
(2013) 07 KAR CK 0044

In the Karnataka High Court

Case No : Writ Petition No. 18011 of 2009 (KVOA)

B. Venkatesh

APPELLANT

Vs

The State of Karnataka, The Thasildar and Munivenkatappa

RESPONDENT

Date of Decision : 18-07-2013

Acts Referred:

Karnataka Village Officers Abolition Act, 1961 — Section 3(2)
Limitation Act, 1963 — Section 5

Citation : (2013) 07 KAR CK 0044

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : G.M. Chandrashekar, for N.S. Sheshadri, for the Appellant; Gopal Bilal Mane, HCGP for R1 and R2 and H. Suresh, Advocate for R3, for the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy, J.—Petitioner aggrieved by the order dated 29.3.2008 Annexure-K rejecting IA-I u/s 5 of the Limitation Act in M.A. No. 111/2007 of the Prl. District Judge, Kolar has presented this petition. Petitioner filed MA 111/2007 under Subsection (2) of Section 3 of the Karnataka Village Officers Abolition Act, 1961, for short "KVOA Act" calling in question the order dated 7.6.1999 in INA CR 23/98-99 of the Tahsildar directing regrant of land measuring 2.11 acres in Sy. No. 3 of Thuvalanath village, attached to the inferior office of thoti of the said village, in favour of one Munivenkatappa-the 3rd respondent. Along with the application petitioner filed IA-I u/s 5. of Limitation Act to condone the delay of eight years in filing the appeal. In the application it was contended that petitioner's grandfather by name Venkatappa, since deceased, was the holder of the service inam and on his death petitioner's father by name Munivenkatappa continued to hold the inam and on his death the petitioner was cultivating the lands in question. According to the petitioner the Tahsildar having not issued notice and made no enquiry over the fact of grant of interim lands to petitioner's grandfather who held the office of thoti, was denied an opportunity of hearing

and therefore, had no knowledge of the order dated 7.6.1999 of the Tahsildar and came to know of the order only on 5.5.2007 when the 3rd respondent interfered with the cultivation of the land, in question.

2. The District Judge having regard to the material facts declined to accept the explanation for the delay and in addition noticed that the time to file an application for regrant under the Karnataka Village Officers Abolition Act and Rules framed thereunder had expired and that it could not be believed that the petitioner had no knowledge of the order of the Tahsildar, to dismiss the application by the order impugned.

3. In the facts and circumstances, more appropriately that the petitioner was not a party to the proceedings before the Tahasildar IN.CR. 23/1998-99 and had no opportunity to put-forth his case relating to the factum of his grandfather being a holder of thoti inam entitled to regrant, in respect of the land in question, under the KVOA Act, the District Judge recorded a perverse finding declining to accept the explanation as sufficient cause for the delay of eight years in filing the appeal. For yet another reason, the District Judge fell in error in rejecting the application, since it is not as to whether the petitioner was barred from filing an application for regrant since time limit prescribed by the Rules expired, On the contrary, question was whether there was satisfactory explanation offered by the petitioner to condone the delay. Therefore, the finding that petitioner had lost his opportunity to file an application for regrant and hence the delay cannot be condoned but be said to be perverse. Although learned counsel for the contesting 3rd respondent seeks to sustain the order impugned as being well merited, fully justified and not calling for interference. Learned counsel for the 3rd respondent submits that the petitioner is a person from Andhra Pradesh and has nothing to do with the property in question. That is a question of fact which is to be decided only after the condonation of delay and when the appeal is heard on its merit, hence cannot be countenanced.

In the result, the petition is allowed. The order dated 29.3.2008 Annexure-K is quashed. IA-I filed u/s 5 of the Limitation Act is allowed. Delay condoned. Appeal restored to file and the proceeding remitted for consideration afresh after extending reasonable opportunity of hearing to the parties concerned, on the merits of the appeal.

Since the parties are represented by learned counsel are directed to be present before Lower Appellate Court on 5.8.2013 without further notice.