

*** THE HON'BLE SRI JUSTICE P. NAVEEN RAO**

+ WRIT PETITION.No.10064 of 2002

% 12.03.2015

State of Andhra Pradesh

Rep. by its District Collector, Guntur & another .. Petitioners

And

\$ Estate Abolition Tribunal (District Judge),

Guntur & others .. Respondents

! Counsel for the petitioners : Government Pleader for Revenue (A.P)

Counsel for respondents : Sri G. Krishna Murthy

Sri K. Ravindra Kumar

< Gist :

> Head Note :

? Citations:

1. AIR 2011 Supreme Court 2161

2. AIR 2009 SC 571

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.10064 of 2002

Dated : 12.03.2015

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Between:

State of Andhra Pradesh rep., by its

District Collector, Guntur & another

.. Petitioners

And

Estate Abolition Tribunal (District Judge), Guntur & others

.. Respondents

This Court made the following :

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.10064 of 2002

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ORDER :

The State preferred this writ petition aggrieved by the decision of Estate Abolition Tribunal, Guntur (for short 'the Tribunal') dated 10.06.1986 in T.A.S.No.1 of 1982. The Tribunal reversed the decision of the Settlement Officer on the appeal preferred by the respondents before the Settlement Officer and declared that Gummanampadu Village, Veenukonda Taluk, Bollampalli Mandal, is not established to be a "Inam Estate" as defined in Section 2 (7) of the Estates (Abolition and Conversion into Ryotwari) Act, 1948 (for short 'the Act').

2. Sakhamuri Laxmidevamma was the daughter-in-law of Sakhamuri Venkatadri Naidu and his mother was Radhabayamma. Sakhamuri Venkatadri Naidu inherited the property of Laxmidevamma.

3. Sri Chirumamilla Rama Krishna Prasad is the maternal grand son of Sakhamuri Laxmidevamma. The property that fell to the share of Shakamuri Venkatakrishnaiah, who was the adopted son of Laxmidevamma, was purchased by the grand father of Paladugu Krishna Prasad in a court auction. The Settlement Officer conducted suo-motto enquiry under Section 9 of the Act and by his order dated 15.07.1950 held that the Gummanampadu village is not Inam estate. Aggrieved thereby the District Collector, Guntur filed appeal in

T.A.S.No.5 of 1959 before the Tribunal. The Tribunal by its order dated 11.04.1960 set aside the order of the Settlement Officer and remanded for reconsideration. On such remand the Settlement Officer by his order dated 21.08.1976, held that Gummanampadu village is an Inam estate. Aggrieved thereby the appeal was preferred before the Tribunal in T.A.S.No.2 of 1977. By order dated 04.09.1978, the order of Settlement Officer was set aside and the matter was once again remanded to the Settlement Officer.

4. After the 2nd remand, the Settlement Officer by his order dated 30.06.1982 held that Gummanampadu village is an Inam Estate. Aggrieved thereby Chirumamilla Rama Krishna Prasad and Paladugu Krishna Prasad, preferred appeal before the Tribunal in T.A.S.No.01 of 1982. By order dated 10.06.1986 the Tribunal set aside the order of Settlement Officer dated 30.06.1982 and declared that Gummanampadu village is not established to be an Inam Estate as defined in Section 2 (7) of the Act, 1948. Aggrieved thereby the State instituted this writ petition.

5. Heard learned Assistant Government Pleader for the State and Sri G. Krishna Murthy learned counsel appearing for Respondents 5 to 9 and Sri Kanakamedala Ravindra Kumar, learned counsel appearing for Respondents 10 to 13.

6. Learned Assistant Government Pleader contends that the order under challenge is erroneous and is liable to be set aside on the sole ground that the Tribunal failed to appreciate the crucial and important entries made in the Inam Fair Register and has come to a wrong conclusion. He further contended that the Inam Fair Register is a public document. Several recitals in the register conclusively proves that the entire village is an Inam Estate. The Tribunal ought not to have ignored the entries made more particularly the entry in Column No.12 and erred in holding that the entire village is not Inam Estate. He further contends that the whole of the village was granted by the then Zamindar as a personal grant for maintenance to a person by name Venkatadri Naidu in F.1213. After the death of the grantee, it was renewed and this was recorded in Column No.12 of Inam Fair Register and appropriate remarks were made by the Inams Deputy Collector in the year F.1220 in favour of one Venkayya who was the son of the original grantee for maintenance.

7. Learned Assistant Government Pleader further contends that in accordance with the definition provided in Section 3 (2) (d) of the Estates Land Act,

even if subsequent to the grant of such village, hamlet of Khandrika has been partitioned among the parties, the area which formed part of the subject land of the grant should be deemed to be an estate, notwithstanding that it did not include certain lands in the village. He therefore, contends that the village is not an Inam Estate is not correct either on facts or in law and therefore, the decision of the Tribunal has to be set aside. He also contends that the Settlement Officer has come to the correct conclusion and the Tribunal erred in reversing the decision of the Settlement Officer.

8. Sri G. Krishna Murthy, learned counsel appearing for respondents 5 to 9 raised a preliminary objection on the maintainability of the writ petition filed after long lapse of time. He contends that the decision of the Tribunal was rendered on 10.06.1986, whereas the writ petition is instituted in March/April 2002. Thus approximately there was delay of 16 years in instituting the writ petition. No sufficient cause is shown for such inordinate delay. Merely because no limitation is prescribed in instituting the writ petition under Article 226 of the Constitution of India, does not mean that at any time, the writ petition can be filed. Unless there is sufficient cause for not approaching this Court within reasonable time, from the date of arising of cause of action, the writ petition should not be entertained. Except for harping on the fact that as early as in the year 1987 the decision was taken to file writ petition and appropriate papers were submitted to the Government Pleader, what steps were taken thereafter and how the matter was pursued is not explained in detail and vague assertions were made contending that there was no response from the office of the Government pleader in the High Court, to whom the papers were handed over. Learned counsel placed reliance on the decision of the Hon'ble Supreme Court in ***Shankara Co-op. Housing Society Ltd., Vs M. Prabhakar and others*** in support of his contention that the writ petition is liable to be dismissed only on the ground of delay and laches.

9. Learned counsel further contends that after the order was passed by the Tribunal, having waited for sufficiently long time, the contesting respondents herein filed W.P.No.17136 of 1990 praying to issue direction by way of certiorari to direct the respondents to implement the orders of the Tribunal dated 10.06.1986 passed in T.A.S.No.01 of 1982. The said writ petition was disposed of by order dated 21.12.1990 directing the respondents therein to dispose of the applications/representations of the petitioners expeditiously and preferably within

three (3) months from the date of receipt of the order. The present writ petition is instituted by the District Collector, representing the State as 1st petitioner and Mandal Revenue Officer, Guntur as the 2nd petitioner, who were respondents therein.

10. Learned Counsel further submits that in pursuance to the orders passed by this Court in the above writ petition, the contesting respondents have been pursuing with the authorities and the orders of the Court were communicated to them. Thus, if the petitioners were alert at that point of time they ought to have filed the writ petition immediately. However, the present writ petition is instituted after lapse of more than 12 years after the said Writ Petition was disposed of. He submits that it is not a case where the petitioners were not aware of the said fact.

11. Learned counsel further contends that in accordance with provisions contained in Section 3 (3) of the Andhra Inam Abolition and Conversion into Ryotwari Act, 1956 a notification was published in the Gazette dated 07.06.1993 calling for objections to decide whether the land belongs to the Institution or any Inamdar. The issue is not finalised till date. He further submits that the notification under Survey and Boundaries Act, 1923 was issued on 13.11.1995 in the process of taking steps to issue pattas under Inams Abolition Act, 1956 for the entire village and authorities were aware of these notifications and they should have been alert in prosecuting the writ petition atleast at that stage. Thus, the institution of writ petition in the year 2002 on a decision taken by the Tribunal on 10.06.1986 is liable to be dismissed only on the ground of delay and laches and there is absolutely no justification for filing the writ petition after such a long lapse of time. On account of the order passed by the Tribunal, ultimately the issue has been settled, rights have been accrued to the contesting respondents and if the decision of the Tribunal is upset at this distance of time, it would cause grave hardship and suffering and the same would be irreparable.

12. Learned Counsel further contended that even on merits there is no justification shown by the petitioners in assailing the order of the Tribunal. Sufficient opportunity was afforded to the petitioners, but they have not availed to produce the relevant and important documents in support of their claim that the entire village is an Inam Estate. He also contends that the stand of the Government that the Tribunal has not appreciated the entries made in the Inam Fair register is not correct and

contrary to the record. The Tribunal has examined dilapidated copy of Inam Fair Register and the Tribunal has recorded that as per the entries made in the Inam Fair Register, it does not disclose that the entire village is treated as Inam Estate. In spite of granting sufficient time, the proper document was not produced and Tribunal had no option but to consider whatever document filed.

13. He further contends that it is a well considered order and in exercise of certiorari jurisdiction, this Court cannot re-appreciate the evidence and set aside the order. It is not the case of the petitioners that the Tribunal has exceeded its jurisdiction nor is incompetent to decide the issue.

14. The point for consideration is whether the Writ Petition is liable to be dismissed on the ground of delay and laches ?

15. The order was passed by the Tribunal on 10.06.1986 reversing the decision of the Settlement Officer dated 30.06.1982 and held that Gummanampadu village is not Inam estate. This writ petition is instituted after 16 years of the decision rendered by the Tribunal. In page No.5 of the affidavit filed in support of the writ petition it is stated that on taking a decision to challenge the order of the Tribunal, on 08.03.1987 the affidavit along with relevant expenses were furnished to the Government pleader (F&A), High Court, Hyderabad, for filing appeal and thereafter, the matter was pursued from time to time. It is also stated that in spite of several reminders issued in the matter, no writ petition was filed and Government pleader could not furnish particulars. Immediately steps were taken to file writ petition. Except stating as above, no other details are furnished as to the efforts made by the competent authority responsible in prosecuting the litigation. It is not stated when the Government Pleader has replied that no writ petition was filed. It is not stated when the Special Officer in Government Pleaders' Office was contacted and when the Special Officer informed the concerned person that the writ petition was not filed. It is not stated as to who was prosecuting the matter on behalf of the State. As rightly contended by the learned counsel for the respondents that in the meantime the contesting respondents instituted W.P.No.17136 of 1990 seeking implementation of the very same order, which the petitioners intend to assail before this Court. At that time also the Court was not informed of the decision to challenge the order by way of writ petition. They blissfully kept quiet even after the order in the writ petition was

received, which was disposed of on 21.12.1990. As contended by the learned counsel Sri Krishna Murthy, the Gazette publication was made on 07.06.1993 regarding notice under Section 3 (3) of Inams (Abolition and Conversion into Ryotwari) Act, and another Gazette publication was made on 30.11.1995 under Survey and Boundaries Act. Even at that stage also they have not taken steps to institute the writ petition. Therefore, it cannot be said that the petitioners are diligent in prosecuting the litigation. Except saying that somebody else committed mistake in not filing the writ petition, no material is brought on record and no details are furnished on the steps taken by the concerned authority against person responsible if it was a case that some erring officer was responsible in not filing the writ petition deliberately, and action taken against such person.

16. In ***Shankara Co-op. Housing Society Ltd., Vs M. Prabhakar and others***, on detail consideration of the various judgments on the issue of maintainability of the writ petition filed after long lapse of time, for inordinate delay, the Supreme Court laid down the parameters for entertaining the writ petition. They read as under :

“The relevant considerations, in determining whether delay or laches should be put against a person who approaches the writ court under Article 226 of the Constitution is now well settled. They are : (1) there is no inviolable rule of law that whenever there is a delay, the court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts. (2) The principle on which the court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners. (3) The satisfactory way of explaining delay in making an application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the Statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the petitioner chooses to believe in regard to the remedy. (4) No hard and fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts. (5) That representations would not be adequate explanation to take care of the delay” (Para 53).

17. In that case also there was delay of 15 years and the court noticed that

there was no serious effort made to prosecute the litigation and the reasons for delay in instituting the writ petition were not properly explained and on the ground of inordinate delay in instituting the writ petition, the issue was answered against the State.

18. In the present case also specific objection is raised by the respondents on the maintainability of the writ petition. No reply is filed opposing the said objection raised in the counter affidavit and as noticed above no material is shown on the cause for delay. Only a bald statement is made in the affidavit filed in support of the writ petition.

19. Though no limitation is prescribed to entertain a writ petition under Article 226 of the Constitution of India, the principle of law is well settled that a person, who seeks intervention of the High Court under Article 226 of Constitution of India, should invoke the jurisdiction of this Court immediately after arising of cause of action and at any rate within a reasonable time. Ordinarily, the reasonable time in prosecuting the writ remedy is the time available to prosecute civil law remedy. Anything beyond that cannot be said as reasonable for prosecuting the writ remedy. Whenever, there is delay in filing writ petition, the detailed reasons must be assigned with supporting material. The burden is heavy on petitioners to explain the delay in filing the writ petition when such delay is unreasonably long. The writ remedy is discretionary remedy and is an extraordinary remedy available to a person. A person who intend to assert his right must be diligent in prosecuting the litigation. Writ Court do not come to the rescue of a person not diligent in prosecuting legal remedy. The delay of 16 years cannot be said as reasonable. Therefore, there ought to have been detailed explanation for not filing the writ petition immediately without making vague assertions. The petitioners miserably failed in doing so. Furthermore, on account of long delay rights have accrued to respondents and if relief claimed in this writ petition is granted, settled issue for more than 28 years gets affected. It is not in the interest of justice and fair play to grant relief on a stale claim. In ***City Industrial Development Corporation V Dosu Aardeshir Bhiwandiwalla and Others***, the Supreme Court held as under :

“A writ of Mandamus is highly discretionary. The relief cannot be claimed as of right. One of the grounds for refusing relief is that the person approaching the High Court is guilty of unexplained delay and the laches. Inordinate delay in moving the court for a writ is an adequate ground for refusing a writ. The principle is that courts exercising public law jurisdiction do not encourage agitation of stale claims

and exhuming matters where the rights of third parties may have accrued in the interregnum.”

20. In order to consider the desirability of entertaining the writ petition even though it is filed after 16 years, I have also heard the learned Assistant Government Pleader on merits. As seen from the pleadings in the affidavit filed in support of the writ petition, the only plea raised is that the Tribunal erred in not considering the Inam Fair Register and erred in ignoring the entries made in Inam Fair Register and thereby came to a wrong conclusion. The order passed by the Tribunal is minutely read and it is observed that inspite of granting sufficient opportunity, no material was placed before the Tribunal indicating that the grant is a named village or whole village or hamlet or Khandriga of Inam village. The Inam Fair register is marked as Ex.P.9. The Tribunal noticed that the document is in a very damaged condition. However, the document was considered and the Tribunal recorded that in the Inam Fair Register, it is no where mentioned that the entire village was granted as Inam nor does it give particulars of the Inams which are already granted for an extent of Ac.2370.

21. The Tribunal further observed that in the absence of a neat copy of Inam Fair Register, the certified copy of Exs.P.1 and P.9 produced by the appellant and marked as Ex.P.13 was received in evidence and considered. The Tribunal observed that these documents were certified by the Government and therefore their correctness was not doubted. There is no whisper on the said decision of the Tribunal in the writ petition. Thus, it is not correct to contend that the Tribunal has not considered the entries made in the Inam Fair Register. The Tribunal also observed that the Government was not able to produce the original or atleast certified copy of the Inam Fair Register, though the document already produced was in a very damaged condition, inspite of giving sufficient time. The Tribunal noticed that there is no other evidence to show that it is the named village. The Tribunal also observed that unless there is proof that it is a named village, it could not have been presumed as a named village by the Settlement Officer. It was further held that there was no proof that the grant is of a named village as the record indicates that by the time of grant of this extent, there was more than 2/3rd extent which was not granted to the predecessors and part of it was already granted to others.

22. Whether the Tribunal could have come to such conclusion based on the material available on record? or the Tribunal ought to have upheld the decision of the Settlement Officer or inspite of not having a neat copy of the Inam Fair Register and the entries are not clearly visible, the Tribunal ought to have held that the entire village is an Inam Village, are matters of consideration on merits and this Court in exercise of certiorari jurisdiction cannot re-appreciate the evidence on record and redraw the conclusions arrived at by the Tribunal. This Court does not sit in appeal against decisions of Tribunals. It is not a case where the Tribunal did not have the jurisdiction nor exceeded the jurisdiction in deciding the matter. Thus, the petitioners have not made out case on merits also. It is not a case of palpably erroneous reasoning of Tribunal to grant the prayer sought in the writ petition even if delay of 16 years is ignored.

23. It is also noticed that at various points of time, the subject property was propped up, be it a notification under Section 3(3) of Inams (Abolition and Conversion into Ryotwari) Act, 1956 or a notification under Survey and Boundaries Act, 1923 or filing of W.P.No.17136 of 1990 for implementation of very order of the Tribunal, but the petitioners did not wake up from deep slumber and allowed the issue to drift. Thus, the writ petition fails on the ground of inordinate and unexplained delay in espousing the cause in the writ petition.

24. Accordingly, the writ petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand dismissed.

P.NAVEEN RAO,J

12th March, 2015

Rds

Note : L.R. Copy to be marked (yes).

