



Serial No.02
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No.20/2021

Date of Order: 09.02.2022

State of Meghalaya & ors Vs. Umsaw Khwan Village Durbar & anr
Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. K Paul, Sr.Adv
For the Respondent(s) : Mr. VGK Kynta, Sr.Adv with
Ms. M Kynta, Adv

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| i) Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) Whether approved for publication
in press: | Yes/No |

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

The appeal is directed against a judgment and order of February 17, 2014 passed on a writ petition instituted in the year 2012.

2. The appeal was filed after a colossal delay of 861 days and it appears that the application for condonation of delay was not pursued with due diligence despite such application being filed in 2016. The relevant application under Section 5 of the Limitation Act, 1963 came to be allowed by an order of November 24, 2021. It is necessary to notice the two material paragraphs of the relevant order:-

“The primary ground made out is that the appellant acted on erroneous advice. However, a serious objection is put up by the respondent, including the ground that the appellant had already acted in terms of the order and, thus, can no longer prefer an appeal thereagainst.

Without prejudice to the respondent's contention that the conduct of the appellant precludes the appellant from filing or proceeding with the appeal, in view of the sufficient cause shown, the delay in preferring the appeal is condoned. Let the appeal appear for appropriate consideration a week hence.”



3. Courts are, by and large, reluctant to shut out a litigant on the ground of limitation. Even though the State is not a favoured litigant, when delay is cited on behalf of the Government, Courts frequently take a lenient view. In this case the Court was more than charitable in taking on board an appeal of the year 2016 against an order of the year 2014 that was sought to be effectively assailed only towards the end of the year 2021. As will be evident from the order of November 24, 2021, the respondents seriously objected to the condonation of delay, but primarily on the ground that the order had worked itself out and that the appellants had acted in terms of the order. Since such ground of opposition was, strictly speaking, not pertaining to the cause cited for the delay in preferring the appeal, but had more to do with the right of the appellants to question the propriety of an order that the appellants may have already accepted or acted upon, the issue was left open to be urged in the course of the appeal.

4. It is necessary at this stage to indicate the case sought to be made out by the appellants. According to the appellants, the first of which is the State of Meghalaya, no less, a parcel of land at Umsaw Khwan village was absolutely owned by the State of Assam and, upon, the bifurcation of the State and the creation of Meghalaya in 1972, the ownership of such parcel of land passed on to the newly constituted State and it was in the possession of the Soil and Conservation Department. For reasons that are unclear and in respect whereof no explanation is forthcoming, the State of Meghalaya, through its Forest Department, apparently proceeded to acquire the land that the appellants now claim was owned by the State.

5. The acquisition proceedings were instituted under the Land Acquisition Act, 1894. Section 17 of the Act was invoked on the ground of



urgency and the parties – the acquirer at the behest of the department requiring the land on the one hand and the perceived land-owners on the other hand – agreed that a compensation of Rs.10 crore would be just in respect of the acquisition. A sum of Rs.8 crore was promptly paid and the possession of land was apparently made over to the State. Again, it is not clear as to whether physical possession was actually made over to the State or, the land being rather huge, only a letter of possession was made over as a token of physical possession being surrendered by the perceived land-owners to the State.

6. At a time when the further sum of Rs.2 crore remained outstanding, it apparently dawned on the State that though the Forest Department had prompted the State to acquire the land, such land was, indeed, a government land under the possession of the Soil and Conservation Department of the State. Upon such realisation, a letter dated October 8, 2012 came to be addressed by the Deputy Commissioner of Ri Bhoi District to the respondents to the following effect:-

“With reference to the subject cited above, it has been reported by the Forest Department, that the plantation in Mawplai is still in possession of Soil & Water Conservation Department and they were maintaining it for the last 40-52 years. Therefore, the land acquisition proceedings for the said plantation has to be quashed and payment made to you amounting to Rs.8 Crores needs to be recovered immediately.

Therefore, you are requested to refund the above mentioned amount failing which action may be taken as per Bengal Public demand and Recovery Act for recovery of the amount.”

7. A reminder followed on October 15, 2012 to the effect that the erstwhile land-owners should appear before the Extra Assistant Commissioner (Rev) “so that necessary steps may be taken to annul the land acquisition proceedings for the above.” It may do well to notice that



the initial letter alluded only to possession and not to ownership, though the case made out by the appellant is founded on the State having exclusive title to the land in question.

8. These letters were challenged by way of WP (C) No.299 of 2012 culminating in the judgment and order under appeal being rendered on February 17, 2014. In the course of allowing the writ petition, the writ court referred to Section 48 of the Act of 1894 that permits the acquirer to withdraw the acquisition proceedings prior to possession of the land being taken over. The writ court observed that since the possession of the land had already been taken over under the acquisition proceedings, such provision could not be resorted to. The writ court also expressed the view that since the acquisition proceedings were conducted under the orders and at the behest of the Collector, the letters issued by the Deputy Commissioner to annul such proceedings were without jurisdiction.

9. However, since the Court noticed that the case sought to be made out by the State was that the State had been induced to purchase its own land, the writ court gave the State the liberty to institute appropriate proceedings for recovery of the money. The Court also required the outstanding amount of Rs.2 crore to be paid, without reference to any action that could be instituted by the State, and provided for interest for the delayed payment.

10. Pursuant to the order dated February 17, 2014, the State proceeded to institute Title Suit No.8 of 2014 before a Court at Nongpoh, primarily for recovery of the money paid to the respondents herein on the ground that the respondents had no title to the land that was the subject-matter of the acquisition proceedings. The plaint relating to such suit has



since been rejected on the respondents' application under Order VII Rule 11 of the Code of Civil Procedure, 1908 and the relevant Court discovering that the plaintiff in such suit had no cause of action, particularly in the light of the acquisition proceedings not having been appropriately annulled. The appellants say that an appeal was preferred against the order of rejection of the plaint, but such appeal has since been dismissed for default. The appellants claim that an application has been filed for readmission of the appeal, but it does not appear that the matter has been prosecuted with any degree of diligence.

11. In 2016, the respondents instituted Title Suit No.4 of 2016 before the same Court at Nongpoh seeking the balance payment of Rs.2 crore and interest due from the State in connection with the said acquisition. Such suit has been decreed on August 8, 2017 and it is the admitted position that the decree for payment of the relevant amount remains unchallenged till date. In essence, it is the case of the State that either due to mistake or upon being induced by certain persons, the Forest Department of the State proceeded to acquire a parcel of land that already belonged to the State and in respect whereof the respondents herein had no title at all. And yet, no meaningful steps have been taken by the State in such regard.

12. It is elementary that in the course of acquisition proceedings under the Act of 1894 the title of the land-owners is looked into and the compensation is paid only upon the relevant authority being satisfied as to the title of the payee. Indeed, disputes as to title and rival claims to the land sought to be acquired ought to be decided in the course of the acquisition proceedings as the scheme of the Act of 1894 would indicate. Despite the obvious seriousness of the matter, it is also disconcerting that the



Collector's authority was not invoked and a Deputy Commissioner issued administrative letters in an attempt to undo the acquisition proceedings which ought to be regarded as judicial or quasi-judicial in nature. It is further distressing that though the State seeks to paint a picture that it has been defrauded, the manner in which the matter has been conducted on behalf of the State leaves little doubt as to who may have failed or duped the State more than the respondents herein. Equally, it is conceivable that the Soil and Conservation Department was merely in possession of the land and the State may not have been the owner thereof; and, the exercise launched by the State is for obvious extraneous considerations of its officials connected with the matter.

13. It is quite possible that the State may have been the owner of the land and whether by inducement or by mistake, proceeded to take steps to acquire its own property. There were legal avenues open to the State to undo the mistake committed, whether or not any fraud was perpetrated by any other in course of the acquisition proceedings. It is also not to be lost sight of that this is not an ordinary party which claims to have been defrauded; it is the State. If, indeed, the land was owned by the State and it purchased its own property with public money, all that was done was to issue two letters by the concerned Deputy Commissioner without taking any legal steps to annul the acquisition proceedings or undo what had been done. There is much more to the matter than meets the eye and there is no doubt that a responsible State Government will get to the bottom of the matter and book the culprits.

14. As far as the present matter is concerned, it is evident that the appellants accepted the impugned order and acted in terms thereof, inter



alia, by filing the suit for recovery of the money. It is elementary that no litigant may approbate or reprobate in the same breath or in respect of the same cause. Indeed, upon the appellants having accepted the order and having instituted Title Suit No.8 of 2014 before the relevant Court at Nongpoh, the appellants herein could not be seen any longer to be persons aggrieved by the relevant order to be entitled to prefer or pursue any appeal therefrom. In addition, the appellants herein have accepted the rejection of the plaint in their suit or, at any rate, such rejection has attained finality upon the appeal from the order of rejection of the plaint not being pursued by the appellants. The attempt at readmission of the appeal appears to be cosmetic.

15. The further conduct of the appellants as evident from the appellants not preferring any appeal from the decree of August 8, 2017 passed in respondents' money suit for recovery of the balance compensation pertaining to the acquisition proceedings is the final nail in the coffin. It may also be noticed that no serious attempt was made in the writ petition to assert or establish the State's title to the land in question, whether or not the writ court may have been minded to enter into such disputed questions.

16. There is no doubt that the entire charade has been enacted with the deliberate intention of the State seeking to justify that it had tried to take action but it was the Court which went against the State. It is just as possible that the entire saga is a red herring. What must be realised at the end of the day is that the conduct of the State and the manner in which it pursued the matter has resulted in the adverse orders suffered. There is also



a lurking suspicion that the entire scheme has been designed with ulterior motive.

17. For the reasons aforesaid and since the appellants cannot be regarded as persons aggrieved by the order impugned upon having accepted the same and acted in accordance therewith, WA No.20 of 2021 is dismissed with costs assessed at Rs.50,000/- to be paid to the respondents and a further sum of Rs.50, 000/- to be paid to the State Legal Services Authority within eight weeks from date.

18. MC (WA) No.70 of 2021 is disposed of.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
09.02.2022
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