
(1997) 11 MAD CK 0189

In the Madras High Court

Case No : C.R.P. No. 1281 of 1997 and C.M.P. No. 6985 of 1996

Siva Subramaniam and 4 others

APPELLANT

Vs

The Collector, Periyar District

RESPONDENT

Date of Decision : 05-11-1997

Acts Referred:

Citation : (1997) 11 MAD CK 0189

Hon'ble Judges : S. Jagadeesan, J

Bench : Single Bench

Advocate : M.M. Sundresh, for the Appellant; A. Arumughum, Government Advocate, for the Respondent

Judgement

S. Jagadeesan, J.—By consent of both the counsel, the Civil Revision Petition itself is taken up for final disposal. The petitioners herein filed the suit, O.S. No. 637 of 1990 on the file of the District Munsif, Erode, Periyar District for declaration of their title. The said suit was decreed ex parte on 24.7.1991. The respondent filed an application, I.A. No. 902 of 1993 on 31.5.1993 for condoning the delay of 646 days in filing the application for setting aside the ex parte decree. The lower court has allowed the application by order dated 16.2.1996 as against which the present Revision has been filed. The contention of the counsel for the petitioner is that the suit has been decreed ex parte on 24.7.1991 and this was communicated to the respondent by the counsel for the petitioner as early as 18.5.1992. The acknowledgments by the Collector and Tahsildar for the receipt of the notice sent by the petitioners had been marked as Ex.P-I and P-2. The lower Court, without considering the same, has proceeded on the basis that by virtue of the ex parte decree, the individuals are not put to loss but, only the public are put to loss and this view of the lower Court may not be correct. When the respondent had been duly communicated and having got the knowledge about the ex parte decree one year earlier to the filing of the application, it is their duty to explain the delay properly. In the absence of any explanation, the delay, especially when the delay is an inordinate one, cannot be condoned. On

the contrary, the learned Government Advocate has reiterated what is stated in the affidavit filed in support of the application for condoning the delay before the court below and further contended that neither the intimation of the Govt. Pleader nor the notices sent by the counsel for the respondent had been placed before the Collector, as there was change of the Clerks very often.

2. I have carefully considered the contentions of both the counsel. In the affidavit filed by the respondent in support of the application for condoning the delay, it is stated as follows :-

"The then Government Pleader had intimated my subordinates about passing the ex parte decree somehow or other the communications were not reached in the concerned file and therefore no steps could be taken within the stipulated time for filing a petition to set aside the ex parte decree. The section clerks are also changed from time to time. Due to the said and other similar contributing factors and administrative delay the petition to set aside the ex-parte decree has been filed with a delay of 646 days. The said delay is not wanton. The delay is beyond the control of the state who is the petitioner herein. Unless the said delay is condoned, the State will be put to irreparable loss and hardship. It will be a loss to the society as a whole."

From the above, it is very clear that the Government pleader has intimated the Authorities about the ex parte decree. But, however, the same has not been brought to the notice of the petitioners by pulling up the concerned file. Even assuming that the intimation sent by the Government Pleader has not been brought to the notice of the Collector, still the counsel for the petitioners herein has sent the notice on 16.5.1992. in which it has been categorically stated about the ex parte decree in the suit. The Collector as well as the Tahsildar had received the same on 18.5.1992. If the said notice has not been brought to the notice of the Collector, at least the Tahsildar, who is the responsible Officer of the Government, could have met the Collector and discussed the matter or brought it to the notice of the Collector. The explanation given by the respondent that due to change of clerks, the intimation had not been put up in the file cannot be accepted. In the absence of any details or particulars with regard to the period during which the staff were changed or transferred, it cannot be the case that the staff have been changed for the entire one year period without permuting them to sit in the chair and look into the matter pertaining to the particular seat. It is rather surprising that the Government Office is functioning like this. When the delay is an inordinate one, it is the duty of the respondent to explain the same with sufficient cause. Otherwise the same cannot be condoned.

3. When the lower court had proceeded on the basis that the loss is to the public, it is the duty of the Government Officers to take the interest of the public. When they failed to do so, the court cannot come to the rescue of either the Government Officers or the public. The Government is also a litigant, so far as the case is concerned, before the Court. If it is a deliberate mistake of some of the Officers or staff in the concerned office, it is open to the Government to take

action against them and recoup the loss caused to the public. It has been so held by the Apex Court in the decision reported in AIR 1995 S.C. 2237 (Union of India v. Rahul Rasgotra) as follows:-

14. Before parting with this case, we are constrained to place on record our deep distress at the manner in which the cases on behalf of the Government are generally conducted even in this court and also when the Government comes to this Court to overcome the consequence of an adverse order made against it. We do so within feeling almost of despair since our constant lament orally and, at times, even in writing has so far evinced no appropriate response for improvement. On a similar occasion, this Court in Union of India and others Vs. A. Radhakrishnan and others, observed thus:

This matter brings to the fore once again the ineptitude with which litigation is conducted quite often on behalf of the Government of India and State Governments even when important issues having lasting and wide repercussions are involved. The point in this case relates to the validity of a policy of the railway administration and is likely to affect the staff pattern in several units. In spite of this fact, to support validity of the impugned policy the required materials were not produced in the High Court and to overcome the adverse decision several opportunities given by us to produce the entire relevant record were not availed. The learned Additional Solicitor General informed us after several adjournments that better performance is not possible. We, therefore, concluded the learning and proceed to decide on the available materials. It is indeed fortunate for the appellants that our conclusion is in their favour....."

There is no improvement in the situation. An argument was advanced on behalf of the respondents-that the cadre allocation to respondent No. 1 was made prior to allotment of the service to him on account of which it was invalid. Material documents to negative the same must be in possession of the Government of India but they were not produced before the Tribunal or even before us, in spite of opportunity given by us. The learned Additional Solicitor General expressed his offer helplessness in the matter and informed us that his efforts to obtain and produce those documents from the concerned authorities had failed. This shows the apathy of the persons responsible for the conduct of the case on behalf of the Government of India. We are not sure whether such lapses of the persons responsible for conduct of the case on behalf of the Government are deliberate or inadvertent but they are certainly culpable which need to be investigated by the concerned authorities to identify the delinquents and punish them in public interest. It is time that the derelicts are also held accountable and liable for the loss of public money due to their lapses. The stage is now reached for taking drastic steps to arrest further decadence and to implement the avowed promises held out for improvement of the working of the system. Governments being the largest litigants, radical improvement is needed in the functioning of their machinery by reducing frivolous litigation and ensuring proper conduct of the necessary litigation. Unless the desirable steps in this behalf are taken in the

right earnest, any number of seminars and conferences to devise means for reducing the backlog in Courts is an exercise in futility and the resolutions made therein, are empty slogans. We reiterate this with the fond hope that the concerned authorities would wake up to the true malaise and work to make the programme of improving its machinery, a reality".

As pointed out by the Apex Court, except in cases where the Government is personally interested, all other matters are being dealt with as the motherless Child. In fact, even in earlier cases, I have pointed out this aspect. Unless the Government takes some stringent action against the concerned officers wherever inordinate delay is caused due to their inaction, the situation cannot be improved. Hence, it is open to the Government to recover the value of the land from the concerned authorities who have neglected to take care of the litigation. For all the reasons stated above, I am of the view that there is absolutely no explanation for the inordinate delay in filing the application for setting aside the ex parte decree. Hence, the Civil Revision petition is allowed with costs of Rs. 2,000/-. C.M.P. No. 6985 of 1996 is dismissed.