

Vishnu vs State of Kerala

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Court : Kerala

Decided On : Mar-01-2023

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : WP(C)/23871/2022

Appellant : Vishnu

Respondent : State of Kerala

Judgement :

W.P.(C) No. 23871/2022 :1:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SHAJI P.CHALY
WEDNESDAY, THE 1ST DAY OF MARCH 2023 / 10TH PHALGUNA,
1944 WP(C) NO. 23871 OF 2022 PETITIONER/S: 1 VISHNU AGED 44
YEARS S/O.K.REGHUNATHAN, LEYAM, TC 14/1502, ARAPPURA
LANE, KANNAMOOLA, MEDICAL COLLEGE P.O.,
THIRUVANANTHAPURAM- 695 001. 2 KIRAN, AGED 50 YEARS
S/O.K.REGHUNATHAN, LEYAM, TC 14/1502, ARAPPURA LANE,
KANNAMOOLA, MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM-
695 001. BY ADVS. T.RAJASEKHARAN NAIR AJITH KRISHNAN

RESPONDENT/S: 1 STATE OF KERALA REP. BY ITS CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM-695 001. 2 SUPERINTENDING ENGINEER, IRRIGATION DEPARTMENT, SOUTH CIRCLE, THIRUVANANTHAPURAM -695 001. 3 THE EXECUTIVE ENGINEER, IRRIGATION DIVISION, THIRUVANANTHAPURAM- 695 001. SMT. DEPA NARAYANAN, SENIOR GOVERNMENT PLEADER THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22.02.2023, THE COURT ON 01.03.2023 DELIVERED THE FOLLOWING: W.P.(C) No. 23871/2022 :2: C.R

SHAJI P. CHALY, J.

----- W.P.(C). No. 23871 of 2022
----- Dated this the 1st day of
March, 2023.

JUDGMENT

The writ petition is filed seeking a direction to the respondents to disburse an amount of Rs.7,50,758/- to the petitioners in connection with the contract work carried out by their father; and for a further writ of mandamus commanding the respondents to pay 12% of interest on the amount due to the petitioners from the date of submission of the bill to the date of payment.

2. Brief material facts for the disposal of the writ petition are as follows: The petitioners' father was a PWD Contractor. The

respondents awarded the work of construction of a protection wall on the bank of Karamana river to one PWD contractor K. Muraleedharan. But, the said contractor could not execute the work and thereupon, he executed a power of attorney assigning the work in the name of the petitioners father and accordingly with the permission of the Superintending Engineer, Irrigation Department,

Thiruvananthapuram-respondent

No.2, an agreem

original contractor Sri. K. Muraleedharan was imposed with a liability by the respondents in some other contract. The Government attempted to recover the liability of K. Muraleedharan from the bill amount of the petitioners father, consequent to which their father filed O.S. No. 1749 of 2003 before the Munsiffs Court, seeking a permanent prohibitory injunction restraining the respondents from withholding or adjusting any amount due to the petitioners father from the contract in question towards the liability of Sri. K. Muraleedharan.

3. The said suit was dismissed; however, the appeal, A.S. No. 383 of 2005 filed before the Court of IInd Additional District Judge, Thiruvananthapuram was decreed as per Exhibit P1

judgment dated 03.01.2009. In the meanwhile, petitioners father

submitted 3 bills during the course of work and the second bill amounting to Rs.11,99,333/- was withheld on the ground that Sri. K. Muraleedharan was liable to pay amounts to the Government in some other contract. The liability of Sri. K. Muraleedharan was later re-fixed at Rs.7,50,758/- and the respondents released only Rs.4,48,475/- to the petitioners father, as per the cheque bearing No.108257 dated 24.04.2009.

4. The further case of the petitioners is that even though a second Appeal, RSA No. 214 of 2011 was filed by the Government, W.P.(C) No. 23871/2022 :4: it was dismissed by this Court. Thereafter, the father of the petitioners died, and consequently the amount became due to the

petitioners being successors in interest. Therefore, the sum and substance of the contention is that the petitioners are entitled to get the balance amount of Rs.7,50,758/- from the respondents.

5. A detailed counter affidavit is filed by the second

respondent virtually admitting the facts and figures and the order of prohibitory injunction passed by the Additional District Court, Thiruvananthapuram restraining the respondents from realising the amounts from the bill submitted by the petitioners father towards the liability of Sri. K. Muraleedharan, previous

contractor. However, it is submitted that the claim raised by the petitioner is barred by law of limitation.

6. I have heard Sri. T. Rajasekharan Nair for the petitioners and the learned Senior Government Pleader Smt. Deepa Narayanan, and perused the pleadings and material on record.

7. The short question that emerges for consideration is

whether the State Government is entitled to invoke the ground of limitation against the dues remaining to be paid to a contractor. It is true, insofar as a money claim is concerned, only a period of 3 years is available for the recovery of the amounts for a private person. However, the State Government has got a period of 30

W.P.(C) No. 23871/2022 :5: years, by virtue of Article 112 of the Limitation Act, 1963 to recover any amounts, when the period of limitation would begin to run under the Act against a like suit by a private person.

8. In my considered opinion, the original contract carried out by Sri. K. Muraleedharan was assigned in favour of the petitioners father by executing a fresh agreement by and between the

Superintending Engineer and the said person. Therefore, it is as much as a fresh contract; however, the Government attempted to realise the dues of Sri. K. Muraleedharan against some other contract from the bills presented by the petitioners father.

9. It was on account of the same that the petitioners father

had instituted the suit and the appeal proceedings. It is quite clear and evident from Exhibits P1 and P2 that in the appeal, a permanent prohibitory injunction was granted restraining the respondents herein from adjusting or deducting any amount due from Sri. K. Muraleedharan, who was the 4th defendant in the suit, from the amount due to the petitioners father on account of the contract executed by and between the parties.

10. The question with respect to the period of limitation available to the Government was considered by the Apex Court in

Dilbagh Rai Jarry v. Union of India [(1974) 3 SCC 554] and held

that the State is the largest litigant to-day and the huge W.P.(C) No. 23871/2022 :6: expenditure involved makes a big draft on the public exchequer. In

the context of expanding dimensions of State activity and responsibility, is it unfair to expect finer sense and sensibility in its litigation policy, the absence of which, in the present case, has led the Railway callously and cantankerously to resist an action by its own employee, a small man, by urging a mere technical plea which has been pursued right up to the summit Court here and has been negated in the judgment just pronounced.

11. It was further held therein that it is not right for a welfare

State like ours to be Janus-faced and while formulating the humanist project of legal aid to the poor, contest the claims of poor employees under it pleading limitation and the like.

12. This Court had occasion to consider the said issue in P.P. Abubacker v. Union of India [AIR 1972 Ker 103] and held as follows:

5. The State, under our Constitution, undertakes economic

activities in a vast and widening public sector and inevitably gets involved in disputes with private individuals. But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook; for, the State's interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. The State is a virtuous litigant and looks with

W.P.(C) No. 23871/2022 :7:

unconcern on immoral forensic successes so that if on the merits the case is weak, government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move private parties to fight in court. The lay-out on litigation costs and executive time by the State and its agencies is so staggering these days because of the large amount of litigation in which it is involved that a positive and wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic show- downs where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms, giving the legal mentors of government some initiative and authority in this behalf. ...

13. In *Madras Port Trust v. Hymanshu International* [(1979) 4 SCC 176], it was held as follows at paragraphs 2 and 3 thus:

2. We do not think that this is a fit case where we should proceed to determine whether the claim of the respondent was barred by Section 110 of the Madras Port Trust Act (II of 1905). The plea of limitation based on this section is one which the court always looks upon with disfavour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well-founded, it has to be upheld by the court,

W.P.(C) No. 23871/2022 :8:

but what we feel is that such a plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well-founded and by reason of delay in filing it, the evidence for the purpose

of resisting such a claim has become unavailable. Here, it is obvious that the claim of the respondent was a just claim supported as it was by the recommendation of the Assistant Collector of Customs and hence in the exercise of our discretion under Article 136 of the Constitution, we do not see any reason why we should proceed to hear this appeal and adjudicate upon the plea of the appellant based on Section 110 of the Madras Port Trust Act (II of 1905).

3. We accordingly revoke the special leave granted to the appellant, and direct that the appellant do pay the cost of the respondents.

14. In *Sukh Dutt Ratra v. State of H.P.*, [(2022) 7 SCC

508], the Apex Court had considered the question of the claim raised by owners of land acquired by the Government in 1972- 1973; but no compensation paid, and framed a question, can the State, merely on the ground of delay and laches, evade its legal responsibility towards those from whom private property has been expropriated?, and it was held that in the facts and circumstances,

the stand adopted by the Government is unacceptable. It was further held that the State cannot shield itself behind the ground of delay and laches in such a situation; there cannot be any limitation to doing justice.

15. In *Tukaram Kana Joshi v. MIDC*, [(2013) 1 SCC 353], W.P.(C) No. 23871/2022 :9: the delay in the payment of the land acquisition compensation and the consequential limitation was considered by the Apex Court and

held as follows at paragraph 11 thus:

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. The 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

W.P.(C) No. 23871/2022 : 10 : noted that the authorities have treated the landowner as a subject of medieval India, but not as a citizen under our Constitution.

16. In *Vidya Devi v. State of H.P.*, [(2020) 2 SCC 569], it was held as follows at paragraph 12.12 thus:

12.12. The contention advanced by the State of delay and laches of the appellant in moving the Court is also liable to be rejected. Delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Condonation of delay is a matter of judicial discretion,

which must be exercised judiciously and reasonably in the facts

and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice. It was further held therein that in a case where the demand for justice is so compelling, a constitutional court would exercise its jurisdiction with a view to promote justice, and not defeat it.

17. The principles of law evolved by the Apex Court and this

Court would make it clear that the State Government, in the guise of the period of limitation, cannot evade its responsibility to pay the amount due to the petitioners father, who undertook the contract work when the previous contractor Sri. K. Muraleedharan failed to carry out the contract. Moreover, when a civil court passed an W.P.(C) No. 23871/2022 : 11 :

order of prohibitory injunction restraining the State and its officials

by permanent prohibitory injunction from adjusting the amount due to the petitioners father, there was an onerous responsibility to the State to pay the amount to the petitioners.

18. Above all, in a welfare State, the State has the duty and

obligation to protect the interests of its citizens, rather than finding ways and means to defeat their interests and means of livelihood. The scheme of part III of the Constitution of India dealing with fundamental rights speaks eloquently of the responsibilities of the State to safeguard the well-being and prosperity of the citizens without fail. Therefore, when a citizen was engaged by the Government to carry out one of its activities, it had every duty to reward the person as agreed upon in the contract, even without asking for it.

19. Thinking so, especially bearing in mind the constitutional

obligation of the State, in my considered opinion, it becomes a continuing cause of action, till the liability is discharged by the State. This I say also for the reason that

a citizen of India is duty bound to discharge any obligation towards the State for a period of thirty years; which also could be seen only as a principle evolved on the theory of a welfare State obligating citizens to discharge their liabilities and responsibilities for the welfare of the State as

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20. Moreover, Article 300A of the Constitution of India makes

it clear that no person shall be deprived of his property save by authority of law. Therefore, when the contract work was executed to the satisfaction of the respondents, the money became due to the petitioners father; and therefore the said amount cannot be adjusted against the dues from the previous contractor Sri. K. Muraleedharan in some other works by exercising the power of

eminent domain vested with the Government, which when done can only be viewed as an arbitrary and illegal action. Considering the facts and circumstances and the law discussed above, I have no hesitation to hold that the petitioners

are entitled to succeed in the writ petition. Therefore, the writ petition is allowed and the respondents are directed to pay the balance amount due to the petitioners as specified above at the earliest and at any rate within six weeks from the date of receipt of a copy of this judgment, failing which the respondents shall pay interest at the rate of 9% to the petitioners.

sd/- SHAJI P. CHALY, JUDGE. Rv W.P.(C) No. 23871/2022 : 13 : APPENDIX OF WP(C) 23871/2022 PETITIONERS EXHIBITS: Exhibit P1 A TRUE COPY OF THE JUDGMENT DATED 03.01.2009 IN A.S.383/2005 PASSED BY THE ADDL. DISTRICT JUDGE, THIRUVANANTHAPURAM. Exhibit P2 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER'S FATHER BEFORE THE 2ND RESPONDENT 21.3.2009. Exhibit P3 A TRUE COPY OF THE LAWYERS NOTICE ISSUED BY THE PETITIONER'S FATHER DATED 22.03.2009. Exhibit P4 A TRUE PHOTOCOPY OF THE JUDGMENT DATED 30.6.2022 IN RSA NO.214/2011 PASSED BY THIS COURT. RESPONDENTS

EXHIBITS: NIL True Copy PS To Judge. rv

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