting circumstances as such, on merits, to be decided is being directed against by invoking the extraordinary jurisdiction under Article 226 of the Constitution of India. No doubt, on the face of it, the direction by way of Mandamus as sought for is more innocuous and grievance being only for an early disposal of the proceedings before the authority and to avoid any further delay. There is no doubt to the fact that there are delays in disposal of the matters at every stage for various obvious reasons, in respect of which it is not necessary to delve. Each case has to be dealt on its own facts and circumstances and cannot be a precedent for the other. The learned Single Judge in *Mir Fazle Ali Nasiri* (supra) was considering similar such question where the writ jurisdiction was invoked for a direction to expedite the disposal. Considering the same, the learned Single Judge held that it cannot be possible to give such directions where the authorities are busy themselves and further there cannot be any imposition of time limit, which is not prescribed in the statute. Even otherwise, the learned Single Judge referred to the principle that any time limit prescribed by the statute is ordinarily held to be directory and no prejudice would be caused by non-adherence to time limit by public authority. Therefore, it was held that it would not be impermissible for the Court in every case to issue a direction as a matter of course to public authorities to dispose of application, appeal or revision within a specified time, which may amount to introducing a requirement in the statute which the legislature itself did not provided for. Hence, no such writ can be entertained nor any direction can be given. However, the learned Single Judge in the very same decision drawn an exception to a situation where there is inordinate delay in discharge of public duties, which itself amounts to arbitrariness, and ultimately on the facts of the said case, having regard to the date of factum of filing of the appeals, it was held that no such relief can be granted to the petitioners therein.

9. In *T. Vijalakshmi* (supra) relied on by the petitioners the Supreme Court was considering the consideration of an application filed by the parties therein for approval of a building plan before the authority and having regard to the facts and circumstances direction was given to consider the same and dispose of within 8 days in accordance with law. It was held that a statutory authority must exercise its jurisdiction within a reasonable time and therefore having regard to the facts and circumstances therein, it was held that it should be decided at an early date, hence, direction was given. In that case, the lands were purchased in

the year 2004 and an application was filed for approval of building plans on 29-11-2004. Having regard to the comprehensive development plan prepared in the year 1995 which was sanctioned by the State and was initially valid up to 2005, which has been further extended for a period up to 2015 and no action was taken and application was rejected on 15-6-2005. After availing the remedies unsuccessfully, the matter came up to the highest Court. Proceeding on the ground that it is the law as existing on the date of application which governs and consideration of such application should be exercised within a reasonable time, which having been found absent in the case such direction was given. However, there is no consideration on the aspect as to the powers of the Court in exercise of its extraordinary jurisdiction to prescribe any time limit for disposal of the proceedings by the authorities and correctness thereof.

10. In Bhavnagar University (supra) relied on by the appellants, it was held that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under the statute are only creature of statute. They must act within the four corners thereof.

11. From the above it amply transpires that wherever the courts have found that it is expedient and there is an element of laches and delay in pendency of the proceedings for no valid reason on the part of the parties concerned, directions are given. Though, of course, as rightly held by the learned Single Judge in the aforesaid decision, it cannot be sought for a mere asking. Necessarily, the petitioners have to show that there is considerable delay for beyond the reasonable time, which is expected for its disposal and in spite of the best efforts made by them, no action is being taken, in such case, necessarily it calls for reminder to the authorities to be vigilant to take up the proceedings and give a finality thereto, on merits, of course after giving notice and opportunity to both sides.

12. In the present case, the case of the appellants is that they are seeking for issuance of pattadar pass books and the fact that the original owners also filed similar such applications on 9-9-2004 is not denied. No doubt, of the appellants, appellant No. 1 purchased the land from the other appellant under an agreement of sale on 9-10-2006. The revision is filed on 8-2-2007 and the writ petition is filed on 22-3-2007. The learned Single Judge also observed that even before issuance of any notice by the revisional authority and service thereof on the contested respondents, the appellants have approached this Court under Article 226 of the Constitution of India, which is not in serious dispute. Prima facie we are of the view that having regard to the fact that the proceeding, which the appellants seek for early disposal is a just born and yet to take its shape and become ready for hearing where the notices are yet to be served, apart from the question as to whether this Court would exercise any such jurisdiction or there is any warrant to exercise such discretion and give directions on the facts and circumstances, prima facie, the writ petition is quite premature. Nothing has

been alleged on the part of the authorities as to delay or any laches nor there is any thing attributable to them for their silence in taking up the proceedings.

13. In the circumstances, without going into such larger questions to be considered in appropriate case, we do not find any merit in the appeal, especially, in view of the fact that the appellants have unnecessarily rushed to this Court without waiting for a reasonable time.

14. Accordingly, the appeal is dismissed. No costs.