

Basawwa and Others Vs. State of Karnataka and Others

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Court : Karnataka Dharwad

Decided On : Jan-08-2015

Judge : Aravind Kumar

Appeal No. : Writ Petition No. 86177 of 2013 [LR]

Appellant : Basawwa and Others

Respondent : State of Karnataka and Others

Advocate for Def. : Mr. Joshi

Judgement :

1. Heard Sri H.M. Dharigond, learned Advocate appearing for petitioners and Sri Ravi V. Hosmani, learned Additional Government Advocate appearing for respondents and perused case papers.

2. Petitioners are questioning the order dated 20-11-1980 passed by the Land Tribunal, Badami Annexure-H whereunder land bearing Sy.No.3/1B measuring 3 acres 17 guntas situated at Sulla Village, Badami Taluk has been granted in favour of third respondent by issuance of occupancy rights in his favour.

3. It is the contention of Sri Dharigond, learned Advocate appearing for petitioners that petitioners are daughters of deceased Sri Nimbanna who was the original owner of the said land and he had acquired said property under partition under partition which incurred in the year 1938 pursuant to which, Revenue records

came to be mutated in the name of deceased Sri Nimbanna. It is contended that third respondent who is also an adopted son of deceased Sri Mahagundappa Kulkarni, another branch of deceased Sri Rudrappa and relative of deceased Sri Numbanna knowing fully well that Sri Nimbanna had expired in the year 1974 itself, had filed Form 7 before Land Tribunal on 30-12-1974 as per Annexure G describing Sri Nimbanna as the owner based on which proceedings have been initiated by Land Tribunal and an order came to be passed against a dead person and as such, order passed by Land Tribunal is a nullity. He would further contend that petitioners have continued to be in possession of said land and only when third respondent caused interference with possession and enjoyment of land in question, petitioners were constrained to file a suit before Civil Court in O.S. No. 45 of 2012 and written statement has been filed by third respondent therein admitting the fact that property in question originally belonging to deceased Sri Nimbanna and as such, order passed by Land Tribunal is liable to be set aside being illegal, erroneous and contrary to facts. He would also contend that when the order passed by the Land Tribunal is against dead person and same being a nullity, it cannot be enforced against petitioners.

4. Per contra, learned Government Advocate would submit that without going into merits of the case, aspect of delay requires to be dealt by this Court since petitioners have approached this Court for exercise of extraordinary jurisdiction under Article 226 of the Constitution of India after a lapse of 33 years and as such, he prays for issue of delay being considered at the first instance and in furtherance of his plea in this regard, he would contend that on account of there being unexplained delay of 33 years in approaching the Court, petitioners would not be entitled for grant of equitable relief and as such, he prays for dismissal of writ petition on the ground of delay and laches.

5. It has been held by Honble Apex Court in the case of *Union of India and Others v M/s. Suksha International and M/s. Nutan Gems and Another* [AIR 1989 SC 690 : 1989 Supp. (1) SCC 422], that when there is plea regarding delay in filing writ petition, High Court shall specifically dealt with it at the first instance. It has been held by Honble Apex Court as under:

11. Sri Subba Rao would say that the reference in the order by learned Single Judge to the contention on the point of delay as bar to relief had nothing to do with the specific contention of the appellants that there was inordinate and unexplained delay in approaching the Court. This, learned Counsel submits, would be clear, by a reference to the aspect of the delay dealt with and considered in W.P.No. 2477 of 1984, on which the learned Single Judge relied. The order of the same learned Single Judge in W.P.No. 2477 of 1984, in which the particular aspect of delay is considered is at para 8 of that order. That para in the order in W.P.No. 2477 of 1984 reads:

Mr. Joshi, learned Counsel for the respondents, submitted that the petitioners were not entitled to relief because of delay. It is not possible to agree. After the redemption certificate of 16th November, 1983, application for revalidation and OGL endorsement was made within four months therefrom on 12th March, 1984. There is, in the circumstances, no such delay as to warrant its ejection on that ground. The contention thus fails and is rejected.

Sri Subba Rao submits that the delay referred to in the above paragraph is the delay in seeking revalidation and endorsement after the issue of redemption certificate and not the delay in filing the writ petition and that in both the present cases the plea of delay in filing the writ petitions has not received due consideration by the High Court. Sri Subba Rao referred to a number of pronouncements of this Court, to substantiate that such unexplained delay particularly in matters dealing with import licences would bar relief and that unexplained delay, by itself and without more, is a factor disentitling a person to relief. He submitted that absence of prejudice to the opposite party, by itself, would not justify delay and that in the context of grant of import licences passage of time brings with it, as here, problems of conflicting policy considerations. Where changes of policy would impart crucial significance to the delays, Courts, learned Counsel says, should insist upon even a higher degree of promptitude. He, accordingly, submitted that the writ petitions should be dismissed on the ground alone of delay in filing them.

This contention of the appellant cannot be brushed aside. If appellants had raised a specific plea of delay as a bar to the grant of relief and the delays in the present cases, having regard to the nature of the subject-matter, were not inconsiderable it was perhaps necessary for the High Court to have specifically dealt with the plea. The aspect of delay adverted to by the learned Single Judge in the course of the order was a different one.

However, we think it would be somewhat unfair for the respondents, who have succeeded in the High Court, to decide this question without an opportunity to them to satisfy the Court as to the reasons, if any, for the delay and as to the sufficiency of such reasons. We assume that the plea had taken before the High Court by the appellants as this submission of the learned Counsel for the appellant was not controverted. We think it would be appropriate that the appellants appeals before the High Court are remitted to the High Court for such consideration as the Appellate Bench may now bestow on this contention of the appellants. If the Appellate Bench is persuaded to view that the delay is satisfactorily explained as it may proceed to confirm the orders of the learned Single Judge, subject, of course, to the question of permissibility of the importable items to be determined in the light of the pronouncements of this Court referred to at contention(c). If, on the contrary, the delay is held by the Division Bench to be such as to disentitled respondents to relief, the Division Bench may proceed to allow the appeals and dismiss the writ petitions. All other controversies in the appeal shall be held to have been concluded in favour of the respondents.

6. In the instant case, petitioners have attempted to explain the cause for delay by contending that they came to know about the order of Land Tribunal only when third respondent filed his written statement in the suit filed by petitioners in O.S.No.45 of 2012 and said written statement had been filed in the year 2013 i.e., on 17-6-2013 and immediately thereafter, i.e., on 21-12-2013 they have filed the present writ petition and as such there is no delay. Their specific plea with regard to delay is explained in the writ petition as under:

9. It is submitted that the petitioners have come to know about the Land Tribunal order only when the 3rd respondent filed his written statement before the Trial

Court on 17-6-2013 and on the basis of the Land Tribunal order the Trial Court has dismissed the suit on 26-10-2013. After disposal of the suit petitioners immediately have obtained certified copies of the relevant documents have now approached this Honble Court by way of this petition. Therefore, some delay is occurred in filing this writ petition. The delay caused in filing this writ petition is not intentional and deliberate and hence delay deserves to be condoned.

7. There is no dispute to the fact that in application Form 7 filed by third respondent before Land Tribunal as per Annexure-G, name of owner of land in question has been indicated as Sri Nimbanna Ningappa Kulkarni i.e., father of petitioners. Said application was filed not only in respect of land in question i.e., Sy. No. 3/1B but in respect of other lands also. Land Tribunal is stated to have issued notices and order of Land Tribunal dated 20-11-1980 would indicate that Tribunal has taken note of the fact that said Sri Nimbanna Ningappa Kulkarni i.e., father of petitioners had expired and as such his wife Smt. Sangavva W/o. Sri Nimbanna Ningappa Kulkarni has been arrayed as party. In fact, order of Land Tribunal dated 20-11-1980 would also indicate that adopted son of Sri Nimbanna Kulkarni and Smt. Sangavva namely, Sri Shankarappa has also appeared before the Land Tribunal. Order of Land Tribunal would also indicate that public notice has also been issued. None of the petitioners have disputed this fact in the writ petition. In fact, mother of petitioners-Smt. Sangavva has admitted before Land Tribunal that third respondent herein namely, Sri Shankarappa has been cultivating the land in question and she has also stated her no objection for occupancy rights being granted in favour of third respondent herein. Petitioners herein are undisputedly daughters of Sri Nimbanna and Smt. Sangavva and they are aged between 63 years to 55 years and addresses given in the cause title would clearly indicate that they are not residents of Sulla Village where suit property is situated.

8. Be that as it may. Revenue Authorities based on the order passed by the Land Tribunal granting occupancy rights in favour of third respondent have mutated Revenue records way back in the year 1981 itself as per Annexure-D. In the light of Revenue records having been mutated in the name of third respondent and his name finding a place in revenue records, a presumption arises that he is in

possession and enjoyment of land in question and as such, petitioners claim to be in possession of the land namely, Sy. No. 3/1B cannot be accepted. Further petitioners have not objected or pursued their grievance with regard to said mutation entries and this would only indicate that they have waived their rights if any over the land in question or in other words, they have slept over their rights from 1981 onwards. Now only on the basis of written statement filed by third respondent in the suit filed by petitioners in O.S. No. 45 of 2012, they seem to have woken up from their slumber and have attempted to revive a dead cause of action after a gap of 33 years by attempting to challenge the order passed by Land Tribunal on 20-11-1980 vide Annexure H.

9. The question of condonation of delay is one of discretion and is to be exercised in the facts and circumstances of each case. It will depend upon the facts pleaded in a given case. It is no doubt true that there is no limitation prescribed for the Courts to exercise the power under Article 226 of the Constitution of India. It is also not in dispute that there can never be a case where the Courts cannot interfere in a matter after the passage of certain length of time. There may be cases where compelling facts would indicate that demand for justice is so compelling that this Court would be inclined to interfere despite such delay. Thus, it would ultimately be the discretion of the Court which will have to be exercised fairly and justly so as to promote justice and not to defeat it. There cannot be any hard and fast rule insofar as either condonation of delay or refusal to condone the delay. Merely because, no third party rights have been created is hardly a ground for condonation of delay. This discretionary power under Article 226 of the Constitution of India would be exercised to grant relief only to a person whose conduct does not disentitle him to obtain such discretionary relief and from their conduct, it becomes explicit that for such relief parties would not be entitled to, then condonation of delay would not be called for and this Court while exercising the power under Article 226 would be slow in condoning such delay. Lapse of time and delay are important factors which require to be considered while exercising the power under Article 226 and such defence must be examined by taking into consideration the length of delay and the nature of the acts done during this interregnum period namely during such intervals and cause for such delay. The Honble Apex Court in the following case has considered the delay aspect in

various perspective and held that while exercising the power under Article 226 of the Constitution of India, if delay is raised as a defence and if it is found on facts and circumstances of each case, then such delay is not to be condoned or the defence of delay is to be accepted. It has been held in the following cases that relief under Article 226 should be refused:

(i) *Aflatoon and Others v Lt. Governor of Delhi and Others* [AIR 1974 SC 2077 : (1975) 4 SCC 285]:

11. Nor do we think that the petitioners in the writ petitions should be allowed to raise this plea in view of their conduct in not challenging the validity of the notification even after the publication of the declaration under Section 6 of the 1966. Of the two writ petitions, one is filed by one of the appellants. There was apparently no reason why the writ petitioners should have waited till 1972 to come to this Court for challenging the validity of the notification issued in 1959 on the ground that the particulars of the public purpose were not specified. A valid notification under Section 4 is a sine qua non for initiation of proceedings for acquisition of property. To have sat on the fence and allowed the Government to complete the acquisition proceedings on the basis that the notification under Section 4 and the declaration under Section 6 were valid and then to attack the notification on grounds which were available to them at the time when the notification was published would be putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners (see *Tilokchand Motichand and Others v. H.B.Munshi and Another*, AIR 1970 SC 898 and *Rabindranath Bose and Others v Union of India and Others*, AIR 1970 SC 470).

12. From the counter affidavit filed on behalf of the Government, it is clear that the Government have allotted a large portion of the land after the acquisition proceedings were finalised to Co-operative Housing Societies. To quash the notification at this stage would disturb the rights of third parties who are not before the Court.

(emphasis supplied)

(ii) *Swaiika Properties Private Limited and Another v State of Rajasthan and Others* [AIR 2008 SC 1494 : 2008 AIR SCW 1574: (2008) 4 SCC 695]:

15. Insofar as the contention regarding the possession having not been taken is concerned, the respondents submit that the possession of the land in dispute has already been taken. Be that as it may, the award in respect of the land having become final, the State Government is vested with the powers to take possession of the land concerned and, therefore, there is no reason to disbelieve the claim of the State Government that the possession had been taken before the filing of the writ petitioner. Moreover, the appellants sought enhancement of compensation by filing reference application under Section 18 of the Land Acquisition Act, 1894. Simultaneously, the appellants filed writ petition before the High Court of Rajasthan after passing of the award.

16. This Court has repeatedly held that a writ petition challenging the notification for acquisition of land, if filed after the possession having been taken, is not maintainable. *In Municipal Corporation of Greater Bombay v Industrial Development Investment Company Private Limited*, AIR 1997 SC 482, where K. Ramaswamy, J. speaking for a Bench consisting of his Lordship and S.B. Majmudar, J. held (SCC p. 520, para 29):

29. It is thus well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification under Section 4(1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches.

In the concurring judgment, S.B. Majmudar, J., held as under (Industrial Development Investments case, SCC pp. 522-523, para 35):

35. Such a belated writ petition, therefore, was rightly rejected by the learned Single Judge on the ground of gross delay and laches. The respondent-writ petitioners can be said to have waived their objections to the acquisition on the ground of extinction of public purpose by their own inaction, lethargy and indolent conduct. The Division Bench of the High Court had taken the view that because of their inaction no vested rights of third parties are created. That finding is obviously incorrect for the simple reason that because of the indolent conduct of the writ petitioners land got acquired, award was passed, compensation was handed over to various claimants including the landlord. Reference applications came to be filed for larger compensation by claimants including writ petitioners themselves. The acquired land got vested in the State Government and the Municipal Corporation free from all encumbrances as enjoined by Section 16 of the Land Acquisition Act. Thus, right to get more compensation got vested in diverse claimants by passing of the award, as well as vested right was created in favour of the Bombay Municipal Corporation by virtue of the vesting of the land in the State Government for being handed over to the Corporation. All these events could not be wished away by observing that no third party rights were created by them. The writ petition came to be filed after all these events had taken place. Such a writ petition was clearly stillborn due to gross delay and laches.....

17. Similarly, in the case of the *State of Rajasthan and Others v D. R. Laxmi*, (1996) 6 SCC 445, following the decision of this Court in Municipal Corporation of Greater Bombay case, it was held (D.R. Laxmis case, SCC p. 452, para 9):

9.When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case, is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches.....

18. To the similar effect is the judgment of this Court in the case of *Municipal Council, Ahmednagar v Shah Hyder Beig and Others*, (2000) 2 SCC 48, this Court, following the decision of this Court in the case of *C. Padma v Deputy Secretary to the Government of Tamil Nadu*, (1997) 2 SCC 627, held (Shah Hyders case, SCC p. 55, para 17):

17. In any event, after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder. This has been the consistent view taken by this Court and in one of the recent case (*C. Padma v Deputy Secretary to the Government of Tamil Nadu*).

(emphasis supplied)

10. In the light of judgment rendered by Honble Apex Court which is t the effect that inordinate and unexplained delay disentitles a party to seek relief under Article 226 of the Constitution of India, this Court is of the considered view that in the instant case, the delay of 33 years having not been explained by petitioners or in other words, cause shown cannot be construed as one to be accepted as sufficient cause, inordinate delay of 33 years in approaching the Court disentitles the petitioners to claim any relief. It is also to be noticed that petitioners mother and her adopted son had appeared before the Land Tribunal and they had submitted their no objection for granting occupancy rights in favour of third respondent herein and as such, petitioners cannot be heard to contend that order of the Land Tribunal is passed against a dead person. Yet another factor which cannot go unnoticed is the fact that mutation entry in respect of land in question had taken place way back in the year 1981 itself and same was made over to the name of third respondent herein and petitioners having not raised objection and having kept quite all these years cannot be permitted to contend that order passed by Land Tribunal 33 years back is erroneous. In that view of the matter, petitioners would be disentitled for any relief and their petition is liable to be dismissed on the ground of delay and latches.

11. For these myriad reasons, I do not find any merit in this writ petition and accordingly it stands dismissed.