
(2016) 07 KAR CK 0057

In the Karnataka High Court

Case No : Writ Appeal No. 100002 of 2016 (LA-RES)

Ramarao alias Ajit

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 14-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4, 6

Citation : (2016) 3 AirKarR 801 : (2016) ILRKarnataka 3363 : (2016) 4 KCCR 527

Hon'ble Judges : H.G. Ramesh and Mrs. Rathnakala, JJ.

Bench : Division Bench

Advocate : G.R. Gurumath, Advocate, for the Appellants

Final Decision : Dismissed

Judgement

H.G. Ramesh, J. (Oral)—Whether the learned single Judge is justified in rejecting the appellants' writ petition on the ground of delay and laches in the absence of any explanation for the inordinate delay of more than one hundred and fifty years in raising the dispute, and in approaching the Court, is the question that requires to be considered in this intra Court appeal.

The grievance of the appellants is, long back their land was used for construction of Government Guest house without due acquisition and payment of compensation, and hence, they are entitled for compensation.

2. This writ appeal is directed against the order dated 03.11.2015 passed by a learned single Judge of this Court, whereby the learned single Judge has rejected the appellants' writ petition on the ground of delay and laches. We have heard Sri. G.R. Gurumath, learned counsel appearing for the appellants and perused the record.

3. The appellants raised the dispute for the first time by, issue of a notice dated 27.01.2014 (Annexure-E) through their General Power of Attorney. The said

notice reads as follows:

"From

V.V. Hiremath

To

Advocate, "Veerashree",

#3140/B, Stadium Road, Ramapur Extension Saundatti - 591126

Mob : 9448691233

- 1) The Principal Secretary, Public, Port and Inland Water Transport Department, 1st Floor, Vikas Sodha, Govt. of Karnataka, Bangalore-560001
- 2) The Executive Engineer Public Works, Port & Inland Water Transport Department Division Office, Killa, Belgaum.
- 3) The Deputy Commissioner Belgaum District, Belgaum.

Sirs.

Under the instruction of my client Shri. Basangouda S/o.Basangouda Patil of Sattigeri General Power of attorney holder of 1) Shri. Ramarao alias Ajit Krishnarao Desai, 2) Shri. Sujit Krishnarao Desai, both are residents of Yargatti, Taluk: Saundatti Dist: Belgaum. I do hereby issue this legal notice to you as under:

My Clients are the absolute owners of the land bearing Block No. 225/4 measuring 36 Acres-11 (Juntas-11 anna assessed at Rs.6.82ps. situated at Yargatti village of Saundatti Taluk.

In the portion (4 acres) of the land bearing Block No. 225/4 abutting to both highways in Yargatti, the officers of Public Works department and Revenue department misutilized their position as public servants and constructed the structures of two inspection bungalows, store building, section officer quarters, chowkidar quarters, kitchen block, vehicle shed, latrines, PWD section office by the public works department in the aforesaid portion. They have completed works of construction long back.

The land has been acquired without due process of law. Therefore all the structures belonging to the Government in the land of my client are unauthorized one. The buildings are scattered in about 80% of the land, covered with compound wall. No compensation has been paid for acquired/utilization of the said land.

Therefore I hereby call upon to arrange for suitable payment of the compensation amount and oblige.

SAUNDATTI

27/01/2014

Yours faithfully

Sd/-

(V.V. Hiremath)

Advocate, Saundatti"

(Emphasis supplied)

4. Respondent No. 2-Executive Engineer, P.W.D., replied to the aforesaid notice as per his letter dated 21.07.2014 (Annexure-G); the said letter is in vernacular and reads as follows:

VERNACULAR MATTER

V.V. Hiremath Advocate,

21 JUL 2014

"Veerashree" # 3140/B Stadium Road,

Ramapur Extension, Saundatti.

VERNACULAR MATTER

5. It is stated in the aforesaid reply at Annexure-G that the Guesthouse was constructed in the year 1859-1860, and hence, question of acquiring the land and paying compensation does not arise. It is relevant to state that the appellants do not state in which year the land was utilised for construction of Government Guest house at Yaragatti except stating in their aforesaid notice that the construction was completed long back.

6. Aggrieved by the above reply, the appellants presented Writ Petition No. 107954/2015 with the following prayers:

"(i) Issue a certiorari quashing the endorsement dated 21/7/2014 issued by the 2nd respondent bearing No. (Vernacular Matter omitted... Ed.)/2014-15 which is produced at Annexure-G to the writ petition;

(ii) Writ of mandamus directing the respondents to consider the representations dated 27/1/2014 produced at Annexure-E and pass award:

(iii) Issue a writ of mandamus to make payment of compensation to the petitioners pursuant to passing of award.

(iv) Pass such other order as deemed fit in the interest of justice and equity."

7. The learned single Judge, on consideration of the matter, has rejected the writ petition with the following reasoning:

"3. Heard.

4. The representation made by petitioners was rejected by the respondent No. 2 by issuing an endorsement dated 21.07.2014, vide Annexure-G, by stating that the land must have been acquired between 1859-60 and the Guest House Property bearing No. 1170/A was constructed in 247.70 sq.mtrs., out of the total area measuring 14,500 sq.mtrs.

5. The acquisition was made even before tire independence. Under these circumstances, the quest ion of acquisition and granting of land does not arise for consideration. The petitioners have to establish their ownership and all the civil rights. When the ownership itself is a disputed fact, it is not for this Court to pass any order in the form of establishing right or rejecting civil right. The said judgment relied upon by the petitioner is not applicable to this Case. Accordingly, petition is rejected."

(Emphasis supplied)

8. Learned counsel appearing for the appellants submitted that the learned single Judge was in error in rejecting the writ petition on the ground of delay and laches. In support of his submission, he referred to two decisions of the Supreme Court in *Bhimandas Ambwani v. Delhi Power Co. Ltd.* (2013) 14 SCC 195 and in *Tukaram Kana Joshi v. MIDC* (2013) 1 SCC 353 and specifically invited our attention to the following paras in *Tukaram*:

"12. The State, especially a welfare State which is governed by the rule of law, cannot arrogate itself to a status beyond one that is provided by the Constitution. Our Constitution is an organic and flexible one. Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if the whole things hocks the judicial conscience, then the Court should exercise the discretion moreso, when no third-party interest is involved. Thus analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience.

13. The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226, nor is it that there can never be a case where the courts cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such discretion, must be exercised fairly and justly so as to

promote justice and not to defeat it. The validity of the party's defence must be tried upon principles substantially equitable. (Vide: P.S. Sadasivaswamy v. State of T.N. AIR 1974 SC 2271; State of M.P. v. Nandlal Jaiswal AIR 1987 SC 251 and Tridip Kumar Dingal v. State of W.B. AIR 2008 SC (Supp) 824.

14. No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The court should not harm innocent parties if their rights have in fact emerged, by delay on the part of the Petitioners. (Vide: Durga Prasad v. Chief Controller of Imports and Exports AIR 1970 SC 769; Collector (LA) v. Katiji (AIR 1987 SC 1353); Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur AIR 1993 SC 802, Dayal Singh v. Union of India AIR 2003 SC 1140 and Shankara Co-op. Housing Society Ltd. v. M. Prabhakar, AIR 2011 SC 2161

15. In H.D. Vora v. State of Maharashtra AIR 1984 SC 866 this Court condoned a 30 years delay in approaching the court where it found violation of substantive legal rights of the applicant. In that case, the requisition of premises made by the State was assailed.

16. The High Court committed an error in holding the appellants non-suited on the ground of delay and non-availability of records, as the court failed to appreciate that the appellants had been pursuing their case persistently. Accepting their claim, the statutory authorities had even initiated the acquisition proceedings in 1981, which subsequently lapsed for want of further action on the part of those authorities. The claimants are illiterate and inarticulate persons, who have been deprived of their fundamental rights by the State, without it resorting to any procedure prescribed by law, without the Court realising that the enrichment of a welfare State, or of its instrumentalities, at the cost of poor farmers is not permissible, particularly when done at the behest of the State itself. The appellants belonged to a class which did not have any other vocation or any business/calling to fall back upon, for the purpose of earning their livelihood.

17. Depriving the appellants of their immovable properties was a clear violation of Article 21 of the Constitution. In a welfare State, statutory authorities are bound, not only to pay adequate compensation, but there is also a legal obligation upon them to rehabilitate such persons. The non-fulfilment of (heir obligations would tantamount to forcing the said uprooted persons to become vagabonds or to indulge in anti-national activities as such sentiments would be

born in them on account of such ill-treatment. Therefore, it is not permissible for any welfare State to uproot a person and deprive him of his fundamental/constitutional/human rights, under the garb of industrial development.

18. The appellants have been deprived of their legitimate dues for about half a century. In such a fact situation, we fail to understand for which class of citizens the Constitution provides guarantees and rights in this regard and what is the exact percentage of the citizens of this country, to whom Constitutional/statutory benefits are accorded, in accordance with the law."

(Underlining supplied)

By relying on the above paras, the learned counsel contended that delay is no ground in law to reject the appellants' writ petition.

9. As could be seen from the reply at Annexure-G issued by respondent No. 2- Executive Engineer, the land was utilised for construction of Government Guest House at Yaragatti in the year 1859-1860. The appellants claim is that the land utilised for the construction is a portion of Sy. No. 225/4 measuring about 4 acres.

10. Learned counsel appearing for the appellants fairly submitted that the inordinate delay in raising the dispute, and in approaching the Court, is not explained in the writ petition.

11. The question is whether the learned single Judge is justified in rejecting the appellants' writ petition on the ground of delay and laches. In this context, it is appropriate to refer to the following observations made by the Supreme Court in *Syed Maqbool Ali v. State of U.P.* (2011)15 SCC 383:

"9. The remedy of a land-holder whose land is taken without acquisition is either to file a civil suit for recovery of possession and/or for compensation, or approach the High Court by filing a writ petition if the action can be shown to be arbitrary, irrational, unreasonable, biased, mala fide or without the authority of law, and seek a direction that the land should be acquired in a manner known to law.....

10. But that does not mean that the delay should be ignored or the appellant should be given relief. In such matters, the person aggrieved should approach the High Court diligently. If the writ petition is belated, unless there is good and satisfactory explanation for the delay, the petition will be rejected on the ground of delay and laches.....

12. The High Courts should also be cautious in entertaining writ petitions filed decades after the dispossession, seeking directions for acquisition and payment of compensation. It is not uncommon for villagers to offer/donate some part of their lands voluntarily for a public purpose which would benefit them or the community - as for example, construction of an access road to the village or their property, or construction of a village tank or a bund to prevent flooding/erosion.

When they offer their land for such public purpose, the land would be of little or negligible value. But decades later, when land values increase, either on account of passage of time or on account of developments or improvements carried out by the State, the land-holders come up with belated claims alleging that their lands were taken without acquisition and without their consent. When such claims are made after several decades, the State would be at a disadvantage to contest the claim, as it may not have the records to show in what circumstances the lands were given/donated and whether the land was given voluntarily. Therefore, belated writ petitions, without proper explanation for the delay, are liable to be dismissed....."

(Underlining supplied)

12. Learned counsel for the appellants submitted that the observations made in Syed Maqbool Ali are only observations and do not lay down any law within the meaning of Article 141 of the Constitution of India, and therefore, not binding on this Court. We are unable to accept the submission.

13. As could be seen from the aforesaid decisions, nowhere the Supreme Court has stated, that notwithstanding inordinate delay in approaching the Court, writ petition has to be entertained and to be examined on merits. On the contrary, in Syed Maqbool Ali, it is stated that High Courts should be cautious in entertaining writ petitions filed decades after dispossession, seeking acquisition and payment of compensation, as the State would be at a disadvantage to contest the claim, as it may not have the record to show in what circumstance the land was given and whether the land was given voluntarily. It is further stated therein that belated writ petitions, without proper explanation for the delay, are liable to be dismissed.

14. In the present case, the land was utilised in the year 1859-1860 for construction of Government Guest house at Yaragatti. The appellants raised the dispute only in the year 2014 by issuing notice dated 27.01.2014 (Annexure-E) and also approached this Court in the year 2014. Hence, there was an inordinate delay of more than 150 years in raising the dispute. There is absolutely no explanation for the delay. Having regard to the fact, that the huge delay of more than one hundred and fifty years in raising the dispute, and in approaching the Court, is not explained in the writ petition, the learned single Judge is fully justified in declining to entertain the writ petition on the ground of delay and laches.

15. Learned counsel for the appellants referred to certified copy of record of rights at Annexure-B and copy of a registered mortgage deed (produced in this appeal along with a memo dated 27.06.2016) to evidence the appellants' title to the land. In the view we have taken, it is unnecessary to examine as to whether the appellants have prima facie title to the land or not.

16. The writ appeal is devoid of merit and is accordingly dismissed.