

HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.18769 of 2012

ORDER:

The petitioner prays for Mandamus declaring the action of respondents in not paying land acquisition compensation to him for the admitted extent of Ac.0.26 guntas in Sy.No.524 of Siddipet Village and Mandal, Medak District, as illegal, arbitrary and unconstitutional.

The circumstances are not in dispute between the parties. For the purpose of appreciating the prayer of petitioner, reference to the following circumstances is sufficient.

The petitioner filed W.P.No.1052 of 2009 for Mandamus declaring the action of respondents in depriving his right and possession in property in an extent of Ac.1.10 guntas in Sy.No.524 of Siddipet Village and Mandal, Medak District, as illegal and unconstitutional and prayed for a direction to pay compensation for the said land. The petitioner filed W.P.M.P.No.1337 of 2009 in W.P.No.1052 of 2009 for payment of compensation and on 30.01.2009 injunction order was passed. The petitioner filed C.C.No.1355 of 2009 complaining disobedience of interim order dated 30.01.2009 in W.P.M.P.No.1337 of 2009. The respondents filed counter affidavit in C.C.No.1355 of 2009. The cause of action for filing the present writ petition is the admission in pleading in C.C.No.1355 of 2009. I will refer to the effect of admission in C.C.No.1355 of 2009 little later in the order.

To continue the narration, this Court through order dated 22.02.2011 dismissed the writ petition. The findings which have bearing on the present relief are as follows:

“After hearing the learned counsel appearing on either side and perusing the case file, it is clear that the respondents have not acquired the land of the petitioner for widening of the road, as alleged by him, from Sircilla to Siddept, which is a major district road. In view of their categorical stand in the counter affidavit, as stated supra, the writ petition is liable to be dismissed.

Further, it is to be seen, prior to 1978, Zilla Parishad laid the road by acquiring the land of the villagers and pattadars with their consent and after 1978, the maintenance of the said road was undertaken by the second respondent. Perhaps, at the time of

formation of road prior to 1978, the concerned Zilla Parishad might have taken the land of the petitioner to some extent. But, after lapse of thirty years, the petitioner has approached this Court seeking payment of compensation and other statutory benefits. The petitioner has, however, utterly failed to explain properly and satisfactorily the undue delay of thirty years which had occurred between the alleged taking possession of his land and the date of filing of the Writ Petition in this Court. He is, therefore, disentitled to the discretionary relief under Article 226 of the Constitution. It is well settled that the power of the High Court to be exercised under Article 226 of the Constitution is a discretionary and its exercise must be judicious and reasonable and admits of no controversy. Persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot get discretionary relief obtainable thereunder unless they fully satisfy the Court that the facts and circumstances of the case clearly justify the laches or undue delay on their part in approaching the Court for grant of such discretionary relief. Therefore, grant of relief under Article 226 of the Constitution against any person including the State without considering his blameworthy, conduct, such as laches or undue delay, acquiescence or waiver, becomes unsustainable even if the relief was granted in respect of alleged deprivation of his/its legal right by the State.

From the foregoing discussion, I do not see any merit in the Writ Petition.

The Writ Petition is dismissed. There shall be no order as to costs.”

The petitioner filed, against order dated 22.02.2011, W.A.No.862 of 2011. On 17.11.2011, the Writ Appeal was dismissed. It is a matter of record that C.C.No.1355 of 2009 was dismissed.

The petitioner files the present writ petition for Mandamus declaring the action of respondents in not paying compensation to the extent admitted in pleading by the respondents as illegal and arbitrary.

During the pendency of the writ petition, this Court, having regard to the totality of circumstances, directed the presence of respondents 2 and 3 and on 09.07.2012, the following order was passed:

“The respondents appeared. Across the Bar, it is stated that the Revenue Divisional Officer, Siddipet, is prepared to initiate proceedings for acquisition of the land, in case the Executive

Engineer, R & B, submits the proposal.

Learned Government Pleader for R and B seeks two weeks time. The presence of respondents 2 and 3 is dispensed with.

Post after two weeks.

The 1st respondent shall also coordinate with the officials of the R & B and Panchayat Raj Departments, to ensure that the compensation is paid for the lands of the petitioner.”

The requisitioning Department has filed counter affidavit dated 04.08.2012 opposing the writ prayer on all fours.

Briefly stated, the objections of the respondents are that the admitted extent of Ac.0.26 gunats in Sy.No.524 of Siddipet Village was not acquired in the year 1978 or the petitioner disposed therefrom. A road was formed long ago and the steps now taken by the 2nd respondent were reinforcing or laying a metal top road. However, the legal objection on the maintainability of W.P.No.1052 of 2009 is that this Court has considered the entitlement of petitioner for grant of compensation to the extent of Ac.1.10 guntas in Sy.No.524 of Siddipet Village on two grounds, namely that possession of land was taken with the consent of parties to lay a road and secondly, the writ remedy was barred by laches. On account of laches, the writ petition was dismissed and the same was confirmed in W.A.No.862 of 2011. The decision of this Court in W.P.No.1052 of 2009 operates as *res judicata* and in the present writ petition, a portion of extent covered by the prayer in W.P.No.1052 of 2009 cannot be agitated as the same operates as *res judicata*.

The issue for consideration is whether the petitioner is entitled for any relief to the extent of Ac.0.26 guntas in Sy.No.524 of Siddipet Village.

I have perused the material available on record and taken note of the contentions urged by the learned counsel appearing for the parties.

The admitted circumstances are stated above and I am not reiterating these averments. The effect of dismissal of W.P.No.1052 of 2009 is that this Court declined to grant any relief to the petitioner on the premise that the dispossession was with the consent of petitioner and that the prayer was hit by laches. To the extent of Ac.0.26 guntas, in the opinion of this Court, the same reasons are available

and the stand in the counter affidavit in C.C.No.1052 of 2009 cannot be treated as an admission to pay compensation. The statement made by the respondents in the counter affidavit is to explain actual extent covered by formation of road.

The findings recorded in W.P.No.1052 of 2009 as confirmed in W.A.No.862 of 2011 stare at petitioner for grant of relief.

Learned Government Pleader for Land Acquisition rightly contends that if proposals are received from the requisitioning Department and amount is made available, the Land Acquisition Officer would have certainly proceeded in the matter. As the requisitioning Department is joining issue both on the mode of dispossession of petitioner and the legal effect thereof, by considering the material available on record, this Court is unable to agree with the submissions of learned counsel for the petitioner that the admission in pleading should be considered and appropriate order be issued.

The interim order merges with the final adjudication. With the final adjudication, the interim order does not stand on its own and has to be considered in the background of final adjudication.

In the case on hand, the final adjudication is rejection of petitioner's prayer. So either the interim order or the pleadings of parties in the contempt case, more particularly with the dismissal of contempt case, cannot be the basis for fresh cause of action.

With the above reasons, the Writ Petition fails and accordingly, the same is dismissed. No order as to costs.

Miscellaneous petitions, if any, pending in the writ petition shall stand closed.

S.V. BHATT, J

Date: 11.03.2015

KLP ☐