

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION NO. 5079 OF 2009

M.P. Matsya Mahasangh ... Petitioner

Vs.

Sudheer Kumar & Anr. ... Respondent

WITH

SLP(C) Nos. 5474,5875,5882,5912,6042,7302,7582,7588,7787, 8084,8460,8628,8669,9227,10025,10026,11656,11707 & 14453 of 2009

O R D E R

R.V. Raveendran, J.

Twenty suits were filed by the respective respondents in these special leave petitions in the year 2001 before the District Court, Bhopal claiming declaration of title in regard to their respective portions of Khasra No. 39/1 Kotra Sultanbad, Bhopal which in all admeasures 6.80 acres and for consequential permanent injunction.

2. The plaintiffs in the twenty suits (respective respondents in these SLPs) claimed that the said land originally belonged to one Shahida Bano who sold it to Hakim Hamidullah Kureshi on 28.5.1953; that it was inherited by his niece Razia Bano. They all traced their title to the said Razia Bano, under various sale deeds. The petitioner resisted the said suits contending that the land was a part of a Government land adjoining a fishery area fenced and transferred to MP Fisheries Development Corporation, who in turn delivered it to the petitioner in or about the year 1999. According to the petitioner, the respondents were encroachers of government land. After,

receiving the evidence let in by both sides and hearing arguments, the suits were decreed in the year 2002. However, on appeals by the petitioner, by judgment dated 26.12.2004, the decrees were set aside and suits were remanded for fresh disposal within a fixed time frame. On such remand, the cases were listed for further evidence by the IV Addl. District Judge, Bhopal on 17.1.2005. The petitioner was represented by its counsel up to 9.4.2005. The suits were adjourned to 4.5.2005 at the request of petitioner by levying costs. From the next date of hearing viz. 4.5.2005, the petitioner's counsel ceased to appear and petitioner was represented by its officer-in-charge of the cases - Mr. Chandrakant Nikam, Assistant Engineer. But the said officer-in-charge also failed to appear during subsequent hearings and the costs levied were also not paid. Therefore the petitioner (defendant in the suits) was placed ex parte on 2.7.2005, noting that the High Court had directed disposal within eight months, and defendant was continuously absent. Thereafter the trial court, after considering the evidence on record, decreed the suits on 29.8.2005 by a detailed judgment.

3. On 16.6.2007, about one year and ten months later the petitioner filed applications under Order 9 Rule 13 of CPC for setting aside the ex parte decrees. It was alleged by the petitioner that its officers in the lower level had failed to discharge their duties and did not take action for defending the suits and that the petitioner became aware of the ex parte decrees only when one of the plaintiffs submitted a representation dated 28.5.2007. The said applications filed by the petitioner for setting aside the ex parte decrees were dismissed on 29.8.2007. The appeals against the said dismissals were dismissed by the High Court on 16.5.2008. The petitioner sought review and

the review petitions were rejected on 23.7.2008. The petitioner filed SLPs which were also dismissed on 17.11.2008 with an observation that it was open to the petitioner to urge its contentions before appropriate forum (as the petitioner had by then filed appeals against the judgment dated 29.8.2005).

4. The regular appeals filed by the petitioners on 31.7.2008, under section 96 CPC, against the decrees dated 29.8.2005 were heard and dismissed by the High Court on 5.12.2008, on the ground of 948 days delay in filing the appeals. The High Court also referred to the facts briefly, to avoid any failure of justice, and found that the defence of the petitioner was without any basis. Leave is sought in these special leave petitions to challenge the said judgments and decrees. On notice being issued, the respondents have appeared and opposed grant of leave.

5. As noticed above, the only explanation given in the applications filed under Order 9 Rule 13 CPC for seeking condonation of delay was a vague statement that the officers at the lower level had failed to discharge their duties and had not taken timely action for defending the rights of the petitioner. However, in the memoranda of regular appeal filed before the High Court under Section 96 CPC and the applications for condonation of delay filed alongwith the appeals, the reason assigned by the petitioner to explain the delay of 948 days was that after the remand on 26.12.2004, the cases were entrusted to its Assistant Engineer Chandarkant Nikam as the officer-in-charge of the cases with instructions to keep the senior officers of the petitioner informed of the developments, but he failed to defend the cases and abandoned them without informing the senior officers; and that therefore the petitioner was unaware of the dates fixed for trial or

about the ex parte decrees in the suits.

6. The explanation for the delay of one year and ten months in filing the applications under Order 9 Rules 13 CPC was found to be unsatisfactory resulting in the petitions under Order 9 rule 13 being dismissed and the same being affirmed by the High Court. When the appeals under Section 96 were filed there was a delay of 948 days. The High Court examined the reason assigned for the delay and found that the delay was not satisfactorily explained. It also held that there was no explanation as to why and how the appellant stopped participating in the proceedings before the trial court from June 2005 and why the petitioner did not file the appeals even when the applications under Order 9 Rule 13 CPC were dismissed.

7. As there is no satisfactory explanation for the neglect and delay, we put a specific question to the learned counsel for the petitioner as to what action had been taken with reference to the alleged negligence on the part of Chandrakant Nikam and why no material had been placed before the High Court in that behalf. The learned counsel for the petitioner had no specific answer, but handed over a copy of a letter dated 16.8.2007, said to have been addressed by the petitioner to Chandrakant Nikam referring to his 'failure to intimate the progress of the suit on a regular basis' and calling for his explanation. The learned counsel for petitioner was however not in a position to explain what happened after such show cause notice. Thus petitioner in a vague manner has sought to place the entire blame on one of its officers, namely, Chandrakant Nikam, but without initiating any disciplinary proceedings or without taking other action to fix the responsibility. Significantly the records of these SLPs

show that Chandrakant Nikam, Assistant Engineer of petitioner continues to be the officer-in-charge of all these cases even now. An application (IA No.7-8) filed by the petitioner, as late as 7.10.2009, seeking permission to file additional documents in supported by an affidavit sworn to by Chandrakant Nikam as the officer-in-charge of these cases as on 6.10.2009. This clearly shows that the petitioner did not consider him to be negligent, but found him fit to continue as the officer in-charge of these cases. The learned counsel had no explanation for this strange conduct on the part of the petitioner.

8. But we found the explanation to this strange conduct, in the copies of certain correspondence produced by the respondents with their counter affidavit filed in these matters. We find that on 2.8.2005, the Managing Director of petitioner wrote to the Collector of Bhopal as follows (a rough translation provided by respondent) :

"Sub: With regard to entrustment of land khasra NO. 39/1 rakba 6.80 acre adjoining Fishery Area, Bhadbhada to revenue department/District Magistrate, Bhopal.

Please take notice of letter no. 3758 dated 22.3.2005 addressed to Principal Secretary, govt. of M.P. Pisciculture Department, Bhopal wherein

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the fact of returning back of land of 6.80 acre given to MP Fishery General Union (co-operative) Ltd. to Govt. of MP. This land is hereby returned back to the Govt.

The dispute relating to this land is pending in various courts since last 10 yrs. and presently also this matter is pending before the court of Sri Rajesh Gupta, IV Additional District Judge, Bhopal and 3.8.2005 is fixed as next date of hearing.

In these cases the Govt. Advocate is to defend the case on behalf of the Govt. The proceeding is urgent. Hence it would be proper to give necessary instructions to Govt. Advocate for next date of hearing. It is also expedient to issue direction that the name of M.P. Fishery General Union (co-operative) Ltd. may be deleted from the array of parties in the above cases".

It is thus evident that the petitioner had 'returned' back the land bearing Khasra No. 39/1 measuring 6.80 acres adjoining the Fishery Area, Bhadbhada to the State Government and that in view of it, wanted the Government Advocate to defend the cases thereafter. The petitioner also informed the Collector that the next date of hearing before the District court was 3.8.2005. Therefore the reason for Mr. Nikam's absence after April, 2005 was not any negligence on his part, but because petitioner had by then had nothing to do with the land having returned the land in dispute in the 20 suits (that is 6.80 acres of land) to the Government vide letter dated 22.3.2005 and had requested the Government to defend the matter thereafter. It also shows that the petitioner was aware of the hearing dates after it was placed ex-parte and before the suits were decreed and had consciously chose not to defend the cases any further. Therefore it was rather uncharitable on the part of the petitioner to allege negligent conduct on the part of his own officer Chandrakant Nikam, but at the same time continue him even now to be the officer-in-charge of these cases. We may mention that in the rejoinder affidavit filed by the petitioner, there is no denial of the said letter dated 2.8.2005.

9. There are several unexplained loose ends. First is how could petitioner 'return' back, the disputed land which was and is in the possession of plaintiffs in the suit. Evidently, when the said land was 'entrusted' to petitioner in 1999, actual possession was not delivered to it. Second is, having given up its claim to the land and having requested the Government to defend the cases, why did the petitioner suddenly decided to challenge the decrees in a series of costly litigation. The third is the failure of the petitioner to produce any title deed, grant or

possession certificate in support of its claim. Be that as

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it may.

10. We find that the cause shown for the delay is wholly inadequate and unsatisfactory, bordering on suppression and misrepresentation of facts to the courts, in regard to knowledge of order placing it ex parte and the subsequent ex parte decrees. We find that the High Court was justified in refusing to condone the delay of 948 days. It is, therefore, unnecessary to examine the matter with reference to the merits.

11. The petitions are dismissed as no ground is made out to grant leave. In view of its deprecable conduct, we levy costs of Rs. 2000/- in each of these cases payable by the petitioner to the respective respondent. We however, make it clear that if Government of Madhya Pradesh has any claim over the land in question, this will not come in the way of the Government establishing its title in appropriate proceedings.

J.
(R V Raveendran)

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New Delhi;
January 12, 2010.

J.
(K S Radhakrishnan)

ITEM NO.2(PH)

COURT NO.5

SECTION IVA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).5079/2009

(From the judgement and order dated 05/12/2008 in FA No.

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538/2008 of The HIGH COURT OF M.P AT JABALPUR)

M.P.MATSYA MAHASANGH

Petitioner(s)

VERSUS

SUDHEER KUMAR & ANR.

Respondent(s)

(With appln(s) for exemption from filing O.T., bringing on record additional documents, impleadment as party respondent, PERMISSION TO FILE ADDITIONAL AFFIDAVIT and prayer for interim relief and office report) (FOR FINAL DISPOSAL)

WITH SLP(C) NO. 10025 of 2009
(With prayer for interim relief and office report)
SLP(C) NO. 10026 of 2009
(With prayer for interim relief and office report)
SLP(C) NO. 11656 of 2009
(With prayer for interim relief and office report)
SLP(C) NO. 11707 of 2009
(With prayer for interim relief and office report)
SLP(C) NO. 14453 of 2009
(With prayer for interim relief and office report)
SLP(C) NO. 5474 of 2009
(With prayer for interim relief and office report)
SLP(C) NO. 5875 of 2009
(With prayer for interim relief and office report)
SLP(C) NO. 5882 of 2009
(With prayer for interim relief and office report)
SLP(C) NO. 5912 of 2009
(With prayer for interim relief and office report)
SLP(C) NO. 6042 of 2009
(With prayer for interim relief and office report)
SLP(C) NO. 7302 of 2009
(With prayer for interim relief and office report)
SLP(C) NO. 7582 of 2009
(With prayer for interim relief and office report)
SLP(C) NO. 7588 of 2009
(With prayer for interim relief and office report)
SLP(C) NO. 7787 of 2009
(With prayer for interim relief and office report)
SLP(C) NO. 8084 of 2009
(With prayer for interim relief and office report)
SLP(C) NO. 8460 of 2009

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(With prayer for interim relief and office report)

SLP(C) NO. 8628 of 2009
(With prayer for interim relief and office report)
SLP(C) NO. 8669 of 2009
(With prayer for interim relief and office report)

SLP(C) NO. 9227 of 2009
(With prayer for interim relief and office report)

Date: 12/01/2010 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.V. RAVEENDRAN
HON'BLE MR. JUSTICE K.S. RADHAKRISHNAN

For Petitioner(s) Mr. K.K. Venugopal, Sr.Adv.
Mr. K.V. Vishwanathan, Sr.Adv.
Mr. Merusagar Samantaray, Adv.
Mr. Vikramjit Banerjee, Adv.
Mr. Gopal Sankarnarayan, Adv.

For Respondent(s) Mr. P.P. Rao, Sr.Adv.
Mr. Ravish Chandra Aggarwal, Sr.Adv.

Mr. P.S. Narsimha, sr. Adv.
Mr. S. Chandra Shekhar, Adv.
Mr. Manoj Kumar, Adv.
Mr. Purushottam S.T., Adv.
Mr. Utsav Sidhu, Adv.
Ms. Sampriti Phukan, Adv.

UPON hearing counsel the Court made the following
O R D E R

The Special Leave Petitions are dismissed in
terms of the signed order.

The petitions are dismissed as no ground is
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made out to grant leave. In view of its deprecable
conduct, we levy costs of Rs. 2000/- in each of these
cases payable by the petitioner to the respective
respondent. We however, make it clear that if
Government of Madhya Pradesh has any claim over the
land in question, this will not come in the way of
the Government establishing its title in appropriate
proceedings.

(O.P. Sharma)
Court Master

(M.S. Negi)
Court Master

(Signed order is placed on the file)