

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.25339 of 2009

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioners seeking verbatim the following relief/s:

‘.....to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus, directing the respondents to pass award and pay compensation under land acquisition act, 4(1) and 6 Declaration dt.18.04.1981, in respect of the structures of petitioners house bearing No.441, 441/B, 443/A, 453/B, 465/C in Sy.No.243, 241/B1, 241/A2, 241/A3 of reach No.V of Boyanapalli village, H/o.Madhavaram Vontimitta Mandal, Kadapa District, according to the valuation report of the officers of the engineering department dt.30.11.1984, and pass such further order or orders...’

2. I have heard the submissions of Sri Boya Ravinder Reddy, learned counsel appearing for the petitioners, and of the learned Government Pleader for Land Acquisition (AP) appearing for the respondents 1 & 2. I have perused the material record.

3. The case of the petitioners as per their pleading and the submissions made on their behalf, in brief, is as follows:

They are the owners of the lands and structures in Sy.no.243, 241/B1, 241/A3 of Boyanapalli village, H/o.Madhavaram Vontimitta Mandal. The petitioners 1 & 4 had a house bearing no.441-A in Sy.no.243 to an extent of 18.90 square meters; the 2nd petitioner had a house bearing no.441-B in Sy.no.243 to an extent of 19.64 square meters; 3rd petitioner had a house bearing no.443-A in survey no.241/A3 to an extent of 87.88 square meters;

and, the 5th petitioner had a house bearing no.453-B in Sy.no.241/B1 to an extent of 92 square meters. The 5th petitioner raised a thatched house bearing no.465-C in Sy.no.241/A2 to an extent of 85.64 square meters situated at Boyanapalli village, h/o.Madhavaram, Vontimitta mandal. The respondents acquired the petitioners' lands and structures afore-stated in the year 1981 and notified the village as reach no.V for the purpose of Somasila project. Section 4(1) notification was issued; and, Section 6 declaration was published, on 23.03.1981, under the provisions of the Land Acquisition Act, 1894 [‘the Act’, for short] by invoking the urgency clause and dispensing with the enquiry under Section 5A of the said Act. In the notification, the petitioners' houses and structures were mentioned at sl.nos.6, 7, 21, 22, 26 and 45. An award in No.29/1986-87, dated 17.09.1986, was passed. However, no award has been passed in respect of the structures mentioned in the notification. And, compensation for structures was rejected on the ground that the structures were not in existence as on the date of passing of the Award and that the structures were not found to be in existence at the time of valuation by the engineering authorities. The said action is contrary to the valuation report of the Deputy Executive Engineer, SSP, Sub Division – III, Madhavaram, the approval report of the Executive Engineer, Somasila Project, Division-IV, Athmakur, dated 30.11.1984, and the certified valuations & measurements given by the said two officials of the department, which established the existence of the structures as on the date of valuation. The Award was passed contrary to the valuation report of the engineering department and the provisions of the Act. On rejection of compensation for structures, the writ petitioners filed WP.No.5034 of 1987 before this Court for quashing the

Award afore-stated. An affidavit was filed by the respondents herein in the said writ petition admitting the existence of structures at the time of notification under Section 4(1) and declaration under Section 6 of the Act and at the time of preparation of valuation by the engineering authorities. Having considered the pleadings and submissions of both the sides, this Court allowed the said writ petition and passed the following order: - 'The respondents are directed to pass award in respect of structures bearing House No.441-A, 441-B, 443-A, 453-B, 460-B and 465-C in Survey Nos.243, 241/A3, 241/B1, 241/A3 and 241/A2 situated in Boyanapalle (V) H/o.Madhavaram, Vontimitta Mandal, Sighout Tq, Cuddapah District, forming in part of reach no.V in Somasila Project, within three months from the date of receipt of copy of this order and to pay the compensation expeditiously.' Even after the said orders of this Court, respondents have not taken any steps to pass an award for payment of compensation for the said structures. The respondents deliberately failed to pass an award and pay compensation. The above order in the afore-stated writ petition has become final. When the petitioners approached the respondents 2 & 3 they were given the impression that the said authorities are corresponding with higher authorities and that appropriate steps would be taken for payment of compensation after passing the Award. The petitioners are poor illiterate people; under a *bona fide* impression, they waited for all these years with the hope that the authorities will take steps for payment of compensation by passing an award. They are agriculturists and not well versed with the procedures. The lands with the structures were taken possession and the entire village of Boyanpally submerged in the foreshore submersion of Somasila project. For the last several years, the petitioners are deprived of the

compensation to which they are legitimately entitled. Other land owners were paid compensations. The petitioners made an application to the respondents, on 23.03.2004, and made several requests for payment of compensation as per the orders of this Court, afore-stated. However, the respondents were negligent in passing the award and paying the compensation after taking into consideration the valuation reports and measurements of structures given by the engineering department. Hence, the writ petition is filed.

4. The case of the respondents as stated in the counter affidavit of the Special Deputy Collector, Land Acquisition, and as per the submissions made on their behalf, in brief, is as follows:

The petitioners earlier filed WP.no.5034 of 1987 for the very same relief and the said writ petition was disposed of, on 07.02.1994. Hence, the present writ petition is not maintainable. The claim of the petitioners in respect of the structures is not genuine. The structures did not exist at all. By mistake they were notified. Before passing of the award, a personal inspection of the land was made. It was found that there are no structures. The petitioners could not establish by any evidence, the existence of the structures, which they claimed to be in existence. Hence, the land acquisition officer rejected the compensation for the structures. Once the award is passed, the remedy open to the petitioners is to seek a reference to the civil Court under Section 18 of the Act. The petitioners failed to do so. Once an award is passed, the LAO has no jurisdiction to reopen and review. It is incorrect to say that the petitioners are pursuing the matter. Since the year 1987, the petitioners did not approach the respondents. If the petitioners had any grievance, they ought to have filed a

contempt case. This writ petition, which is filed more than 20 years after the filing of the earlier writ petition, that too for the very same relief, is not maintainable.

5. I have given earnest consideration to the facts and submissions.

6. In the case on hand, the petitioners are requesting to pass an award and pay compensation for the subject structures in their lands, which submerged in the foreshore submersion of Somasila project. The respondents are contending that the structures did not exist at all and that in the notification, the structures were mentioned by mistake; and, that later at the time of personal inspection that was made before passing of the award, it has come to the notice of the authority that there are no structures; Hence, no award has rightly been passed by the LAO. When the petitioners earlier filed a writ petition the respondents herein through the Spl.Dy.Collector filed a counter affidavit *inter alia* stating as follows:

'It is submitted that the notification under Section 4(1) were approved in GoRt.No.446 I & P (PW) Dept.dt.23/03/1981, Draft Declaration Govt.Memo No.674 LAR-1, 2) 81-1, dt.23/03/1981 and published in the A.P.Gazette extraordinary volume No.5 dt18.04.1981 for all the acquired structures. The valuation report in respect of item no.6,7,21,22, 36 and 45 were received from the engineering Department in the year 1984. As per the notification U/s.4(1) and 6, Award enquiry was completed. The Special Collector, Telugu Ganga Project Nellore, Executive Engineer, Somasila project Divison No.4 Atmakur and Special Dy.Collector (LA) Somasila Project Unit-I, Bedwel, jointly inspected all the structures in the village on 24.08.1986, at the time of joint inspection the alleged structures are not existing on ground in the notified survey numbers. Hence, compensation for the above structures were not awarded in awrd No.29/86-87, dt.17/09/1986.

...

It is true that the structures in item No.6,7,21,22,36 and 45 are in existence at the time of the notification U/s.4(1) and 6. But at the time of inspection for preparation of valuation by the engineering authorities item no.6,7,21,22 and 45 were in existence. In regard to item no.35 the structures was not in existence during the joint inspection all the said super structures are not existing at the notified item no. and survey number. Hence compensation was not paid though there were notified and valued.'

[Reproduced verbatim]

This Court, by orders, dated 07.02.1994, passed in the above writ petition directed the respondents to pass award in respect of structures bearing House No.441-A, 441-B, 443-A, 453-B, 460-B and 465-C in Survey Nos.243, 241/A3, 241/B1, 241/A3 and 241/A2 situated in Boyanapalle (V) H/o.Madhavaram, Vontimitta Mandal, Sighout Tq, Cuddapah District, forming in part of reach no.V in Somasila Project, within three months from the date of receipt of a copy of the order and to pay the compensation expeditiously. Therefore, the respondents are not entitled to contend contrary to the orders of this Court which have become final and which are binding on the parties. If the structures were not found to be in existence at the time of inspection made before passing of the Award, the petitioners cannot be faulted. Viewed thus, this court finds that the petitioners are entitled to the relief.

7. Be that as it may. Before parting, there are a few other aspects to be considered.

7.1 Dealing with the contention of the learned Government Pleader that the relief is already claimed and granted to the writ petitioners and that the present writ petition for the same relief is not genuine, it is apt to refer to the following decision. In **Commissioner, Karnataka Housing Board v. C. Muddaiah**

[(2007) 7 SCC 689], the question – ‘Whether a fresh writ petition could be filed claiming the benefits of an earlier order in the earlier writ petition?’ was squarely considered. The facts of this cited case reflect that an order earlier made in favour of the petitioner made it more than clear that the salary to be paid to the writ petitioner was from October 27, 1997 to February 28, 1998; however, contrary to the said orders, it was expressly stated by the respondent-Board that the writ- petitioner would not be entitled to arrears of pay and allowances for any earlier period "since he has not actually worked in the cadre of Superintendents and Assistant Revenue Officers"; it is thus obvious that inspite of a clear direction issued by a competent Court, no payment was made and an express order was passed to the effect that the writ petitioner would not be entitled to ‘pay’ as he had not worked; the writ- petitioner, who had legitimate grievance against such orders declining ‘pay’, had filed a fresh substantive petition. In this setting of facts it was held that such substantive fresh petition could be filed by him and that since he was entitled to such relief, the Division Bench was justified in granting the prayer. It is apt to extract the relevant findings/observations in the cited case, which are as follows:

"We are of the considered opinion that once a direction is issued by a competent Court, it has to be obeyed and implemented without any reservation. If an order passed by a Court of Law is not complied with or is ignored, there will be an end of Rule of Law. If a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law. But it cannot be made ineffective by not complying with the directions on a specious plea that no such directions could have been issued by the Court. In our judgment, upholding of such argument would result in chaos and confusion and would seriously affect and impair administration of justice. The argument of the Board, therefore, has no force and must be rejected.

The matter can be looked at from another angle also. It is true that while granting a relief in favour of a party, the Court must consider the relevant provisions of law and issue appropriate directions keeping in view such provisions. There may, however, be cases where on the facts and in the circumstances, the Court may issue necessary directions in the larger interest of justice keeping in view the principles of justice, equity and good conscience. Take a case, where ex facie injustice has been meted out to an employee. In spite of the fact that he is entitled to certain benefits, they had not been given to him. His representations have been illegally and unjustifiably turned down. He finally approaches a Court of Law. The Court is convinced that gross injustice has been done to him and he was wrongfully, unfairly and with oblique motive deprived of those benefits. The Court, in the circumstances, directs the Authority to extend all benefits which he would have obtained had he not been illegally deprived of them. Is it open to the Authorities in such case to urge that as he has not worked (but held to be illegally deprived), he would not be granted the benefits? Upholding of such plea would amount to allowing a party to take undue advantage of his own wrong. It would perpetrate injustice rather than doing justice to the person wronged. We are conscious and mindful that even in absence of statutory provision, normal rule is 'no work no pay'. In appropriate cases, however, a Court of Law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The Court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The Court may in the circumstances, direct the Authority to grant him all benefits considering 'as if he had worked'. It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a Court of Law and if such directions are issued by a Court, the Authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellant-Board, therefore, has no substance and must be rejected."

The ratio in the decision applies on all fours to the present case. This Court is of the considered view that when once a direction by way of writ order was

issued by this Court, it has to be obeyed and implemented without any reservation.

7.2 Learned Government Pleader next contended that in many cases, without there being any structures, compensations were claimed by several claimants and, that, therefore, a criminal complaint was lodged and that the Bureau of Anti Corruption is investigating into the matter. He also brought to the notice of this Court that this Court passed orders, on 16.12.2015, in LAAS.No.136 of 2009, and that by the said orders, after setting aside the order of the Court below, the matter was remanded to the I Additional District Court, Kadapa, directing to restore the LAOP therein to its original number and proceed to dispose of the same according to law in the light of the observations contained in the judgment of this Court. However, this instant matter is not the subject matter of the said LAAS.No.136 of 2009 is not in dispute. Even otherwise, the parties herein are bound by the earlier orders of this Court referred to supra. Learned counsel for the petitioner also stated that in view of the earlier orders of this Court and as this matter is not one of the matters covered by any criminal proceedings stated by the respondents, the contentions of the respondents are untenable.

7.3 Learned Government Pleader also contended that on the ground of delay the petitioners are not entitled to seek any relief.

7.4 Insofar as the delay, the petitioners explained in their writ affidavit, the reasons for the delay. Be that as it may.

8. Learned counsel for the petitioners relied upon the decision of the Supreme Court in **Tukaram Kana Joshi and Ors. thr. Power of Attorney**

Holder vs. M.I.D.C. and Ors.¹ In this decision, the facts are as follows: -

“The authorities of the State took over possession of the land belonging to the appellant without any sanction of law. The appellant had repeatedly asked for grant of compensation. In that background, the Supreme Court held as follows:

“The right to property is now considered to be, not only a constitutional or a statutory right, but also a human right. Though, it is not a basic feature of the Constitution or a fundamental right. Human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment etc. Now however, human rights are gaining an even greater multi faceted dimension. The right to property is considered, very much to be a part of such new dimension. (Vide: Lachhman Dass v. Jagat Ram and Ors.: (2007) 10 SCC 448; Amarjit Singh and Ors. v. State of Punjab and Ors.: (2010) 10 SCC 43; Narmada Bachao Andolan v. State of Madhya Pradesh and Anr.: AIR 2011 SC 1989; State of Haryana v. Mukesh Kumar and Ors.: AIR 2012 SC 559 and Delhi Airtech Services Pvt. Ltd. v. State of U.P. and Anr.: AIR 2012 SC 573).”

The Supreme Court further held as follows:

11. There are authorities which state that delay and laches extinguish the right to put forth a claim. Most of these authorities pertain to service jurisprudence, grant of compensation for a wrong done to them decades ago, recovery of statutory dues, claim for educational facilities and other categories of similar cases, etc. Though, it is true that there are a few authorities that lay down that delay and laches debar a citizen from seeking remedy, even if his fundamental right has been violated, under Article 32 or 226 of the Constitution, the case at hand deals with a different scenario altogether. Functionaries of the State took over possession of the land belonging to the Appellants without any sanction of law. The Appellants had asked repeatedly for grant of the benefit of compensation. The State must either comply with the procedure

¹ (2013) 1 SCC 253

laid down for acquisition, or requisition, or any other permissible statutory mode. There is a distinction, a true and concrete distinction, between the principle of "eminent domain" and "police power" of the State. Under certain circumstances, the police power of the State may be used temporarily, to take possession of property but the present case clearly shows that neither of the said powers have been exercised. A question then arises with respect to the authority or power under which the State entered upon the land. It is evident that the act of the State amounts to encroachment, in exercise of "absolute power" which in common parlance is also called abuse of power or use of muscle power. To further clarify this position, it must be noted that the authorities have treated the land owner as a 'subject' of medieval India, but not as a 'citizen' under our constitution.

12. The State, especially a welfare State which is governed by the Rule of Law, cannot arrogate itself to a status beyond one that is provided by the Constitution. Our Constitution is an organic and flexible one. Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third party interest is involved. Thus analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience.

In the case on hand also till date the Award was not passed despite the earlier orders of this Court in the earlier writ petition. Therefore, the ratio in the decision squarely applies to the facts of the case. It is not in dispute that having regard to the facts and circumstances, any number of awards can be passed.

9. In the result, writ petition is allowed as prayed for in the light of the orders of this Court, dated 07.02.1994, in WP.No.5034 of 1987. It is needless to state that the necessary exercise required to be undertaken in the matter shall be undertaken forthwith and be completed within three months from the date of receipt of a copy of this order.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

10.10.2018
Vjl

