

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE MS. JUSTICE J. UMA DEVI

WRIT APPEAL No.1158 OF 2003

JUDGMENT: (per Hon'ble the Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order of the Learned Single Judge in W.P. No.14649 of 2002 dated 28.04.2003. The respondents herein filed the Writ Petition questioning the order of the District Collector dated 18.05.2002 rejecting the petitioners claim for payment of compensation in respect of 20 guntas of land allotted by the Government to Zilla Grandhalaya Samstha and Sivdharma Vardhani Dharmasala.

The appellants-writ petitioners claimed that the subject land originally belonged to Sri S. Bheemaiah, the husband of the first petitioner and the father of the second petitioner; Sri S. Bheemaiah was the absolute owner and pattedar of 20 guntas of land in Sy. No.2227/4 and 2229/6 in Siddipet, Medak District; the second petitioner was adopted in the year 1979 by Sri S.Bheemaiah, who died in the year 1984; the petitioners were the successors of the properties of late Sri S. Bheemaiah; they made an application on 28.02.1998 for payment of compensation for the subject land in accordance with the provisions of the 1984 Act; an enquiry was conducted by the Revenue Divisional Officer who, in his report dated 15.01.1990, stated that the Secretary of the Grandhalaya Samstha had produced documents in support of their rights, and Sri B. Lingam had donated the said property; however the revenue records reflected that Sri S. Bheemaiah was the pattedar; it is thus evident that it was Sri S. Bheemaiah, and not Sri B.Lingam, who was the pattedar of the subject land; and, therefore, the so called gift

deeds, whereby the subject lands were donated to the two institutions, were illegal, and without authority of law.

In the order under appeal, the Learned Single Judge noted the contentions, urged on behalf of the appellants-respondents that a Writ Petition, filed for payment of compensation, thirty years after the subject land was put in possession of the Grandhalaya Samstha and the Kalyanamandapam, was not maintainable. The Learned Single Judge opined that there was no dispute with regards the relationship of the parties; no notice was issued to the petitioner, before allotting the subject land, in the year 1990; the property was allotted illegally, and without any justification, to the said institutions; the petitioners were entitled to succeed as they were deprived of enjoyment of the property without following the due process of law; and they were required to be paid compensation for being illegally deprived of their property. The Writ Petition was allowed directing the respondents to initiate land acquisition proceedings, and pay compensation to the petitioners, for the subject land situated at Siddipet, Medak District. Aggrieved thereby, the present appeal.

In the counter affidavit filed by the Revenue Divisional Officer it is stated that a dispute arose between the library and Dharmasala in the year 1988 for illegal construction of the Dharmasala in the premises of the library; the President of the Dharmasala had submitted a representation to the effect that the subject land was called as muhtaj Khana where, from times immemorial, the Dharmasala was being run by Sri B. Lingaiah who was its President; as the President of the Dharmasala, B. Lingaiah had donated a piece of land to the Grandhalaya Samstha by way of a gift deed; the matter was dealt with

from 1965 to 1990; and even from the report of the Revenue Divisional Officer dated 15.01.1990 it was evident that there existed a library building, and the building of the Dharmashala, over the subject land.

Learned Government Pleader for Land Acquisition would submit that the subject land has been in the possession of the Grandhalaya Samstha and the Dharmasala ever since 1965; it was because of a dispute between both these institutions that the proceedings dated 24.04.1990 was issued allotting 10 guntas each to the Zilla Grandhayala Samstha and to the Dharmasala; other than these two institutions, neither the petitioner nor any one else had approached the competent authority, with necessary documents, to prove ownership of the subject land during the disputed period; the contention of the petitioners that they were the owners, and were in possession of the subject land, was not correct; the Revenue Divisional Officer had, in his report dated 15.01.1990, caused a survey of the subject land; in his report, he had recorded that the area covered by the library building was of two guntas, the open area under the library was four guntas, the area covered by the Dharmashala was one gunta, and the open area under the Dharmashala was 13 guntas; from the spot demarcation, it was evident that the dispute arose between the library and the Dharmasala; ever since 1979 till date, the petitioners had not approached the competent authority claiming right over the subject land; it was evident from the enquiry that the petitioners were not in possession of the subject land; the 1st petitioner had not produced any certificate to show that she was the legal heir of the deceased pattedar; even the deceased Sri S. Bheemaiah was not in possession of the subject land; the petitioners had failed to establish that they were the legitimate legal heirs of the deceased Sri S. Bheemaiah; they had not

even informed this Court of the correct date of his death; Sri B. Lingam had donated the subject land in the year 1959-60; the land was under the possession of the library ever since till the proceedings of the District Collector, Medak i.e., 24.01.1990; if Sri S. Bheemaiah was alive upto the year 1984, and was in possession of the subject land, he could have claimed rights over the land at the appropriate time; the petitioners did not discharge the burden of establishing that they were the legitimate legal heirs of the deceased; and, after such a long lapse of time, it was not open to the petitioners to dispute the claim of the Government over the subject land.

In his proceedings dated 24.01.1990, the District Collector stated that the Revenue Divisional Officer had reported that the Secretary of the Grandhalaya Samstha, and the President of the Dharmasala, had produced documents in support of their rights over the disputed lands; both of them had submitted a common gift deed whereby Sri B. Lingaiah had donated the subject land; as per the local enquiry conducted by the Revenue Divisional Officer, it was revealed that the pattedar was Sri Bheemaiah who expired long back, without any legal heirs; he had died issueless; the whereabouts of Sri Bheemaiah's wife was not known; it should, therefore, be presumed that the subject land was vested with the Government as the pattedar has died had issueless, and the whereabouts of his legal heirs was not known; and, since the library and the Dharmashala were public institutions, it was decided to allot 10 guntas each to the Dharmashala and the Grandhalaya Samstha subject to the conditions mentioned therein.

From the order of the District Collector dated 24.01.1990 it is evident that Sri B. Lingaiah had executed a gift deed in favour of

the Drandhalaya and the Dharmashala donating 20 guntas of land. While the report of the Revenue Divisional Officer dated 15.01.1990, no doubt, records that Sri S.Bheemaiah was the pattedar, the counter-affidavit of the Revenue Divisional Officer records that there existed a Grandhalaya Samstha, and a Dharmashala, for several decades prior to the order of the District Collector dated 24.01.1990. The questions whether Sri B. Lingaiah was the owner of the subject land; whether he was entitled to gift 20 guntas of land to the Dharmashala and to the Grandhalaya Samstha; whether Sri S. Bheemaiah was the pattedar; whether the petitioners herein were his wife and adopted son etc., are all questions of fact which this Court would not, ordinarily, examine in proceedings under Article 226 of the Constitution of India. It is only if the petitioners are held to be the owners of the subject land, can they claim to have been illegally deprived of the subject property, and claim compensation.

While owners of land no doubt have a constitutional right not to be deprived of their property except in accordance with law, this Court would not aid the indolent or the lethargic. The High Court does not, ordinarily, permit a belated resort to the extraordinary remedy, under Article 226 of the Constitution of India, as it is likely to cause confusion and public inconvenience, and bring in its train new injustices. If the writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience, but also injustice on third parties. When the writ jurisdiction is invoked, unexplained delay coupled with creation of third party rights in the meantime is an important factor which also weighs with the

High Court in deciding whether or not to exercise such jurisdiction. (**Shiv Dass v. Union of India**¹; **Shankara Co-Op. Housing Society v. M. Prabhakar**²).

The jurisdiction of a High Court to issue appropriate writs, particularly a writ of Mandamus under Article 226 of the Constitution of India, is 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 or exhumed matters where the rights of third parties may have accrued in the interregnum. (**City and Industrial Development Corporation v. Dosu Aardeshir Bhinandiwala**³; **M. Prabhakar**²).

The doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. Two circumstances, always important in such cases, are the length of the delay and the nature of the

¹ (2007) 9 SCC 274

² (2011) 5 SCC 607

³ (2009) 1 SCC 168

acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy. (**Lindsay Petroleum Company v. Prosper Armstrong Hurd etc**⁴; **Moon Mills Ltd. v. Industrial Courts**⁵; **Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service**⁶; **M. Prabhakar**²).

If the petitioners have been so remiss or negligent as to approach the Court for relief, after an inordinate and unexplained delay, they certainly jeopardise their claims as it may become inequitable, with circumstances altered by lapse of time and other facts, to enforce a right to the detriment of similar claims of innocent third persons. (**Amrit Lal Berry v. CCE**⁷; **M. Prabhakar**²). Delay and laches, is one of the factors, to be borne in mind by the High Courts when they exercise their discretionary power under Article 226 of the Constitution of India. The High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his rights taken in conjunction with the lapse of time and other circumstances. (**M. Prabhakar**²). Unless the facts and circumstances of the case at hand clearly justify the laches or undue delay, the petitioners are not entitled to any relief against any body including the State. (**State of Maharashtra v. Digambar**⁸; **M. Prabhakar**²). Apart from the aforesaid disputed questions of fact, it is also evident that the petitioners have raised the dispute, regarding their title over the subject land and have sought compensation, more than three decades after the

⁴ (1874) 5 PC 221

⁵ AIR 1967 SC 1450

⁶ AIR 1969 SC 329

⁷ (1975) 4 SCC 714

⁸ (1995) 4 SCC 683

Grandhalaya Samstha and the Dharmashala were admittedly in possession of the subject land. They have invoked the jurisdiction of this Court 12 years after the order of the District Collector dated 24.01.1990. As third party rights of the Grandhalaya Samstha and the Dharmashala have intervened, the inordinate delay of more than three decades in approaching this Court would also disentitle the petitioners to the grant of relief.

Viewed from any angle, the Learned Single Judge has erred in directing the appellant to acquire the subject land, and pay compensation to the respondent-writ petitioners. The order under appeal is set aside. It is, however, made clear that this order shall not preclude the respondents-writ petitioners from availing their common law remedy of filing a Civil Suit, establish their title over the subject land, and seek cancellation of the gift deed whereby the subject land was gifted by Sri B. Lingaiah in favour of the Grandhalaya Samstha and the Dharmashala. Needless to state that, if its jurisdiction is invoked, the Civil Court shall consider the claims of the respondents-writ petitioners strictly in accordance with law uninfluenced either by the observations in the order under appeal or in the order now passed by us.

The Writ Appeal is, accordingly, disposed of. The miscellaneous petitions pending, if any, shall stand closed. No costs.

RAMESH RANGANATHAN, ACJ

J. UMA DEVI, J

Date: 07.09.2017.
MRKR