

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.25342 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 under L.A Act in respect of structures of the petitioners to an extent of 18.36 Sq.Mts in reach No.1, an extent of 56.19 Sq.mts in reach No.II, an extent of 26.86 Sq.Mts in reach No.III, and an extent of 16.70 Sq.Mts in reach No.IV total admeasuring 324.59 Sq.Mts in Sy.No.13(14) of Chinnapareddipalle village, which was acquired and notified U/s.4(1) and 6 of the L.A Act dt.15.11.1996 and 01.08.1997 situated at Chinnapareddipalle village, Ontimitta Mandal, cuddapah District and consequently direct the respondents to pay compensation and pass such further order or orders as this Hon'ble Court may deems fit and proper in the circumstances of the case.’

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: - ‘The petitioners are the owners of lands situated in Chinnapareddipalli village in Sy.No.13(14) and structures/thatched houses to an extent of 18.36 Square meters in reach no.I; to an extent of 56.19 Square meters in reach no.II; to an extent of 26.86 Sq.Mts in reach no.III; and, to an extent of 16.70 Square Meters in reach no.IV. They have been in possession and enjoyment of the same for the last several decades.

Chinnapareddipalle village is identified as submersible village under foreshore submersion of Somasila project. The lands in Chinnapareddipalle village and surrounding villages were also acquired while issuing notification. After acquiring the entire land in the village and surrounding villages an award was passed and accordingly compensation was paid to the others, leaving the petitioners' land and structures. On enquiry, the petitioners learnt that their houses were not included in the notification. The petitioners sent a representation, dated 14.06.1982, to the Spl. Dy. Collector, Somasila Project, the District Collector and the Joint Collector, Cuddapah, bringing to their knowledge the fact that the houses of the petitioners were not acquired in the notifications already issued and requested the respondents to acquire the same. The same was received by the said authorities, on 16.06.1982. And, the authorities informed that the Government are proposing to acquire the houses, which were not included in the earlier notifications, by issuing a fresh notification. As the Government have not taken any action, the petitioners went on submitting representations from time to time. Thereafter, the authorities conducted a joint inspection, on 07.05.1984; and, a report was prepared by the authorities viz., Spl. Dy. Collector, Somasila project, Rajempet, the Dy. Executive Engineer and the Asst. Executive Engineer, Somasila Project. After due verification, the said authorities found that all the houses of the petitioners were in existence long prior to the issuance of the 4(1) notification and that by mistake the same were not included in the notification. The measurements and descriptions of the houses were also recorded in the said report. While so, the District Collector announced to the residents of Chinnapareddipalle village and other neighboring villages to vacate their

premises and shift to some other village. Under the said circumstances, the petitioners approached this Court and filed W.P.No.13313 of 1987 questioning the action of the respondents in dispossessing the petitioners from their structures without payment of compensation and seeking a direction to the respondents to initiate land acquisition proceedings for acquiring 18.36 Square meters in reach no.I; 56.19 Square meters in reach no.II; 26.86 Sq.Mts in reach no.III; and, 16.70 Square Meters in reach no.IV situated in Chinnapareddipalli village and pay compensation in respect of the same after conducting due enquiry and as per provisions of the Land Acquisition Act, 1894. A counter affidavit was filed in the above writ petition admitting the existence of structures, which are old, prior to the issuance of 4(1) notification. This Court in its order, dated 13.12.1987, having noted that the subject matter is covered by the decision of this Court *vide* order, dated 21.04.1987, in WP.No.17234 of 1987, allowed the said writ petition and directed the LAO to make a spot inspection with regard to the structures for which compensation has to be determined and then determine compensation as expeditiously as possible and preferably within 3 months from the date of the said order. Pursuant to the orders of this Court, the Spl. Dy. Collector addressed a letter, dated 12.05.1988, to the Executive Engineer, Irrigation, Somasila project, Div.IV, Athmakoor, requesting to inspect the structures mentioned in the joint inspection notes related to the original requisition and send fresh requisition. The said officer submitted proposals for draft notification and draft declaration publication, on 23.08.1989, to the Spl.Collector, Telugu Ganga Project, Nellore. The Government issued GOMS.No.333, dated 19.05.1992, for publication of 4(1) notification and the same was published in Telugu Newspapers, dated

20.12.1993. 1st respondent called for estimations' report, on 05.06.1995, 14.08.1995 and 13.09.1995. Thereafter, he failed to pass an award and the proceedings lapsed. The Spl. Dy. Collector submitted fresh proposals, dated 26.08.1996, to the Spl. Collector, for publication of the same. 4(1) notification was published in daily newspaper, on 15.11.996. Urgency clause was invoked and enquiry under section 5A was dispensed with; and, thereafter Section 6 declaration was published, on 01.08.1997, notifying the structures and the extent of area. No steps were taken by the authorities till date. Thus, the respondents failed to comply with the orders, dated 31.12.1987, of this Court in WP.No.13313 of 1987. The petitioners approached the respondents several times and made requests for payment of compensations. But, the respondents having kept quiet have not initiated any action. The lands and structures of the entire village submerged in the foreshore submersion of Somasila project. The petitioners were deprived of their legitimate right to just compensation for several years. Others similarly placed were paid compensations. This is a case of negligence on the part of the respondent authorities. The petitioners were and are being subjected to great hardship. The action of the respondents in dispossessing the petitioners from their properties without payment of compensation is violative of Articles 14, 19 (1)(g), 21 and 300-A of the Constitution of India. The respondents 2 & 3 were giving an impression that they are corresponding with the higher authorities and that appropriate steps will be taken for payment of compensation. 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. The inaction on the part of the respondents resulted in the delay. On account of

the lapses committed by the authorities, the petitioners cannot be deprived of their right to claim compensation, which is a fundamental right guaranteed under the Constitution of India. The inaction of the respondents in not paying the compensation for the subject structures in the lands of the petitioners despite the Court orders is not only arbitrary & illegal but also a violation of Article 300-A of the Constitution of India. The respondents having acquired the property of the petitioners, deprived them of the just and reasonable compensation. 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.13313 of 1987 for the very same relief and the said writ petition was disposed of, on 31.12.1987. Hence, the present writ petition is not maintainable. The claim of the petitioners in respect of the structures is not genuine. The writ petition is barred by *res judicata*. The subject village is one among the submerged villages. The structures pertaining to the writ petitioners were not notified as the same were not in existence at the time of notification. All structures of the village were notified in the notification under Section 4(1) of the Act. Since the structures claimed by the petitioners did not exist at the time of notification, they were not notified. The Spl.Dy.Collector submitted a report, dated 04.08.1989, to the Spl.Collector stating that it is a fact that the LAO and the Executive Engineer, Somasila project, Badvel, conducted a joint inspection of the missing structures of the petitioners, on 07.05.1984, and found that the structures in question of

the petitioners are old. But, no action was taken in this regard at both ends. Further, the then Spl. Dy. Collector, along with staff, inspected the structures of the petitioners, on 12.09.1988. In his inspection notes, he noted that the structures are in existence and that they are old structures. Draft notification and draft declaration proposals were submitted. They were approved by the Government and were published. No estimates/valuation were prepared and furnished, as the so called structures were not notified. The petitioners approached this Court and filed WP.No.13313 of 1987. This Court allowed the writ petition and directed the LAO to make a spot inspection with regard to the structures for which compensation has to be determined and then determine the compensation, accordingly, and as expeditiously as possible and preferably within three months from the date of receipt of the orders of this Court. Subsequently, the said structures were notified vide notification under Section 4(1) and declaration under Section 6 respectively, on 29.05.1992 and 08.06.1992. Engineering department did not furnish the estimates. Therefore, award could not be passed within stipulated time. Hence, the draft notification lapsed. The Government issued GOMs.No.333, dated 19.05.1992, for publication of 4(1) notification; and, the same was published in Telugu Newspapers, dated 20.12.1993. 1st respondent called for estimations' report, on 05.06.1995, 14.08.1995 and 13.09.1995. Thereafter, he failed to pass an award; and, the proceedings lapsed. The Spl.Collector by his letter, dated 29.06.1996, issued directions to initiate fresh proposals. Accordingly, fresh draft notification and draft declaration proposals were submitted, on 28.09.1996. The Spl.Collector approved the same, on 07.10.1996. The same were published. As the petitioners could not prove the existence of structures, the

award was not passed; and, the proceedings lapsed. Spl.Collector also passed orders stating that there is no evidence produced by the claimants to prove the existence of their structures; and, he further held that the claim of existence of structures is suspicious. Compensations for genuine structures, which were acquired, were paid. Had the structures of the petitioners are genuine, they would not have waited for more than twenty years. The writ petitioners are not entitled to any relief for the so called structures, the existence of which they could not establish. Hence, the writ petition may be dismissed.

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 the subject lands. The respondents are contending that the structures did not exist at all and that for the said reason, the existence of structures is not noted in the notification and 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 also a fact that the houses of the petitioners mentioned in the writ petition were not included in the notifications U/s.4(1) and 6 of the land acquisition Act of Chinnapareddypalli village. On representations from the petitioners the then land acquisition officer held personal inspection of these structures on 07/05/1984 jointly with the Deputy Executive Engineer, Somasila project, Division, and prepared a joint inspection notes. A copy of the same is submitted herewith for favour of perusal. The joint inspection reveals that the 18-36 square meters of round thatched house belongs to the 1st petitioner is existing in between structures No.24 and 25 of reach No.I and 56.69 Sq.mts of thatched house belonging to the 2nd petitioner bearing house No.141/A of reach No.II has been included in the original requisition, but not notified in the gazette and 26.88 sq.mts and

28.16 sq.mts of thatched houses belonging to the 3rd and 4th petitioner respectively are existing in reach No.III towards the southern side of Door No.268 and adjoining to patta land and that as per local enquiry it was found that these two structures were left over duly treating them to be existing in patta lands are not requisitioned, but actually they are existing in village site only and that these structures were appeared as old ones and that 16.70 Sq.mts of thatched house belonging to the 5th petitioner is existing in reach No.IV and appeared as old one and local enquiry also confirmed the same.

I submit that, immediately after the joint inspection, joint inspection notes were communicated to the Executive Engineer, Somasila project, Division – 4, Athmakur who is the requisitioning authority for sending supplemental requisition in respect of the above 5 structures and the file was closed by the then land acquisition officer consequently the matter was not pursued any longer. So far neither the Executive Engineer Somasila Project, Division-4, Athmakur has sent the supplemental requisition for the 5 missing structures belonging to the petitioners, not the petitioners have approached this office in the matter. Hence these structures could not be notified again after getting the supplemental requisition from the executive engineer and paid compensation to the petitioners.

....

The petitioners never approached this respondent at any time in the matter. If at all the petitioner have approached and explained their matter, action would have been initiated to get the requisition from the Executive Engineer and to pay compensation. Because the file was closed by the then land acquisition officer abruptly after communicating the joint inspection notes to the Executive Engineer and because the matter was not brought to notice by the petitioners, no action could be initiated. The matter will be now taken up with the Executive Engineer and compensation will be paid, after observing all the required formalities under the land acquisition act.’

[Reproduced verbatim]

This Court in its order, dated 13.12.1987, having noted that the subject matter is covered by the decision of this Court *vide* order, dated 21.04.1987, in WP.No.17234 of 1987, allowed the said writ petition and directed the LAO to

make a spot inspection with regard to the structures for which compensation has to be determined and then determine compensation as expeditiously as possible and preferably within 3 months from the date of the said order. 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. Viewed thus, this Court finds that the petitioners are entitled to the relief.

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

7.1 Dealing with the contention of the learned Government Pleader for Land Acquisition 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 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 an order 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. 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. Even otherwise, the parties herein are bound by the earlier orders of this Court referred to supra.

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

¹ (2013) 1 SCC 253

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 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 earlier orders of this Court in the above said writ petition are not complied with. 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 31.12.1987, in WP.no.13313 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.SEE'THARAMA MURTI, J

10.10.2018

Vjl