
(2003) 08 AP CK 0062

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17163 of 1996

Narender

APPELLANT

Vs

Secretary, Municipal Administration and Others

RESPONDENT

Date of Decision : 01-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 5 ALD 448

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : G. Dasaradha Rami Reddy, for the Appellant; Government Pleader and Ghanta Rama Rao, SC to MCH for Respondents 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The petitioner alleging to be the owner of land admeasuring 787 Sq.yds. in Ward No. 13, Jiyaguda, Hyderabad, filed the writ petition praying this Court for a writ of mandamus declaring the action of the respondents namely, Government of Andhra Pradesh in Municipal Administration Department, Commissioner and Special Officer, Municipal Corporation of Hyderabad (MCH) and Superintending Executive Engineer (G), MCH, in taking possession of his land without following any procedure under the Land Acquisition Act, 1894 (the Act) as illegal and arbitrary. He also seeks a consequential direction to the respondents to restore the land or pay compensation to him.

2. The case of the petitioner in brief is as under. According to him, the land in question was sold by one Mohd. Layak Ali Khan to Laxmanji who is his grandfather in 1959 by a registered sale deed dated 8-8-1959, Laxmanji bequeathed the property on 26-12-1974 in favour of the petitioner. By that date, the petitioner was a minor. The petitioner's mother representing him as guardian filed O.S.No. 3915 of 1981 on the file of the Court of the III Assistant Judge, City Civil Court, Hyderabad against Laxmanji for permanent injunction. The suit was decreed. The petitioner then applied to MCH for permission to construct a

compound wall. As no permission was issued, the petitioner filed the suit being O.S.No. 250 of 1986 on the file of the II Assistant Judge, City Civil Court, Hyderabad, for a direction to MCH to grant permission for construction of compound wall. The matter was referred Lok Adalat which directed to consider the application for grant permission for construction of compound wall.

3. On 25-11-1985 MCH called for tenders for construction of community hall in the land admeasuring about 300 Sq.yds. forming part of the land allegedly belonging to the petitioner. Construction of community hall was completed in 1989. On 8-4-1996 the petitioner issued a legal notice calling upon MCH to pay a sum of Rs. 12 lakhs to him for the land acquired by it or to deliver 787 Sq.yds. Having failed to get any response, the petitioner filed the present writ petition on 19-8-1996.

4. Respondents 2 and 3 filed counter-affidavit denying the allegation of the petitioner that the land belongs to him and that MCH has acquired the land without initiating land acquisition proceedings. It is also stated that the land in question was recorded in the survey records as Government Abadi and, therefore, the petitioner has no absolute right over the property. Community hall was constructed in 1985 in the Government land as the remaining land is being used as play ground by the colony people. The petitioner filed the writ petition after a decade after construction of community hall. Along with the counter-affidavit, a certified copy of the TSLR in respect of the land in question is produced to show that the land in question is Government Abadi land. The TSLR extract shows the name of Laxmanji S/o.Balaji which indicates that he was in possession of the said property. A reply affidavit is filed denying the counter allegations. Learned Counsel for the petitioner, Sri G.Dasaradharami Reddy submits that MCH has occupied the private land of the petitioner and, therefore, they are liable to pay compensation under the Act for using his land. The occupation of the petitioner's land by the MCH violates Article 300-A of the Constitution of India. He placed strong reliance on the sale deed executed in favour of petitioner's grandfather by Mohd.Layak Ali Khan and the decree passed by the Court of the HI Assistant Judge, City Civil Court in O.S.No. 3915 of 1981 in support of the contention that the land belongs to the petitioner. These allegations are refuted by the learned Standing Counsel for MCH, Sri Ghanta Rama Rao.

5. The petitioner is admittedly aware of the fact that MCH issued tender notice on 25-11-1985 inviting tenders for construction of community hall. He never raised any objection. Even after completion of construction of community hall, he did not raise any objection. When his suit being O.S.No. 250 of 1986 on the file of the Court of the HI Assistant Judge, City Civil Court for grant of permission by MCH was referred to Lok Adalat, he never raised any objection on this aspect. It is only on 8-4-1996 he gave a legal notice demanding compensation and/or restoration of possession of 787 Sq.yds. The writ petition was filed in August 1996. Therefore, the writ petition is clearly barred by delay and laches.

6. It is now well settled that even in matters where the Government allegedly utilized private land for public purpose, persons who claim to be owners of such land have to approach the Court within a reasonable time and seek appropriate relief. Delay defeats the rights and results in extinguishments of rights. In *State of Maharashtra Vs. Digambar*, , the Supreme Court considered the question of delay. When persons approach the Courts under Article 226 of the Constitution seeking compensation for their land which was acquired for public purpose, it was held:

In our view, the above allegation is in no way sufficient to hold that the writ petitioner (respondent here) has explained properly and satisfactorily the undue delay of 20 years which had occurred between the alleged taking of possession of his land and the date of filing of writ petition in the High Court. We cannot overlook the fact that it is easy to make such kind of allegations against anybody that too against the State. When such general allegation is made against a State in relation to an event said to have occurred 20 years earlier, and the State's non-compliance with petitioners demands. State may not at all be in a position to dispute such allegation, having regard to the manner in which it is required to carry on its Governmental functions. Undue delay of 20 years on the part of the writ petitioner, in invoking the High Court's extra-ordinary jurisdiction under Article 226 of the Constitution for grant of compensation to his land alleged to have been taken by the Governmental agencies, would suggest that his land was not taken at all, or if it had been taken it could not have been taken without his consent or if it was taken against his consent he had acquiesced in such taking and waived his right to take compensation for it.

7. In *Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others*, , the Supreme Court observed thus:

It is well settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification u/s 4(1) and declaration u/s 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches.

8. In *The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others*, , the Supreme Court considered the effect of delay in claiming compensation from the Government by persons who allege that it is private land. After referring to *Municipal Corporation of Greater Bombay v. Industrial Development Investment Company* (supra) the Supreme Court ruled thus:

..... It is now a well settled principle of law and we need not dilate on this score to the effect that while no period of limitation is fixed but in the normal course of events, the period, the party is required for filing a civil proceeding ought to be the guiding factor. While it is true that this extraordinary jurisdiction is available to mitigate the sufferings of the people in general but it is not out of place to mention that this extraordinary jurisdiction has been conferred on to the law Courts under Article 226 of the Constitution on a very sound equitable principle. Hence, the equitable doctrine, namely, "delay defects equity" has its fullest application in the matter of grant of relief under Article 226 of the Constitution. The discretionary relief can be had provided one has not by his act or conduct give a go-bye to his rights. Equity favours a vigilant rather than an indolent litigant and this being the basic tenet of law, the question of grant of an order as has been passed in the matter as regards restoration of possession upon cancellation of the notification does not and cannot arise.

9. The affidavit accompanying the writ petition is silent as to why the petitioner did not choose to approach this Court in 1985 and approached this Court after lapse of eleven years. In that view of the matter, the writ petition cannot be entertained and is liable to be dismissed in limini.

10. It is nextly contended by the learned Counsel for the petitioner that by reason of the judgment of the Court of the III Assistant Judge in O.S. No. 3915 of 1981 the petitioner was declared as owner of the land in question and, therefore, the acquisition of property without compensation violates Article 300-A of the Constitution of India. He also submits that when the other suit being O.S.250 of 1986 against MCH was referred to Lok Adalat which decided the matter on 2-3-1988, the Standing Counsel for MCH never even brought to the notice of the Lok Adalat that the land belongs to MCH and that community hall was constructed thereon. These submissions are devoid of merits.

11. Admittedly, MCH is not a party to the suit filed by the petitioner's mother against petitioner's grandfather for perpetual injunction. Further, the suit was only for perpetual injunction and it cannot be said that by reason of that the petitioner is declared as owner of the land. Be that as it is, no information is forthcoming from the Counsel for the petitioner as to why the petitioner filed the suit against his own grandfather who gifted the land to him. Furthermore, a reading of the decree dated 27-3-1982 in O.S.No. 3915 of 1981 would show that the petitioner's grandfather Laxmanji who was the defendant in the suit admitted the suit claim and, therefore, though the suit was filed on 23-12-1981 decree was passed on 27-3-1982 within a period of less than three months. This shows that it is a collusive suit filed by his mother for reasons best known to them. The same cannot be of any help to the petitioner.

12. The submission that MCH did not demur the title of the petitioner nor it set up title to the land cannot be accepted. The statement recorded by the Lok Adalat in the order dated 2-3-1988 in O.S. No. 250 of 1986 (Lok Adalat case No. 580 of 1987) inter alia contains a clause in its decree to the effect that

compounding of the suit construction shall be without prejudice to the third party rights including the municipality/Government properties and the scheme of road widening. This would belie the submission of the learned Counsel for the petitioner that MCH did not object title of the petitioner. In any view of the matter, it is now well settled that a title dispute cannot be resolved in a proceedings under Article 226 of the Constitution. If any authority is required, a reference may be made to the judgments of the Supreme Court in *State of Rajasthan v. Bhawani Singh*, AIR 1992 SC 1016, *Mohan Pandey and Another Vs. Smt. Usha Rani Rajgaria and Others*, , and *Dwarka Prasad Agarwal v. B.D. Agarwal*, 2003 AIR SCW 3346. In the recent judgment of the apex Court in *Dwarka Prasad Agarwal v. B.D. Agarwal*, it was held:

A writ petition is filed in public law remedy. The High Court while exercising a power of judicial review is concerned with illegality, irrationality and procedural impropriety of an order passed by the State or a statutory authority. Remedy under Article 226 of the Constitution of India cannot be invoked for resolution of a private law dispute as contra distinguished from a dispute involving public law character. It is also well-settled that a writ remedy is not available for resolution of a property or a title dispute. Indisputably, a large number of private disputes between the parties and in particular the question as to whether any deed of transfer was effected in favour of M/s. Writer and Publishers Private Limited as also whether a partition or a family settlement was arrived or not, were pending adjudication before the Civil Courts of competent jurisdiction. The reliefs sought for in the writ petition primarily revolved round the order of authentication of the declaration made by one of the respondents in terms of the provisions of the said Act. The writ petition, in the factual matrix involved in the matter, could have been held to be maintainable only for that purpose and no other.

13. A copy of the TSLR in respect of the land in question would show that one Laxmanarji, S/o. Balaji is in possession of the property whereas the name of the petitioner's grandfather is Laxmanji, S/o. Narsoji as per the sale deed dated 8-8-1959 allegedly executed by Mohd. Layak Ali Khan, S/o. Mohd. Riasat Ali Khan. It would also show that the petitioner's claim at least for the purpose of this writ petition is baseless. It is open to the petitioner to approach the civil Court and avail common law remedy as per law.

14. In the result, for the above reasons, the writ petition fails and is accordingly dismissed. There shall be no order as to costs.