

(2003) 08 AP CK 0007

Andhra Pradesh High Court

Case No: W.P.M.P. No. 16644 of 2003, Rev. W.P.M.P. (SR) No. 70764 of 2003 in Writ
Petition No. 18876 of 2001

Government of A.P. and Others

APPELLANT

Vs

Sri M.A. Razzaq and Others

RESPONDENT

Date of Decision: Aug. 13, 2003

Acts Referred:

- Hyderabad Municipal Corporation Act, 1955 - Section 146, 147
- Land Acquisition Act, 1894 - Section 18, 30

Citation: (2003) 5 ALD 257 : (2004) 2 ALT 273

Hon'ble Judges: N.V. Ramana, J

Bench: Single Bench

Advocate: Govt. Pleader for Municipal Admn, for the Appellant; A. Anantha Reddy, for the Respondent

Final Decision: Dismissed

Judgement

N.V. Ramana, J.

The respondents in W.P. No. 18876 of 2001, namely, Government of Andhra Pradesh, represented by its Principal Secretary in the Municipal Administration and Urban Development Department, the District Collector, Hyderabad, the Municipal Corporation of Hyderabad, represented by its Commissioner, and the Assistant City Planner, Circle No. V, Town Planning Section, Khairtabad, Hyderabad, have filed this petition praying this Court to condone the delay of 257 days in preferring the review petition seeking review of the orders dated 17-9-2002 passed by this Court in W.P. No. 18876 of 2001.

2. The only ground urged by the learned Government Pleader for Municipal Administration appearing on behalf of the respondents in support of the condone delay petition is that though at the time of disposal of the writ petition it was admitted by the learned Additional Advocate General that the petitioners are

owners of the entire extent of 621 Sq. yds. of land, but in the detailed report submitted by the District Collector to the Government pursuant to the receipt of the judgement in the writ petition, it was found that the petitioners are not the owners of the entire extent of 621 Sq. yds. of land, and that out of the said extent, an extent of 173.14 Sq. yds. of land, covered by T.S. Nos. 111 and 114 is G.V.M. land and belongs to the Government, and as such, the question of payment of any compensation to the petitioners in respect of the said extent of 173.14 Sq. yds. of land, which does not belong to the petitioners, does not arise, and having regard to the discovery of this fact, the Government have decided to file petition for review of the judgement passed by this Court in the main writ petition, and thus delay of 257 days has occurred in filing the review petition. According to the learned Government Pleader the delay occasioned is purely on account of administrative factors and is neither wilful nor wanton, and prayed the Court to condone the inordinate delay of 257 days in filing the review petition.

3. The reasons assigned by the respondents-review petitioners in the affidavit filed in support of the application to condone the delay in filing the review petition are neither cogent nor convincing and do not commend to this Court. Except making bald statement that the delay occasioned is purely on account of administrative grounds and that the delay is neither willful nor wanton, no reason worth mentioning, which justifies condoning the inordinate delay of 257 days in filing the review petition, is stated. It is no doubt true that while dealing with applications relating to delay condonation filed by Government and Governmental authorities, the Courts should be liberal and flexible and should normally allow such applications and condone the delay, but in the instant case, no plausible explanation, much less every day's delay is explained to condone the inordinate delay of 257 days in filing the review petition.

4. Though the condone delay petition is devoid of any merit, yet having regard to the submissions advanced on behalf of the review petitioners, I deem it just and appropriate to consider whether the review petitioners have made out any case for review of the judgement dated 17-9-2002, passed by this Court in W.P. No. 18876 of 2001.

5. The grounds urged by the review petitioners in support of the review petition is that writ petitioners are not the owners of the entire extent of 621.73 Sq. yds. of land, and that out of the said extent, an extent of 173.14 Sq. yds. covered by T.S. Nos. 111 and 114 is G.V.M. land and belongs to the Government. It is their case that the Municipal Corporation of Hyderabad is only a requisitioning authority and that the Revenue Department and not the Municipal Corporation of Hyderabad is the authority competent to decide the nature, classification and ownership of the land and that the Municipal Corporation of Hyderabad is not empowered to determine the title or ownership of the land. It is the further case of the review petitioners that since the outbreak of the litigation between the parties, it was their specific stand

that an extent of 173.14 Sq. yds. of land is G.V.M. land and belongs to the Government, but by inadvertence the same was not reflected in the counters filed nor in the submissions advanced before the Court on their behalf. Inasmuch as an extent of 173.14 Sq. yds. of land is G.V.M. land and belongs to the Government, the question of payment of any compensation to the writ petitioners for having acquired the said land for road widening, does not arise.

6. It may be noticed that none of the contentions sought to be raised and advanced by the review petitioners in support of this review petition have been raised by the review petitioners either in the writ petition or in the W.P.M.P. filed by the writ petitioners subsequent to the disposal of the writ petition seeking setting aside the reference made by the Special Deputy Collector, and on the contrary, the review petitioners have taken an agreed stand that the writ petitioners are owners of the entire extent of 621 Sq. yds. of land which was taken by the Municipal Corporation of Hyderabad for road widening. Be that as it may, before adverting to the contentions advanced by the learned Government Pleader for Municipal Administration on behalf of the review petitioners, it would be expedient and useful to make a reference to the orders passed by this Court in the main writ petition and the W.P.M.P. filed subsequent to the disposal of the writ petition.

7. By order dated 17-9-2002, this Court while disposing of W.P. No. 18876 of 2001, passed the following order:

At the time of hearing, learned Additional Advocate General submitted that out of 621 Sq. yds., except 93 Sq. yds., the rest of the land was already taken over by the 3rd respondent-Municipal Corporation for widening of the road. Initially, basing on some entries the respondents were under the impression that the petitioners are the owners for an extent of 419 Sq. yds. only. Later on, after passing the award, the Government came to the conclusion that the petitioners are the owners for the entire extent of land i.e. 621 Sq. yds., which is the subject-matter of this writ petition.

8. In fact, at the instance of this Court, the respondents have already passed an award for the land in an extent of 419 Sq. yds. which was subsequently referred to the civil Court u/s 30 of the Land Acquisition Act. Pursuant to referring of the matter to the civil Court, the matter is negotiated and in view of the claim made by the petitioners, the respondents are now willing to pay the awarded amount to the petitioners. Regarding the balance area in an extent of 202 Sq. yds., the respondents are willing to take necessary action to acquire the land and pass a final award within a period of three months from the date of receipt of this order, for which learned counsel for the petitioners has also agreed. At the same time, learned counsel for the petitioners requested that he wants to file an application u/s 18 of the Land Acquisition Act before the Land Acquisition Officer within a period of two weeks from the date of receipt of this order for which learned Additional Advocate General agreed. It is also agreed by the learned counsel for the petitioners to surrender the 93 Sq. yds. of land to the respondents after passing of the final award by the

respondents with regard to the land in an extent of 202 Sq. yds.

9. Having regard to the award already passed by the respondents, considering the submissions made by the learned counsel for the petitioners as well as the learned Additional Advocate General and in view of the consent given by both the counsel, recording the submissions made by both the counsel, this writ petition is disposed of accordingly.

10. After disposal of the writ petition with directions, as aforementioned, the writ petitioners filed W.P.M.P. No. 25958 of 2002 before this Court praying for the following relief:

11. To pass an order either by setting aside or quashing the reference made by the Special Deputy Collector, Land Acquisition, Municipal Corporation of Hyderabad, u/s 30 of the Land Acquisition Act to the civil Court, Hyderabad, in his award dated 22-5-2002 as forming part of judgement dated 17-9-2002 passed in W.P. No. 18876 of 2001 for receiving the said awarded amount by the petitioners under protest along with filing of their petition for reference u/s 18 of the Land Acquisition Act, and pass any such other order or orders as this Court deems fit and proper in the circumstances of the case.

12. By order dated 23-10-2002, this Court after hearing the learned counsel for the writ petitions as well as the learned Additional Advocate General for the respondents-review petitioners, while disposing of the W.P.M.P. passed the following order:

13. It is submitted by the learned counsel for the petitioners and admitted by the learned Advocate General that the matter between the petitioners and the respondents has been settled amicably and there are no third party claims, and therefore, the part of the Award dated 22-5-2002 of the Special Deputy Collector, which directed reference of the matter to the Civil Court for adjudication of the ownership of the land for payment of compensation, has to be set aside.

14. In view of the agreed stand taken by the learned counsel appearing on behalf of the parties, I allow this W.P.M.P. as prayed for. The part of the Award dated 22-5-2002 of the Special Deputy Collector, which directed reference of the matter to the Civil Court for adjudication of the ownership of the land acquired, shall stand set aside. This order forms part and parcel of the main order dated 17-9-2002, passed in W.P. No. 18876 of 2001.

15. None of the contentions advanced by the review petitioners in support of the petition filed for review of the judgement dated 17-9-2002 passed by this Court in W.P. No. 18876 of 2001 are worthy of acceptance. As can be seen from the judgement dated 17-9-2002 passed by this Court in the main writ petition, it was specifically admitted to by no less than an officer of the rank of the Additional Advocate General, who is the highest officer for rendering legal advice to the

Government in matters relating to the State, that the writ petitioners are owners of the entire extent of 621 Sq. yds. of land, that except 93 Sq. yds. of land, the rest of the land has already been taken over by the Municipal Corporation of Hyderabad for the purpose of road widening, and that basing on some entries in the revenue records, they were under the impression that the writ petitioners are owners of an extent of 419 Sq. yds. of land only. It may be noticed that immediately after the disposal of the writ petition, the writ petitioners filed W.P.M.P. No. 25958 of 2002 seeking directions to the effect that the reference made by the Special Deputy Collector, Land Acquisition, Municipal Corporation of Hyderabad, u/s 30 of the Land Acquisition Act, 1894, to the City Civil Court, Hyderabad, vide his Award dated 22-5-2002, be quashed and set aside. Even at the time of hearing and disposal of the said W.P.M.P., the review petitioners have not brought the facts, which they sought to present by way of review of the judgement before this Court in this review petition, and on the other hand, the learned Additional Advocate General has taken an admitted stand that the matter between the petitioners and the respondents has been settled and there are no third party claims, and therefore, the part of the Award dated 22-5-2002 of the Special Deputy Collector, which directed reference of the matter to the Civil Court for adjudication of the ownership of the land for payment of compensation, be set aside. Even though, consent order was passed in the W.P.M.P. as far back as on 23-10-2002, the respondents have not taken any steps to bring the facts to the notice of the Court, and on the contrary, they filed W.P.M.P.Nos. 32503 of 2002 and 8069 of 2003, seeking extension of time to enable the Government to comply with the orders dated 17-9-2002 passed by this Court in the writ petition. It may be noticed that even in these W.P.M.Ps., the review petitioners except seeking extension of time for complying with the orders of this Court passed in the writ petition, they have not made any averment or is there any iota of whisper to the effect that an extent of 173.14 Sq. yds. of land is G.V.M. land and belongs to the Government, and the question of payment of any compensation in respect thereof to the writ petitioners does not arise.

16. The contention of the review petitioners that the Municipal Corporation of Hyderabad is only a requisitioning authority and that the Revenue Department and not the Municipal Corporation of Hyderabad is the authority competent to decide the nature, classification and ownership of the land and that the Municipal Corporation of Hyderabad is not empowered to determine the title or ownership of the land, cannot be accepted. It may be noticed that the review petitioners have taken this plea for the first time before this Court in the review petition. This plea does not find place in any of the counters filed on behalf of the review petitioners in the writ petition and on the other hand they have taken an admitted stand that the petitioners are owners of the entire extent of 621 Sq. yds. of land. It would be apt to extract the stand taken by the review petitioners in the counters filed on behalf of the Government and the Municipal Corporation of Hyderabad, in the writ petition, which is to the following effect:

17. It is submitted that the Commissioner, Municipal Corporation of Hyderabad, reported that the petitioner Nos. 1 to 3 are the owners of the house bearing Nos. 8-2-244, 8-2-245 and 8-2-246 situated at Punjagutta Junction, Hyderabad, by virtue of registered sale deeds dated 15-3-1971 to an extent of 317.00 Sq. yds. and 28-1-1972, an extent of 304.73 Sq. yds. total admeasuring 621.73 Sq. yds. In the year 1996, the Municipal Corporation of Hyderabad negotiated with Mr. M.A. Razzaq invoking the powers vested under Sections 146, 147 of HMC Act, 1955, to acquire the land of petitioners by private negotiations which are affecting under road widening. Accordingly, Sri. M.A. Razzaq and others, the petitioners herein, have agreed to surrender the land to an extent of 263.29 Sq. yds. subject to payment of structural value and giving equal extent of alternate site. The MCH has prepared a plan indicating the state of things on ground i.e. the existing structures and the land in their possession with reference to the ownership documents produced by petitioners. According to the sale deeds an extent of 621.73 Sq. yds. was under their possession and it was tallied with the documents produced by the petitioners. After negotiation and after payment of Rs. 4,35,429/- as compensation for the affected structures, the MCH has demolished the existing building consisting ground + 1 floor affected under road widening during the year 1996 and had taken possession of an extent of 263.29 Sq. yds.

18. Be that as it may, even if it is admitted that the Revenue Department is the authority competent to determine the question of title or ownership of the land, yet this plea at this belated stage cannot be accepted. It may be seen that the writ petitioners have claimed compensation in respect of the land in question on the basis of the title deeds, which the review petitioners admitted them to be correct, and on the basis of which even awards were passed. It is not the case of the review petitioners that the title deeds produced by the writ petitioners are forged or were created for the purpose of claiming compensation. Even assuming that 173.14 Sq. yds. of land which was in possession of the writ petitioners was G.V.M. land and belonged to the Government and that the writ petitioners are land grabbers or are encroachers of the said Government land, yet there is no material placed before this Court by the review petitioners to show as to what steps they have taken against the writ petitioners for evicting them from the said land. Had the review petitioners initiated proceedings or have taken some steps either under the A.P. Land Encroachment Act, 1905 or the A.P. Land Grabbing (Prohibition) Act, 1982 against the writ petitioners to declare them as encroachers or land grabbers and consequently to evict them from the extent of land which the review petitioners claim is G.V.M. land and belongs to the Government, they would have been justified. But the affidavit filed in support of the review petition does not speak of the review petitioners having taken any steps in that regard. And on the contrary, it is averred in the counter filed on behalf of the review petitioners in the writ petition that a total extent of land 524.23 Sq. yds. was taken from the writ petitioners in two spells i.e. during the year 1977 and 1996, basing on the documents of title.

19. It is the further case of the review petitioners that since the outbreak of the litigation between the parties, it was their stand that an extent of 173.14 Sq. yds. of land is G.V.M. land and belongs to the Government, but by inadvertence the same has not been reflected in the counters and also the submissions made before this Court in the writ petition. This contention at this belated stage cannot be accepted. As can be seen from the above narration, it was the specific case of the review petitioners all through the litigation that the petitioners are owners of the entire extent of 621 Sq. yds. of land. It should be noted that the review petitioners, who are responsible officers and custodian of the properties belonging to the Government, cannot file counters before the Constitutional Courts lightly without verifying the records. Before filing counters before the Constitutional Courts they have to verify the records and after satisfying themselves in all respects, should file counters. They cannot be permitted to approbate and reprobate and take inconsistent pleas according to their whims and fancies and take the Constitutional Courts for a ride.

20. For the foregoing reasons, there is neither any reason shown to condone the inordinate delay of 257 days in filing the review petition nor any merit in the review petition warranting review of the judgement passed by this Court in the writ petition.

21. In the result, the condone delay petition as well as the review petition are dismissed. No costs.