

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.25340 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 herein to pay compensation as per the L.A Act and valuations mentioned in the Award No.37/86-87, dt.17.09.1986 (Item No.49, 159, 161 to 164) in respect of houses of the petitioners No.2nd & 5th thatched houses measuring 31.68 Sq.meters each, an extent of 56 Sq. meters of thatched houses of 3rd & 4th petitioner each, an extent of 28.90 Sq.meters of thatched house of 6th petitioner and measuring 168.17 Sq.meters of thatched house of 1st petitioner, situated at Boyanapalli Village H/o.Madhavaram, Sidhout Mandal, Kadapa District and pass such other 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 pleadings and as per the submissions made on their behalf, in brief, is as follows:

The petitioners 2 & 5 had thatched houses in extents of 31.68 Square meters each. The petitioners 3 & 4 had thatched houses in extents of 56 Square Meters each. 6th petitioner had a thatched house to an extent of 28.90 Square Meters. 1st petitioner had a thatched house to an extent of 168.17 Square Meters at Boyanapalli village, H/o.Madhavaram, Sidhout Mandal,

Kadapa District. All the petitioners were the absolute owners of the above said thatched houses and they were in possession and enjoyment of the same for the last several decades. The Boyanapalli village was notified as submersible village under Somasila project. The respondents issued notification for acquisition of all the lands & the structures in the village and issued Section 4(1) notification; and, Section 6 declaration was published in the Gazette, dated 18.04.1981, by invoking the urgency clause and dispensing with the enquiry under the provisions of the said Act. In the notification, the petitioners' houses and structures were mentioned at sl.nos.49, 159, 161 to 164. An award in No.37/1986-87, dated 17.09.1986, was passed. However, no award has been passed in respect of the structures mentioned in the notification. Compensation for structures was rejected on the ground that the structures were not in existence on the date of passing of the Award. Questioning the said action of the respondents and seeking a direction to pay compensation for the structures as notified under Section 4(1) of the Act, the writ petitioners filed WP.No.16732 of 1986 before this Court. This Court disposed of the said writ petition, on 06.11.1987, directing the respondents to pay valuations mentioned in the award in respect of item nos.49, 159 and 161 to 164; and, with regard to item no.49 the estimate as given by the PWD may be taken into consideration. The respondents were directed to pay the same within eight weeks from the date of receipt of the said order. Even after the said orders of this Court, the respondents have not taken any steps to pass an award for payment of compensation for the said structures. 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. 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 viz., houses in an extent of 372.45 Sq.Mts., 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.16732 of 1986 for the very same relief and the said writ petition was disposed of, on 06.11.1987. 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 had 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 claiming compensation for the structures in the subject lands. 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 inspection that was made before passing of the award, it was noticed by 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 structures were notified in the name of Sri Sodanapalli Subbaiah, S/o.Subba Reddy. The compensation was allowed to all the three members as desired by them. Item No.159, 161 to 164 were notified in DN and DD, The engineering Department has valued the structures in 1984. But there structures were not existing by 24.08.1986. The Special Project, Athmakur and the Land Acquisition Officer have jointly inspected the structures notified in 24.08.1986. The structures in question claimed to be in existence by the petitioners were not actually existing by 24.08.1986. The award was passed on 17.09.1986. As the above structures were not existing at the time of passing awards no compensation was awarded for them though they were notified and valued....’

[Reproduced verbatim]

This Court, in the orders, dated 06.11.1987, passed in the above writ petition observed as follows: - 'It is rather unfortunate that poor citizens' entire property including the house property as well as the lands have been submerged in the Somasila project. In deed, in the notification under Section 4(1) of the Land Acquisition Act; so also in the Award, the value of structures has been mentioned and the Award is finalized. Thereafter, it is now stated in the counter that when the LAO visited the spot, the structures were not said to be available. Even assuming for a moment that the structures were not available, it is not the fault of the petitioners herein. The LAO, after taking into consideration the existence of structures, not only got the valuation made but also even mentioned in the Award and now the same is denied to the petitioners.' In the said circumstances, this Court directed the respondents to pay within eight (8) weeks from the date of receipt of a copy of the said order, the valuations mentioned in the award in respect of item nos.49, 159 and 161 to 164; and, with regard to item no.49 the estimate as given by the PWD may be taken into consideration. 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 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 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 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 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

¹ (2013) 1 SCC 253

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 compensation was not paid to the petitioners despite the earlier orders of this Court in the above said 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 06.11.1987, in WP.no.16732 of 1986. 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.

10.10.2018
Vjl



M.SEEETHARAMA MURTI, J