

(2010) 11 MAD CK 0100
In the Madras High Court
Case No : Writ Petition No. 10290 of 2003

S. Kamala

APPELLANT

Vs

The Executive Engineer and The Commissioner

RESPONDENT

Date of Decision : 10-11-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 30, 31, 32(1)

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 46

Citation : (2011) WritLR 137

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : S. Parthasarathy, for Kalpana, for the Appellant; P. Gopalan, for 1st respondent and T. Chandrasekaran, Special Government Pleader for 2nd respondent, for the Respondent

Judgement

P. Jyothimani, J.—This writ petition is for a direction against the Respondents to pay the entire accrued interest in respect of the

compensation amount, including the enhanced compensation payable in respect of the land comprised in R.S. No. 167/1 measuring 4.16 Acres

situated at Thallakulam Village, Madurai District.

2.1. The Petitioner's husband is stated to be a service holder performing service of Nachiarparikalam and Sannadhi Paricharakam since 1956 at

Arulmigu Kallalaghar Thirukoil till his death on 20.3.1992. It is stated that her husband's predecessors were granted service inam in respect of the

land measuring 4.16 Acres comprised in R.S. No. 167/1, Thallakulam Village, Madurai for the service of Paricharakam Pagoda of Kallalaghar

Devasthanam and Petitioner's husband and his predecessors were in exclusive possession and enjoyment of the said land and they were utilizing

the income therefrom in lieu of the services rendered.

2.2. It is stated that the Petitioner's husband has sold an extent of 2.53 Acres of land out of 4.16 Acres to one Gopal Naidu on 1.3.1960 and that

sale deed was not questioned by the first Respondent/Devasthanam. According to the Petitioner, her husband being the service holder was entitled

to the absolute enjoyment. The Government has acquired the land in the year 1963 and that resulted in claiming compensation by the first

Respondent/Devasthanam, the Petitioner's husband and the alienee. LAOP No. 564 of 1965 was filed on the file of the I Additional Sub Court,

Madurai under Sections 30 and 31 of the Land Acquisition Act and there was an apportionment of the compensation among the claimants. As

against which, the alienee - Gopal Naidu filed A.S. No. 769 of 1967, the first Respondent filed Appeal in A.S. No. 15 of 1968 and the

Petitioner's husband filed A.S. No. 631 of 1972 before the High Court.

2.3. By judgment dated 17.11.1972 in A.S. Nos. 769 of 1967 and 15 of 1968, the Division Bench of this Court has held that the alienee is not

entitled to claim any compensation and that the first Respondent/ Devasthanam is also not entitled to claim compensation. However, there was a

direction issued to the first Respondent for securing the compensation amount so that the service may be continued. In the appeal filed by the

Petitioner's husband in A.S. No. 631 of 1972, there was an order stating that in respect of his paricharakam service in the temple, so long as he

continues to perform his service, he will be entitled to receive interest on the compensation amount from the first Respondent/ Devasthanam, which

the first Respondent/Devasthanam is receiving by way of interest from the investment of the entire compensation amount in respect of 4.16 Acres

in R.S. No. 167/1, Thallakulam Village.

2.4. According to the Petitioner, by virtue of the judgment in first appeals, the first Respondent/Devasthanam is bound to pay the amount to her

husband by return from the investment of compensation amount. It is stated that the interest amount of ` 75,993.75 lying in the credit of L.A.O.P.

No. 477 of 1965 on the file of the I Additional Sub Court, Madurai, was withdrawn by the first Respondent in I.A. No. 250 of 1986 and out of

the same the Petitioner's husband was stated to have been paid an amount of ` 60,000/-during his life time.

2.5. The Petitioner's husband died on 20.3.1992, leaving behind him six minor daughters aged between 21/2 years and 17 years. It is stated that

the first Respondent is refusing to pay the amount on the ground that there is a clerical error in the decree and in spite of her representation, the

amount has not been paid. It is also stated that the first Respondent has admitted its liability in I.A. No. 250 of 1985 in I.A. No. 403 of 1985 in

L.A.O.P. No. 477 of 1965 stating that entire compensation amount has to be invested and the accrued interest has to be paid to the Petitioner's

husband, being the service holder.

2.6. It is also stated that the alienee is not entitled to receive compensation amount in respect of 2.53 Acres purchased from the Petitioner's

husband. It is stated that the compensation amount deposited in the lower court was withdrawn by the first Respondent and the same was renewed

periodically accruing more than ` 10 Lakhs with accrued interest ever since 1963, viz., for the past 40 years. Hence, the present writ petition is

filed for a direction as stated above.

3.1. In the counter affidavit filed by the Executive Officer of the first Respondent/Devasthanam, it is stated that the first Respondent is a listed

Public Temple notified u/s 46 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and is administered by the Executive

Officer.

3.2. While it is admitted that the predecessors of the Petitioner's husband were granted service inam in respect of the land measuring 4.16 Acres

comprised in R.S. No. 167/1, Thallakulam Villagem, Madurai for rendering service in the first Respondent/Devasthanam, it is stated that contrary

to the said condition the Petitioner's husband has sold 2.53 Acres of the temple lands under the sale deed dated 1.3.1960 to one Gopal Naidu. It

is the case of the first Respondent that the Petitioner's husband being a service holder with permissible possession has no right to sell the said

lands.

3.3. It is stated that thereafter the entire lands were acquired by the Government and the first Respondent/Devasthanam, being the owner, has

claimed compensation in respect of the entire amount. However, it is stated that the Petitioner's husband has claimed compensation only in respect

of 1.63 Acres and his alienee has claimed compensation in respect of the extent

purchased by him. The Additional Sub Court, Madurai in

L.A.O.P. No. 564 of 1965 has held that the first Respondent is not entitled to claim compensation amount since the grant of land to the

Petitioner's husband is personal in nature.

3.4. It was against the said order, the alienee filed appeal in A.S. No. 769 of 1967, the first Respondent/Devasthanam filed A.S. No. 15 of 1968

and thereafter, the Petitioner's husband filed A.S. No. 631 of 1972 before this Court. The appeals filed by the first Respondent as well as the

alienee came to be dismissed holding that the alienee has no right to receive from the Petitioner's husband any title and stating that the first

Respondent was also not entitled to any compensation amount. But in the appeal filed by the Petitioner's husband in A.S. No. 631 of 1972, even

though it was held that the first Respondent was not entitled to receive the compensation amount, it was observed that so long as the Petitioner's

husband continues to perform the services, he will be entitled to receive from the first Respondent/Devasthanam such amount as the first

Respondent may receive by way of return from the investments made in the LAOP.

3.5. It is pursuant to the direction of the High Court, the first Respondent has withdrawn ` 60,007.25 towards proportionate interest and paid the

same to the Petitioner's husband by way of cheques and the Petitioner's husband has received it without raising any dispute during his life time. It

is also stated that the Petitioner's husband has in fact restricted his claim only in respect of 1.63 Acres retained by him and it was only for that

extent the proportionate interest was paid to him. For the representation made by the Petitioner after the death of her husband, which was made by

her on 1.3.1993, a reply was given on 15.3.1993 stating that the Petitioner was entitled to only the proportionate interest in respect of the land

retained by him. Apart from the said amount, it is stated that the Petitioner's husband was also paid ` 500/-towards his monthly remuneration, a

further sum of ` 750/-to ` 800/-per month towards his share in the issue of Archana Ticket and also his annual share of ` 14,000/-towards the sale

of prasadam. It is stated that the amount due to the Petitioner's husband has been paid till his death.

3.6. It is also stated that after the demise of the Petitioner's husband, qualified

persons have been appointed to continue the Amudhar service in the first Respondent/Devasthanam. It is stated that even though the Petitioner claimed that after the demise of her husband she is entitled to perform the Paricharakam Service in the temple through an agent or by proxy, that claim was rejected and against the same, she filed W.P. No. 20525 of 1992, which was also dismissed on merits.

4. It is the contention of the learned Counsel for the Petitioner that when in the judgment in the first appeal the right claimed by the first

Respondent/Devasthanam has been rejected holding that the grant is personal in nature, thereby rejecting the claim of the alienee - Gopal Naidu

also, the Petitioner's husband should be entitled to receive the interest out of the compensation in respect of the entire extent of land, viz., 4.16

Acres, and that when once the High Court judgment holding that the grant given to the Petitioner's husband is personal in nature has become final,

the first Respondent/Devasthanam loses its right.

5.1. On the other hand, it is the contention of the learned Counsel for the first Respondent/Devasthanam that the Petitioner's husband died on

20.3.1992 and the Petitioner has chosen to file the writ petition in the year 2003, after eleven years, and therefore, the writ petition is liable to be

dismissed on the ground of laches.

5.2. It is his submission that when the Petitioner's husband has acted against the grant of inam, which is based on the service to be rendered by him

to the temple, by alienating a part the land to Gopal Naidu, he loses his right in respect of the property, which includes the interest.

5.3. It is his submission that unless and until the Petitioner takes steps to rectify the defect in the decree she has no right. It is his further submission

that when the Petitioner's husband himself has not claimed the right in respect of the alienated extent of land, the Petitioner, who steps into his

shoes, cannot claim better right.

6. The fact that originally 4.16 Acres of land has been given to the Petitioner's husband as service inam is not in dispute. However, the first

Respondent/Devasthanam has claimed kudivaram right, while the grant given to the Petitioner's husband was personal for the services to be

rendered by him. Therefore, it is clear that the Petitioner's husband would not have sold 2.53 Acres of land to Gopal Naidu, which is not

permissible in law. It is also not in dispute that the High Court has already held that the said alienee has no right over the land.

7. On the acquisition of the entire lands by the Government, the dispute has revolved around the compensation amount which has been deposited

by the acquiring authority and during the life time of the Petitioner's husband, he has received the interest amount till his death, namely on

20.3.1992, in respect of the proportionate extent of 1.63 Acres of land, which was retained by him after sale of 2.53 Acres to the said Gopal

Naidu.

8. The main contention of the learned Counsel for the first Respondent is that when the Petitioner's husband himself has restricted his claim only in

respect of 1.63 Acres of land, the Petitioner, after the death of her husband, cannot claim compensation amount for a larger extent.

9. It is also admitted that as far as 1.63 Acres of land is concerned, the proportionate amount due to the Petitioner's husband has been paid till the

date of his death and the only remaining point to be decided is in respect of 2.53 Acres of land which has been sold by the Petitioner's husband to

Gopal Naidu under a sale deed executed by him on 1.3.1960.

10. Aggrieved by the order of the I Additional Sub Judge, Madurai dated 24.1.1967 in L.A.O.P. No. 564 of 1965 apportioning the compensation

among the claimants, the Petitioner's husband, the alienee and the first Respondent/Devasthanam filed appeals. While the appeals filed by the

alienee and the first Respondent/ Devasthanam stood dismissed by holding that the first Respondent/ Devasthanam has no kudivaram right, in the

appeal filed by the Petitioner's husband, viz., A.S. No. 631 of 1972, this Court, in the judgment dated 14.12.1972, has ordered as follows:

The Appellant in this appeal was claimant No. 1 in L. Acq.O.P.564 of 1965 on the file of the Subordinate Judge, Madurai, which was a reference

u/s 30 of the Land Acquisition Act, 1894. Arising out of the said order, the second claimant Gopal Naidu and the 24th claimant, the Executive

Officer of the Devasthanam, had filed Appeals A.S. No. 769 of 1967 and 15 of 1968 respectively. By our judgment dated 17.11.1972, we held

that Gopal N. who claimed to be an alienee from the present Appellant had not title to the property and as such he was not entitled to claim any

portion of the compensation. We also held that so far as the Devasthanam was

concerned though it was not entitled to receive the compensation amount, it was entitled to have suitable orders passed for securing the amount so long as services in the temple may be continued. We gave liberty to the Devasthanam to move the court before to get suitable orders for investing the amount. The Appellant herein, who is the first claimant, is the service-holder, our decision in the said appeals applies to this appeal also, and so long as the Appellant herein continues to perform the services, he will be entitled to receive from the Devasthanam such amount as the Devasthanam may be receiving, by way of return, from the investments which we have directed to be made as per our judgment in the two appeals referred to above.

11. The point which has been clarified in the said judgment, which has become final between the parties, is that so long as the Petitioner's husband continues to perform his services to the temple, whatever amount of compensation which the temple may be receiving will be receivable by the Petitioner's husband. By virtue of the judgment dated 17.11.1972 in A.S. Nos. 769 of 1967 and 15 of 1968 filed by the first Respondent and the alienee, by which the alienee's right to claim either compensation or interest came to be rejected, ultimately the first Respondent/Devasthanam has been receiving the interest amount in respect of the entire 4.16 Acres of land and therefore, as per the judgment of the High Court, whatever amount the first Respondent/Devasthanam will be receiving, which is in respect of the entire extent, the Petitioner's husband was entitled to.

However, while drafting the decree, this Court has drafted it as follows:

1) that the Appellant (first claimant) be and is hereby entitled, so long as he continues to perform the paricharakam services in the Alagarkoil, Madurai Dt., to receive from the Kallalagar Devasthanam, Alagarkoil, the 24th Respondent herein, such amount as the Devasthanam may be receiving, by way of return, from the investment of the compensation amount for 1.63 Acres in R.S. No. 167/1, Tallakulam Village, acquired herein

12. It is true that in normal circumstances the decree has to be amended suitably, since there is an apparent contradiction between the contents of the judgment elicited above and the decree drafted by the Court. While the judgment is clear that whatever amount the Devasthanam will be

receiving in respect of the entire extent the Petitioner's husband will be entitled to, the decree restricts such benefit only in respect of 1.63 Acres of land.

13. In the common judgment dated 17.11.1972 in A.S. Nos. 769 of 1967 and 15 of 1968, based on which the subsequent judgment was passed

in A.S. No. 631 of 1972, as stated above, the Division Bench has passed the following order:

12. In the result A.S. No. 769 of 1967 is dismissed. There will be no order as to costs. So far as the Devasthanam is concerned, though it is not

entitled to the compensation amount, it is entitled to have suitable orders being passed for securing the amount so that the service may be

continued. The Court below will pass suitable orders u/s 32(1) of the Land Acquisition Act for investing the amount. The Devasthanam is at liberty

to move the Court below for this purpose. A.S. No. 15 of 1968 is ordered accordingly. No order as to costs.

thereby making it clear that the Land Acquisition Court shall pass appropriate orders u/s 32(1) of the Land Acquisition Act for the investment of

the amount, with liberty to first Respondent/Devasthanam to move the Court for the said purpose.

14. It is not in dispute that pursuant to the said judgment, on the first Respondent/Devasthanam moving the Court, the compensation in respect of

the entire extent of 4.16 Acres of land was deposited before the Court and the first Respondent/Devasthanam is receiving interest in respect of the

entire extent, while admittedly till the death of the Petitioner's husband, the Petitioner's husband was paid only proportionate share of interest in

respect of 1.63 Acres of land.

15. Under these circumstances, I am of the considered view that because the Petitioner's husband has not chosen to claim interest in respect of the

entire extent of 4.16 Acres of land, it does not mean that the Petitioner, being his legal heir, on whom the right to receive the interest on the entire

extent till the date of her husband's death, viz., on 20.3.1992 vests, has ceased to have any right.

16. Taking into consideration the special circumstances that admittedly the Petitioner's husband has rendered services to the first

Respondent/Devasthanam till the date of his death, I am of the view that the

delay on the part of the Petitioner in making claim in respect of the share due to her husband for the services rendered cannot be considered on the technical ground of laches. I am of the considered opinion that on the facts of the case, this is not a case where this Court should harp on the technicality of laches for depriving the legal right of the Petitioner, being the legal heir of the service holder who has rendered services to the Devasthanam during his life time and which claim accrued to him during his life time.

17. However, as on date there is a discrepancy between the judgment and decree in A.S. No. 631 of 1972 passed by the Division Bench of this Court. Even though on a reading of the judgment of the Division Bench it is clear that the Petitioner will be entitled to interest up to the date of death of her husband in respect of the entire extent of 4.16 Acres of land which has been receivable by the first Respondent/Devasthanam, unless and until the decree drafted in the said appeal is suitably amended, it is not possible to give relief to the Petitioner in this case. In effect, the claim of the Petitioner is revolving on the decree and judgment of the Division Bench of this Court and when there is a contradiction, it is for the Petitioner to get the decree rectified so as to approach the authority concerned thereafter. In such view of the matter, giving liberty to the Petitioner to get the decree passed in A.S. No. 631 of 1972 rectified in accordance with the judgment dated 14.12.1972 and also giving liberty to the Petitioner thereafter to approach the first Respondent/Devasthanam for payment of interest due to her husband till the date of his death, the writ petition stands disposed. No costs.