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Court : Andhra Pradesh

Decided On : Apr-23-2002

Reported in : 2002(3)ALD578; 2002(4)ALT93

Judge : Ar. Lakshmanan, C.J. and ;Tamada Gopala Krishna, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : WA No. 222 of 2002

Appellant : Chittipolu Kishan and ors.

Respondent : Govt. of A.P. and ors.

Advocate for Def. : Government Pleader for Irrigation and ;Government Pleader for L.A.

Advocate for Pet/Ap. : S. Lakshma Reddy, Adv.

Disposition : Appeal dismissed

Judgement :

Gopalakrishna Tamada, J.

1. In this appeal under Clause 15 of the Letters Patent, the appellants assail the judgment of learned single Judge dated 18-10-2001 in Writ Petition No.28338 of 1996 by which the same is dismissed.

2. The factual matrix according to the affidavit filed in support of the writ petition by the appellants herein who are the writ petitioners is that they are the absolute owners of the agricultural patta lands situated in Survey Nos. 135, 137, 151, 267, 269, 276, 277, 278, 279, 281 and 284 of Chintapally village, Miryalaguda Mandal, Nalgonda District and that they are in possession of the same and they are cultivated under the Nagarjuna Sagar Project. It is their further contention that they are small farmers too. While so, it is alleged that with a view to supply water to the tail end agricultural lands of Kistapuram village of Miryalaguda Mandal, the respondents raised the bunds of the Chintapalli village tank, maintaining water through out the year. So as to store maximum water and supply the same through core channel to the tail end lands, the weir of Chintapally tank was repaired and the height of the weir was raised. Consequently, the lands of the appellants in the aforementioned survey numbers are coming under submergence since the year 1985 onwards. In view of the storage of water, the appellants could not cultivate the above-said lands and thereby sustained losses. Though the appellants made several representations to the authorities seeking compensation in respect of their submerged lands, no action was taken by the respondents. One such representation was given in October, 1994. Thereafter, the appellants also got issued legal notices to the respondents on 28-4-1995 and 4-2-1996. But except giving oral assurances to the appellants that they would be paid compensation after receiving approval from the authorities, no positive action was initiated by the respondents in this regard. Hence, the writ petition is filed seeking a direction to the respondents to pay compensation under the provisions of Land Acquisition Act in respect of their submerged agricultural lands under Chintapally tank, Miryalaguda Mandal, Nalgonda District by declaring the action of the respondents in not taking any steps for acquisition of the appellants' lands under the Land Acquisition Act and not paying them compensation as illegal, arbitrary and violative of Articles 14, 21 and 300-A of the [Constitution of India](#).

3. On behalf of the respondents, respondents 3 and 4 filed separate counters. In the counter-affidavit filed by the 3rd respondent, who is the Executive Engineer, Irrigation Branch Division, Nalgonda, it is stated that Chowtacheruvu tank of Chintapally village is an ancient tank. The lands of the appellants were coming under submergence even prior to the year 1968 when the Nagarjuna Sagar

Project Canals started functioning. Neither the height of the tank bund nor the height of the surplus weir was ever raised by the Irrigation Department. The Full tank level was also never altered. It is contended that when the full tank level of the tank was never increased nor was the height of the bund or even the surplus weir raised, no additional lands can come under submergence now. It is, therefore, contended that the claim of the appellants that their lands came under submergence for the first time in the year 1985 is false. It is specifically stated that in the year 1985, only the breached tank was restored but the original standards of the tank were not altered. It is submitted that the lands of the appellants are tank bed lands and have already been coming under submergence under the Choutacheruvu tank since times immemorial. It is, therefore, contended that there are no bona fides in the claim made by the appellants.

4. The 4th respondent, who is the District Collector, Nalgonda, in his counter stated that the lands in Survey Nos.284 and 269 of Chintapally Revenue village are Government lands and the appellants are not at all concerned with these lands. It is further submitted that the lands mentioned by the appellants being the foreshore lands of Choutacheruvu tank are subject to natural submergence whenever the tank is filled up to the full tank level. Whenever the level recedes, the lands are available for cultivation i.e., for Rabi crop. The Nagarjunasagar canal was commanded in Miryalaguda Mandal during the year 1965-66.

The Choutacheruvu tank of Chintapally village receives regenerated Nagarjuna Sagar Project water. The tank is in existence since times immemorial and it has been under the maintenance of the Irrigation Department. The bund or weir of the tank was never raised from its original position. Therefore, it is stated that the allegation that the bund and the weir of the tank are raised is incorrect. There was no new submergence caused as the tank weir or bund was never modified. It is lastly contended that the plea of the appellants, who remained silent all these years, also suffers from laches.

5. Having heard both the parties and also after perusing the affidavit filed in support of the writ petition and the counter-affidavits filed by the respondents 3 and 4, the learned single Judge dismissed the writ petition on two grounds viz., (i)

laches and (ii) there is a dispute with regard to the ownership of the lands in question, which cannot be decided in a writ petition filed under Article 226 of the Constitution.

6. In this appeal, the learned Counsel for the appellants Sri S. Laxma Reddy strenuously contended that according to the counter-affidavit filed by the 4th respondent, Survey Nos.284 and 269 of Chintapally Revenue village are Government lands whereas nothing is stated in respect of the other survey numbers and as such the learned single Judge ought not have held that there is a dispute with regard to the title of the lands. In view of the fact that the appellants' contention is not controverted, it is contended that the learned single Judge ought to have accepted the case of the appellants that they are the absolute owners of the lands in question and ought to have given a direction to initiate Land Acquisition proceedings. So far as the finding that there are laches on the part of the appellants is concerned, the learned Counsel submitted that the lands are undersubmergence since 1985 and as such the appellants could not proceed with the agricultural operations and gave number of representations, for which the officials have orally responded stating that the appellants would be paid compensation. In the light of the above, according to him, the learned single Judge ought not have held that there are laches on the part of the appellants and, therefore, prayed this Court to allow the writ appeal.

7. On the other hand, the learned Government Pleader for Irrigation reiterated the contentions raised in the counter-affidavits and stated that the learned single Judge has discussed everything in detail while dismissing the writ petition and as such no interference is required in this writ appeal.

8. In the light of the said submissions made by both the Counsel, the points that emerge for consideration in this writ appeal are : (1) Whether the appellants are the absolute owners of the lands in question and (2) Whether there are bona fides in the conduct of the appellants in approaching this Court and filing the writ petition in the year 1996 ?

9. According to the appellants, they are the absolute owners of the lands in Survey Nos. 135, 137, 151, 267, 269, 276, 277, 278, 279, 281 and 284 of Chintapally

village, Miryalaguda Mandal, Nalgonda District, and those lands are under their cultivation without any interruption. While so, the counter-affidavit filed by respondent No.4 is to the effect that the Government is the owner of the lands in Survey Nos.284 and 269 of Chintapally Revenue village but it is silent with regard to the other survey numbers. In view of this, if at all there is any dispute, the dispute is only with regard to Survey Nos.284 and 269 and as such, the learned single Judge ought not have held that there is a dispute with regard to the ownership of the entire land in question and that the same cannot be gone into sitting under Article 226 of the Constitution. The learned single Judge ought to have rejected the claim of the appellants in respect of these two survey numbers and given a direction in respect of the other survey numbers, as there is no dispute about the title and possession in respect of other survey numbers. In the light of the above discussion, we find force in the contention of the learned Counsel for the appellants and accordingly we uphold the said contention.

10. The next point that arises for consideration is whether there are laches on the part of the appellants or not. It is stated by the appellants that the tank bund was raised so as to assure water supply to the tail end agricultural lands of Kistapuram village of Miryalaguda Mandal and the full tank capacity was enhanced and maintained through out the year and as a result of which their lands are under submergence since 1985. But, according to the counter-affidavits filed by the respondents 3 and 4, since the functioning of Nagarjunasagar Project canal in the year 1968, the lands in question are tank bed lands and they are in submergence. Further, it is stated in the counter-affidavits that none of the lands in Kistapuram are fed by the water from Chowtacheruvu tank as there is no ayacut in Kistapuram village and only the regenerated surplus water reaches Kistapuram. It is also stated that Chowtacheruvu tank is in existence since times immemorial and the bund or weir was never raised from its original position.

11. In view of the specific assertion made in the counter-affidavits by respondents 3 and 4 that the lands in question are in submergence since times immemorial i.e., even prior to the commissioning of Nagarjuna Sagar Project canal in 1968 and the lands in question are not in submergence for the first time in the year 1985, the contention of the appellants that for the first time their lands came into

submergence only in the year 1985 because of the rise of the bund or that they were unable to carry on the agricultural operations, cannot be countenanced. Further, it is stated in the counter-affidavits that the tank bund was never raised in the year 1985 but was only repaired. When it is the specific case of the respondents that the lands in question are under submergence right from the year 1968, it is not known as to what the appellants were doing all these years i.e., from the year 1968 onwards. Even if it is accepted that the lands are in submergence since 1985 as alleged by the appellants in their affidavit, it is not known as to what the appellants were doing since 1985. Even according to the appellants, they gave a representation for the first time only in the year 1995 followed by two legal notices, i.e., just prior to the filing of the writ petition. From the above, it is clear that the appellants were not diligent in the matter during the period from 1985 to 1995, which, in our considered view, comes within the meaning of doctrine of laches. It is well settled that where the petitioner is guilty of laches or undue delay in approaching the Court and where no satisfactory explanation is forthcoming for such delay, the High Court may refuse to exercise its extraordinary writ jurisdiction under Article 226 of the Constitution. In *State of Maharashtra v. Digambar*, : AIR 1995 SC1991, the Supreme Court in identical circumstances has held :

"How a person who alleges against the State of deprivation of his a legal right, can get relief of compensation, from the State by invoking writ jurisdiction of the High Court under Article 226 of the Constitution even though he is guilty of laches or undue delay is difficult to comprehend, when it is well settled by decisions of this Court that no person, be he a citizen or otherwise, is entitled to obtain the equitable relief under Article 226 of the Constitution if his conduct is blameworthy because of laches, undue delay, acquiescence, waiver and the like. Moreover, how a citizen claiming discretionary relief under Article 226 of the Constitution against a State, could be relieved of his obligation to establish his unblameworthy conduct for getting such relief, where the State against which relief is sought is a Welfare State, is also difficult to comprehend."

'Therefore, where a High Court in exercise of its power vested under Article 226 of the Constitution issues a direction, order or writ for granting relief to a person including a citizen without considering his disentitlement for such relief due to his

blameworthy conduct of undue delay or laches in claiming the same, such a direction, order or writ becomes unsustainable as that not made judiciously and reasonably in exercise of its sound judicial discretion, but as that made arbitrarily.'

'In our view, the above allegation is in no way sufficient to hold that the writ petitioner (respondent here) has explained properly and satisfactorily the undue delay of 20 years which had occurred between the alleged taking of possession of his land and the date of filing of writ petition in the High Court. We cannot overlook the fact that it is easy to make such kind of allegations against anybody that too against the State. When such general allegation is made against a State in relation, to an event said to have occurred 20 years earlier, and the State's non-compliance with petitioner's demands, the State may not at all be in a position to dispute such allegation, having regard to the manner in which it is required to carry on its Governmental functions.'

'Thus, when the writ petitioner (respondent here) was guilty of laches or undue delay in approaching the High Court, the principle of laches or undue delay adverted to above, disentitled the writ petitioner (respondent here) for discretionary relief under Article 226 of the Constitution from Ilie High Court, particularly, when virtually no attempt had been made by the writ petitioner to explain his blameworthy conduct of undue delay or laches. The High Court, therefore, was wholly wrong in granting relief in relation to inquiring into the allegation and granting compensation for his land alleged to have been used for scarcity relief road works in the year 1971-72.' (emphasis ours)

12. In the light of the above legal position coupled with the conduct of the appellants in pursuing the matter, we are of the considered view that the attempt made by the appellants at this point of time i.e., after a lapse of about 35 years (from 1968) is a belated one. The appellants have not taken any prompt steps at the earliest point of time in bringing their grievances to the notice of the authorities thereby prompting them to initiate land acquisition proceedings without much loss of time. Therefore, we have no hesitation to hold that the appellants were not diligent enough in pursuing the matter either with the authorities or in approaching this Court. For the foregoing discussion, we are of the opinion that the finding of

the learned single Judge on the point of 'laches' cannot be interfered with by this Court. This writ appeal is, therefore, liable to be dismissed.

13. In the result, the writ appeal is dismissed. No costs.

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