

**(2004) 06 KAR CK 0004**

**In the Karnataka High Court**

**Case No : Writ Petition No. 40447 of 2003**

Muniyamma and Others

APPELLANT

Vs

Kumbaiah and Another

RESPONDENT

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**Date of Decision :** 17-06-2004

**Acts Referred:**

**Citation :** (2004) ILR (Kar) 4769 : (2004) 6 KarLJ 106 : (2004) 3 KCCR 355 SN

**Hon'ble Judges :** N.K. Patil, J

**Bench :** Single Bench

**Advocate :** B.L. Srikantaiah, for the Appellant; S.A. Kalagi and H.S. Surendra, High Court Government Pleader, for the Respondent

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## **Judgement**

N.K. Patil, J.—The petitioners, assailing the correctness of the judgment dated 21st February, 2003 in M.A. (VOA) No. 26 of 1992 on the file of the II Additional District Judge, Tumkur, have presented the instant writ petition.

2. The first respondent herein had assailed the correctness of the order dated 16th August, 1971 passed by the Assistant Commissioner, Tumkur in proceedings No. .... ordering to re-grant 1/3rd share to the first respondent herein and the petitioners herein in respect of land bearing Sy. Nos. 23 and 57 totally measuring 08 guntas and 22 guntas situated at Hadonahalli, Yediyur Hobli, Kunigal Taluk, Tumkur District on the ground that the order passed by the Assistant Commissioner re-granting the land under the Karnataka Village Offices Abolition Act, 1961 in favour of the petitioners to an extent of 1/3rd share, is contrary to the material on record and the same is done without conducting the enquiry and without deciding as to whether the petitioners are entitled to 1/3rd share in the lands in question referred above. The learned II Additional District Judge, Tumkur, after considering the oral and documentary evidence and after affording an opportunity to both the parties, has passed the impugned judgment setting aside the order passed by the Assistant Commissioner dated 16th August, 1971 and remitted the matter to the Assistant Commissioner, Tumkur with a direction to hold proper enquiry in the light of the observations made in the said

judgment. Further, the learned Judge directed the Assistant Commissioner to dispose of the matter within six months from the date of receipt of the order. Being aggrieved by the impugned order referred above, the petitioners have presented the instant writ petition.

3. The learned Counsel appearing for the petitioners vehemently submitted that, the impugned order passed by the Trial Court is not justifiable and it is liable to be set aside at the threshold itself solely on the ground that, there is inordinate delay in filing the said appeal and the said delay has not been satisfactorily explained nor cogent reasons are assigned. The Trial Court has accepted the explanation given by the appellant therein and condoned the delay and entertained the miscellaneous appeal and passed the impugned order, contrary to the material on record. Further, he submitted that, the petitioners are in settled position in pursuance of the re-grant order passed by the Assistant Commissioner since more than two decades and therefore, the said settled position of the petitioners may not be disturbed and the Trial Court is not justified in setting aside the re-grant order passed by the Assistant Commissioner and remitting the matter for reconsideration afresh.

4. Per contra, the learned Counsel appearing for the first respondent, inter alia, contended and justified the impugned order passed by the Trial Court. Further, he submitted that, the order passed by the Assistant Commissioner re-granting the land came to his knowledge only when the petitioners started canvassing in the village stating that, the order has been passed in favour of the petitioners. Then only the first respondent came to know of that fact for the first time in 1991 and immediately thereafter, from the date of knowledge, he has filed the appeal well in time. To substantiate the said submission, he submitted that, the petitioners have not chosen to file objections on I.A. II filed by the first respondent for condoning the delay in filing the appeal and has simply taken the ground that, the first respondent is not entitled.

Further, he pointed out and has taken me through the reasoning given by the Trial Court for remanding the matter. After going through the entire original records threadbare and the specific finding recorded from paragraphs 15 to 17 of the judgment passed by the Trial Court, I am of the view that, the Trial Court has passed a well-considered order, taking into consideration the ground reality involved in the subject-matter. The said order has been passed in compliance of the mandatory provisions of the Act.

5. The learned Counsel appearing for first respondent, regarding delay, has placed reliance on the judgment of the Hon"ble Supreme Court in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, . The well-settled principle laid down by the Apex Court in the case referred to above is directly applicable to the facts and circumstances of the instant case. Therefore, the petitioners have not made out any good grounds to interfere with in the order passed by the Trial Court.

6. After hearing the learned Counsel appearing for the petitioners, learned Counsel appearing for first respondent and after careful perusal of the order passed by the Trial Court dated 21st February, 2003, I do not find any error or illegality committed by the Trial Court in passing the impugned order, nor the petitioners have made out any good grounds to interfere in the order passed by the Trial Court. The Trial Court has set aside the order passed by the Assistant Commissioner and remitted the matter back to the Assistant Commissioner for reconsideration and to decide the same after affording an opportunity to both the parties. If the submission made by the learned Counsel appearing for the petitioners is accepted on hyper technical grounds, in my view, will not do any justice to the litigants. The Trial Court has gone in the matter in detail and thereafter, after thorough evaluation of the original records threadbare, by giving specific finding from paragraphs 15 to 17, has remanded the matter for reconsideration afresh. Therefore, in view of the specific finding recorded by the Trial Court in passing the impugned order under challenge, interference by this Court in the said order is uncalled for.

7. However, regarding delay, the learned Counsel appearing for the petitioners submitted that; there is inordinate delay in filing the appeal and the reasons given by the first respondent in LA. II for condonation of delay is not satisfactory nor he has assigned any cogent reasons and that, the said delay has been condoned by the Trial Court without any justification. He submitted that, the Trial Court ought not to have accepted the explanation given by the first respondent for condoning the delay and ought not to have gone into the matter in detail to decide the delay in filing the appeal before it. With regard to the said submission, it is pertinent to note that the said oral submission made by the learned Counsel appearing for the petitioners, during the course of arguments will not hold any water for the reason that, he had ample opportunity before the Trial Court to file his objections on LA. II filed for condoning the delay. The petitioners have not chosen to file the objections, opposing the condonation of delay application and now they have come up before this Court and submitting that, the Trial Court was not justified in condoning the delay, which cannot be accepted. The reason behind is that, the Trial Court after going into the matter in detail as stated supra, has passed the order remitting the matter to the Assistant Commissioner on the ground that, it requires reconsideration to decide the respective rights of the parties as to whether they are entitled for grant or not which can be decided only by the Competent Authority, namely the Assistant Commissioner being the fact finding authority. Therefore, I do not find any justification to interfere in the order passed by the Trial Court on this ground also.

8. Further, as rightly pointed out by the learned Counsel appearing for the first respondent, if the ratio of the well-settled law laid down by the Apex Court, referred above regarding delay is taken into consideration, the same would directly apply to the facts and circumstances of the present case. It is worthwhile to extract the law laid down by the Apex Court in paragraph 6 at page 1354 which reads thus.--

"6. It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the "State" which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the State is applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant non grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that, sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides".

After careful perusal of the well-settled law laid down by the Hon'ble Supreme Court, it can be seen that, the Hon'ble Supreme Court has held that, it must be grasped that, judiciary is respected not on the ground of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so. In the instant case, after careful perusal of the reasoning given by the Trial Court on merits of the case at paragraphs 16 and 17, I am of the considered view that, the matter requires reconsideration by the Competent Authority. Therefore, I do not find any error or illegality in the impugned order passed by the Trial Court.

9. Having regard to the facts and circumstances of the case, the writ petition filed by the petitioners stands disposed of with the following directions.--

(i) The first respondent herein is directed not to interfere in the peaceful possession and enjoyment of petitioners 1 to 5 in pursuance of re-grant order passed by the Assistant Commissioner dated 16th August, 1971 in Nos. INA(K)49 of 1968-69, INA(K)57 of 1970-71 and INA(K)58 of 1970-71, in respect of 1/3rd share of the petitioners pending disposal of the matter on the file of the

Assistant Commissioner, Tumkur;

(ii) The second represent-the Assistant Commissioner, Tumkur is directed to dispose of the matter, as expeditiously as possible within four months from the date of receipt of a copy of this order and to decide the same in strict compliance of the mandatory provisions of the Act and after affording an opportunity to the petitioners and first respondent.

10. With these observations, the writ petition filed by the petitioners stands disposed of.