

(2001) 08 KAR CK 0019
In the Karnataka High Court
Case No : Writ Appeal No. 865 of 2001

Mrs. Roman Crasta

APPELLANT

Vs

Mr. Frank W. D'Souza and Others

RESPONDENT

Date of Decision : 16-08-2001

Acts Referred:

Citation : (2002) 1 KCCR 21

Hon'ble Judges : M.F. Saldanha, J;K.R. Prasad Rao, J

Bench : Division Bench

Advocate : M. Vishwajit Rai, for the Appellant; O. Shivarama Bhat, for Respondents 1 and 2 and K. Nagaraj, A.G.A. for Respondents 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

M.F. Saldanha, J.—We have heard the appellant's learned Advocate, learned Advocate who represents the contesting Respondent and the learned Government Advocate on merits. An area of hardly 2 cents of land which is the subject matter of this appeal was apparently numbered as Sy. No. 54/2 originally and the appellant had originally applied for grant of occupancy rights in respect of this piece of land along with some other area. In the year 1975 the Tribunal granted occupancy rights in respect of the remaining area of 25 cents and as far as Sy. No. 54/2 is concerned which ostensibly admeasured 2 cents, the Tribunal recorded the finding that there is no such land in existence. Thereafter in or about the year 1997 the appellant reapplied to the Tribunal pointing out that on enquiries with the authorities she has come to know that the correct Sy. No. is 128/17 and that the Tribunal should therefore reconsider its earlier order in respect of this area of land admeasuring 2 cents. The Tribunal granted occupancy rights to the appellant in respect of this plot of land which order came to be challenged by the land owner through a writ petition in Writ Petition 23849 of 1998. The learned Single Judge allowed the petition and set aside the order of the Tribunal inter alia on the ground that the Tribunal had no jurisdiction to over-

ride its earlier decision. It appears that the learned Single Judge had observed that if the appellant before us is able to explain the delay that it may be open to the appellant to challenge the original order. The appellant thereupon filed the present writ petition which came to be dismissed by the learned Single Judge principally on the ground that the long delay during the intervening period has not been explained and again on the ground that the delay after the year 1997 has also not been explained. The appellant has assailed the correctness of this order and his learned Counsel submitted that it would be tantamount to disqualifying the appellant purely on the ground of delay. He has drawn our attention to a Division Bench decision of this Court in Writ Petition 20080 of 1991 decided on 15.7.1993 wherein the Division Bench had taken the view that even if a wrong survey number is mentioned that it is within the province of the Tribunal to ascertain the correct position from the records and that the Court must always understand the limitations in the case of farmers and villagers who may commit errors with regard to the survey numbers, areas etc. There can be no two opinions with regard to these views but what we need to point out here is that the facts of this case present something entirely different which we shall presently deal with. Secondly, the appellant's learned Advocate has drawn our attention to a decision of the Supreme Court reported in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, wherein the Supreme Court has laid down the salutary principle that in cases relating to condonation of delay the Court must adopt a liberal approach. We do concede that by and large Courts adopt not only a liberal but an over generous approach in the matter of condonation of delay, but that there are equally necessary principles which the Courts have to bear in mind while dealing with these cases the first of them being that the indulgence which the Courts normally show cannot be taken advantage of nor can it be carried to absurd limits and secondly, that in instances where the Courts were to virtually bend over backwards in favour of one party on the ground of liberality that it is doing equal injustice to the affected party wherein a litigation may be reopened virtually after decades only because of such indulgence shown. It is therefore necessary to observe a liberal but at the same time balanced approach in all of these cases.

2. The first hurdle in the way of the appellant is that the order of the learned Single Judge in the earlier writ petition filed by the owner wherein the Tribunal's order was set aside has assumed finality because that order was not challenged. The appellant decided to file another writ petition which is virtually a parallel proceeding and the legal hurdle in the way of the appellant which in our considered view is unsurmountable would arise from the fact that the learned Single Judge in the second writ petition viz., the present one would be totally precluded from passing any order that would have the effect of nullifying the earlier learned Single Judge's order which has assumed finality because the learned Single Judge is also a Court of co-ordinate jurisdiction.

3. The other issue that arises in this case and one of importance is that it is not a question of condonation of delay that arises in this case but there are issues of

propriety that are involved. On the present set of facts we find that when the Tribunal in the year 1975 recorded the finding that there is no such land, the present appellant was put on notice by the order of the Tribunal. If according to the appellant there was an error and the appellant desired to apply for rectification, time was of the essence, because such an application ought to have been made with the least possible delay. Respondent's learned Advocate has produced before us documentary evidence of the fact that the survey number has been altered in the year 1934 and that consequently, when the Form No. 7 was filed, there was no warrant to indicate a wrong survey number and secondly and even assuming a mistake was committed that it could have been rectified virtually within a matter of days which was not done. It is therefore not a question of delay but the fact that a party who had the opportunity of carrying out a rectification did not do so would lead to the irresistible conclusion that the doctrine of waiver would apply to this case whereby a party has waived the right assuming that one existed. That is the real issue that surfaced in the present proceeding and it is not only a matter of delay simpliciter as the appellant's learned Advocate has submitted. Having regard to the fact that the appellant did not within a reasonable time get the so-called error rectified, would in our considered view totally disqualify the appellant from being permitted to reopen the issue at a very belated stage.

4. Having examined the position in law we find that the learned Single Judge was fully justified in having refused the appellant any reliefs, that order is liable to be confirmed though for different reasons as indicated by us. The appeal accordingly fails on merits and stands dismissed.