



S.A(MD)No.329 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON	22.11.2023
PRONOUNCED ON	08.12.2023

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

S.A(MD)No.329 of 2021

R.Kanagaraj

... Appellant/Respondent/Plaintiff

vs.

1.The Special Officer,
Jamin Nathampatti Panchayat Board Office,
Nathampatti Post,
Chatrapatti Via,
Rajapalayam Taluk,
Virudhunagar District.

2.The Special Officer,
Melarajakularaman Panchayat at
Ayyanapuram,
Chatrapatti Post,
Virudhunagar District.

3.The Block Development Officer,
Rajapalayam Panchayat Union Office,
Rajapalayam,
Virudhunagar District.

4.The District Collector,
Virudhunagar District,
Virudhunagar.

... Respondents/Respondents/Defendants

PRAYER:- Second Appeal filed under Section 100 of Civil Procedure Code, against the Judgment and decree dated 23.03.2020 made in A.S.No.58 of 2018 on the file of the Subordinate Court, Srivilliputhur



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confirming the judgment and decree, dated 04.09.2018 made in O.S.No.390 of 2011 on the file of the Additional District Munsif Court, Srivilliputhur.

For Appellant :Mr.S.M.Anantha Murugan

For Respondents :Mr.N.Muthuvijayan,
Special Government Pleader

JUDGMENT

Challenge is made to the concurrent judgments in A.S.No.58 of 2018 on the file of the Principal Subordinate Court, Srivilliputhur and in O.S.No.390 of 2007 on the file of the Additional District Munsif Court, Srivilliputhur.

2. The appellant/plaintiff filed the suit seeking the relief of permanent injunction restraining the respondents/defendants from interfering with the plaintiff's peaceful possession and enjoyment of the 1st schedule property; the relief of mandatory injunction to remove the motor pump along with "Sintex" water tank erected in 1st Schedule Property and for costs. The motor pump along with "Sintex" water tank is shown as 2nd Schedule Property.

3. The case of the plaintiff is that the suit property bearing Survey No.1356/4 with an extent of 5 acres 56 cents situate at



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Melarajakularaman Village, Rajapalayam Taluk, Virudhunagar District, is a Punja land. The said punja land along with a Well, belongs to the plaintiff. He is in possession and enjoyment of the suit property. Patta bearing No.416, was also issued in his name. During 2007, in the absence of the plaintiff, the first defendant put up a hand pump near the plaintiff's Well by saying that the hand pump is for the welfare of the public. When the plaintiff attempted to remove the hand pump, the first defendant lodged a complaint to the Keelarajakularaman police station. Thereafter, the plaintiff kept quite out of fear. In July, 2011, the hand pump was converted into motor pump and "Sintex" water tank was put up. When the plaintiff attempted to remove the "Sintex" water tank, the first defendant lodged a complaint before the Sub-Inspector of Police, Keelarajakularaman Police Station. The police directed the plaintiff not to remove the "Sintex" water tank. On 23.07.2011, the first defendant attempted to construct a bathroom near the motor pump. The plaintiff stopped the work and on 25.07.2011, sent a lawyer notice to defendants 1 and 3 and 4. However, no action was taken by the defendants. In the said circumstances, the suit was filed for the aforesaid reliefs.

4. In the written statement of the first respondent, it is stated that the "Sintex" water tank was put up in 1996 and not in 2007. The



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bore-well was laid 20 years back with Hand Pump and public had been using the bore well for last 20 years. To provide facility to the public, “Sintex” water tank was put up in 1996. A submersible motor was installed in 2010. Plaintiff had never objected the digging of bore-well putting up of the “Sintex” water tank and now, he filed the suit with ill-motive. There was a panchayat on 23.07.2011 in connection with this dispute and in the said panchayat, the plaintiff and his family members undertook not to disturb the use of bore-well and use of “Sintex” water tank. The public used to take water in the bore-well during the funeral rites of a deceased. This has been happening for several years. This place is also used for preparation of Karagam during temple festival. The suit property does not belong to plaintiff exclusively. His brothers Perumalsamy, Anandhasamy, Jeyaraman, Chandran, have also share in the suit property. They are proper and necessary parties. If the “Sintex” water tank is removed, general public would be seriously affected. Therefore, the first defendant prayed for dismissal of the suit.

5. During trial, on the side of the plaintiff, P.Ws.1 and 2 were examined and Ex.A1 to A10 were marked. On the side of the defendants, D.Ws.1 and 2 were examined. Exs.B1 and B2 were marked.



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6. On the basis of oral and documentary evidence, the learned trial Judge though found that the bore-well was dug and “Sintex” water tank was put up in the land of the plaintiff in S.No.1356/4, dismissed the suit on the ground that the suit is bad for non-joinder of necessary parties, namely, the siblings of the plaintiff.

7. Against this judgment, the plaintiff filed appeal in A.S.No.58 of 2011. The learned First Appellate Judge found that there is no material to show that the plaintiff had given a police complaint against digging of bore-well and putting up of “Sintex” water tank etc. In the said circumstances, the learned First Appellate Judge found that it could only be concluded that the plaintiff dedicated the land for the use of public purpose. Putting up a “Sintex” water tank in a small place will not amount to violation of law. This place has been used for taking water during funeral rites of a deceased person and during festival time, for preparing Karagam. In this view of the matter, it can only be presumed that the plaintiff had voluntarily given the place for public purpose. On this reasoning, the First Appellate Judge, dismissed the appeal. Challenging this judgment, the plaintiff/appellant filed this appeal.

8. This Court framed the following substantial questions of law for consideration in this second appeal:



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“a) Whether the instrumentality of the State can occupy a private property and put it for public purpose, even without resorting to acquisition proceedings? ; and

b) Whether the appellant has been deprived of his right of property guaranteed under Article 300 A of the Constitution of India and whether this right can be defeated merely on the ground that there was a delay on the part of the appellant to approach a competent Court?”

9. The learned counsel for the appellant submitted that the findings of the Courts below especially the First Appellate Court’s finding that the plaintiff had voluntarily given this place for public purpose is not correct and it is against evidence. Plaintiff had been all along opposing the digging of bore-well, installation of hand pump and thereafter, submersible motor and “Sintex” water tank. He opposed the digging of bore-well, putting up of “Sintex” water tank by giving complaint. As the Government officials were acting against him, he was not able to prevail upon the police Department to take action against the erring officials. When he had been all along opposing the use of his land for the purpose of bore-well and other purposes, the finding of the First Appellate Court that it should be presumed that the appellant had voluntarily given this place for public purpose, is not correct. The Government cannot deprive the property of an individual for public purpose without compensating the owner of the property. In support of his submission, he produced the



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judgment in ***Sukh Dutt Ratra and Another v. State of Himachal***

Pradesh and Others reported in **(2022) 7 SCC 508.**

10. In reply, the learned Special Government Pleader appearing for the respondents submitted that the disputed place is being used by the general public for several years, at least from 1996, for taking water during the funeral rites of deceased persons, for preparation of Karagam during temple festival and for other purposes. It is only a small place and it is not in 1st item of the suit properties. Though it is claimed in the plaint that the bore-well was dug in 2007, the suit was filed only in 2011. In the course of evidence, P.W.1 admitted that the bore-well is in existence for more than 10 years. Therefore, it is clear that by giving false details, the suit is filed without any cause of action. The delay would deprive any right available to the plaintiff. The relief of temporary injunction is equitable relief. The disputed property is not used by individuals but by the public in general and therefore, the dismissal of the suit by the Courts below is right and he seeks to dismiss this appeal.

11. The learned Special Government Pleader relied on the judgment in ***Suresh Prakash and others v. Jagdish Raj and others*** reported in ***AIR 1981 Jammu and Kashmir 79***, for the proposition that inordinate delay in instituting the suit will disentitle the plaintiff to seek



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the relief.

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12. He also relied on the judgment in ***National Airport Authority and others vs. Vijaydutt*** reported in ***AIR 1990 Madhya Pradesh 326***, for the proposition that temporary injunction is an equitable one and that should be exercised judiciously.

13. I have considered the rival submissions and perused the records.

14. The suit properties are described as 1st Schedule and 2nd Schedule. The 1st Schedule consists of an extent of 5 acres 56 cents. Out of this 5 acres 56 cents, the suit 2nd Schedule property is only a small portion. Trial Court had dismissed the suit on the ground of non-joinder of proper and necessary parties. Though there is a finding that the bore-well and “Sintex” water tank situates in the plaintiff’s property, this finding is not supported by any acceptable evidence.

15. Though the plaintiff had produced Ex.A1 to A10 documents and defendants produced Exs.B1, B2 documents, from these documents one cannot come to a definite conclusion that the bore-well and “Sintex” water tank are available in 1st Schedule Property. The first defendant in



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the written statement has not admitted that the disputed land is in the plaintiff's property. It is only stated that bore-well and "Sintex" water tank were put up in 1996. In the absence of inspection of the property with the help of Surveyor by a Commissioner, it is difficult to fix whether the 2nd Schedule of the suit property lies within the 1st Schedule of the suit properties.

16. The trial Court had dismissed the suit mainly on the ground of non-joinder of siblings of the plaintiff for the reason that they also have share in the suit property. In the appeal, the learned Appellate Judge found that one co-owner can maintain a suit on behalf of the other co-owners. But, proceeded to dismiss the appeal on the ground that it had to be presumed that the plaintiff had given the disputed land to the welfare of the public. Such presumption is not correct when the plaintiff had stoutly disputed the digging of bore-well and putting up of a "Sintex" water tank, in his land.

17. It is seen that there is some discrepancy with regard to the period during which bore-well was dug and the "Sintex" water tank was put up. Though the plaintiff stated in the plaint that bore-well was dug in 2007 and "Sintex" water tank was put up in 2011, during the course of his evidence, he stated that bore-well is in existence for more than 10



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years. He admitted that karagam is prepared in the disputed land for several years. He also admitted that three family members used to take water in the bore-well. Similarly, it is seen from the judgments of the Courts below that though the first defendant claimed that the bore-well was dug in 1996, this case of the first defendant is not established.

18. Without a concrete evidence as to whether bore-well is in the land of the plaintiff, both the Courts below proceeded to dispose the suit on the premise that bore-well and “Sintex” water tank are in the plaintiff’s land. This itself is not correct. If really the bore-well and “Sintex” water tank are available in the plaintiff’s land, it is no doubt that the Government cannot use the private land without properly compensating the plaintiff. This is what stated in the judgment reported in **(2022) 7 Supreme Court Cases 508(referred to supra)**.

19. One of the issues that came up for determination before the Hon’ble Supreme Court in the case of ***Sukh Dutt Ratra v. State of H.P., (2022) 7 SCC 508*** is, Whether the State on the ground on delay and laches can evade its legal responsibility towards those from whom private property has been expropriated? Answering in negative, the Court held as follows:-

1. The right against deprivation of property unless done in accordance with procedure established by law, continues to be a constitutional right under Article 300-A.



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2. *A high threshold of legality must be met, to dispossess an individual of their property, and even more so when done by the State.*
3. *The State cannot shield itself behind the ground of delay and laches. There cannot be a “limitation” to doing justice.*
4. *If an argument against relief is founded upon mere delay (which otherwise would be just) not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable.*
5. *Two important circumstances, in such cases are, the length of the delay and the nature of the 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 relates to the remedy.*
6. *The State should be gracious enough to accept its mistake and promptly act in just and reasonable manner.*
7. *In the absence of written consent to voluntarily give up land, property owners would be entitled to compensation in terms of law.*



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21. In this view of the matter, this Court is inclined to sets aside the judgment made by the First Appellate Court confirming the judgment of the trial Court to find answer to this vexed question.

22. Accordingly, this second Appeal is allowed and the Judgment and decree dated 23.03.2020 made in A.S.No.58 of 2018 on the file of the Subordinate Court, Srivilliputhur, confirming the judgment and decree, dated 04.09.2018 made in O.S.No.390 of 2011 on the file of the Additional District Munsif Court, Srivilliputhur, is set aside and the matter is remitted back to the First Appellate Court for appointment of an Advocate Commissioner with the help of qualified Surveyor for inspecting the plaintiff's property ie., the 1st Schedule Property to find out whether the 2nd Second Schedule property lies within the 1st Schedule property. If needed to allow additional evidence by the parties and dispose of the case on merits and in accordance with law. No Costs.

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Index:Yes/No

NCC:Yes/No



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To,

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- 4.The District Collector,
Virudhunagar District,
Virudhunagar.
- 5.The Principal Subordinate Judge,
Principal Subordinate Court,
Srivilliputhur.
- 6.The Additional District Munsif Court,
Srivilliputhur.
- 7.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.



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G.CHANDRASEKHARAN, J.

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