
(1997) 09 KAR CK 0031

In the Karnataka High Court

Case No : Writ Appeal No. 2014 of 1995

Muniyappa alias Annayappa (Deceased) by L.Rs and Another	APPELLANT
Vs	
The Land Tribunal and Another	RESPONDENT

Date of Decision : 08-09-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 226, 227
Limitation Act, 1963 — Section 29, 5

Citation : (1999) 4 KarLJ 112

Hon'ble Judges : R.P. Sethi, C.J.;S.R. Bannurmath, J

Bench : Division Bench

**Advocate : Sri T.R. Subbanna, for Sri D.R. Rajashekarappa, for the Appellant;
Sri A.V. Srinivasa Reddy, A.G.A. and Sri Gangadhar Aithal, for the Respondent**

Judgement

R.P. Sethi, C.J.—The appellants have filed an application u/s 17 of the Karnataka Land Reforms (Amendment) Act, 1990 read with Section 151 of the CPC and Articles 226 and 227 of the Constitution of India with prayer to consider Appeal No. LRA 170 of 1987 filed before the Land Reforms Appellate Authority, Bangalore Rural, as a writ petition and dispose of the same after condoning the delay for which a separate application was filed. The petition was dismissed by the learned Single Judge only on the ground that as there did not exist any provision for condoning the delay, the application was barred by time and not maintainable.

2. The facts giving rise to the filing of the application u/s 17 of the Act were that, predecessors in interest of the appellants had filed application in Form 7 seeking occupancy rights in respect of lands bearing Sy. No. 12 measuring 20 guntas, Sy. No. 13 measuring 1 acre, Sy. No. 90 measuring 1 acre 20 guntas and Sy. No. 128 measuring 6 acres 20 guntas of Mugalur Village, Anekal Taluk, which were claimed to be Service Inam Lands regranted in favour of Sri M.S. Subbaiah, the father of second respondent. The application for the grant of occupancy rights was dismissed by the Land Tribunal by its order dated 2-5-1987, against which

the appeal was preferred before the Land Reforms Appellate Authority, Bangalore, in accordance with the provisions of the then prevalent law. The said appeal was registered as LRA 170 of 1987. During the pendency of the appeal before the Land Reforms Appellate Authority, Karnataka Land Reforms Act, 1960, was amended vide Act No. 18 of 1990 with effect from 18-10-1990. Vide Act No. 18 of 1990 the Land Reforms Appellate Authority was abolished. However, opportunity was provided to seek transfer of these appeals to this Court as writ petitions vide Section 17 of the said Act. The appellant herein thereafter filed the application u/s 17 of the Amended Act along with application for condonation of delay which was dismissed vide the order impugned as noted hereinabove.

3. The learned Counsel appearing for the appellants has submitted that Section 17 of the Karnataka Land Reforms (Amendment) Act, 1990, provides that:

"17. Pending proceedings.--The High Court on the application filed by the appellant (which expression shall also include the petitioners of the writ petitions and appellants of the writ appeals transferred to the Appellate Authority), before the expiry of ninety days from the commencement of the Karnataka Land Reforms (Amendment) Act, 1990, whose appeal was pending immediately before such commencement, before such Authority, may if it deems fit, and after condoning the laches, if any, treat such appeal as a writ petition or as the case may be a writ appeal preferred to the High Court against the order passed by the Tribunal under the principal Act".

The conditions prescribed u/s 17, except the period of limitation, are not in dispute. The words "The High Court on the application filed by the appellant...., ..., " may if it deems, and after condoning the laches, if any, treat such appeal as writ petition or as the case may be a writ appeal" are clearly indicative of the fact that the petitions filed under the said section could be considered even after the period of limitation prescribed therein provided the person approaching the Court satisfied the Court regarding the circumstances which justified condoning the laches. The learned Single Judge was not, therefore, justified in rejecting the application merely on the ground that there did not exist a specific provision for condoning the delay.

4. The learned Counsel for the appellant has further referred to the provisions of Section 122 of the Act and Section 29 of the Limitation Act and has drawn our attention to the judgment of the Supreme Court in *Competent Authority, Tarana District, Ujjain (M.P.) v Vijay Gupta and Others*, to submit that as the applicability of the provisions of Section 5 of the Limitation Act was not specifically excluded, the same was deemed to be in the statute book for the purpose of deciding the applications filed for condoning the delay u/s 5 of the Limitation Act. In the case before the Supreme Court proceedings u/s 11 of the Madhya Pradesh Ceiling on Agricultural Holding Act, 1960 ("Madhya Pradesh Act" for short) had been initiated against the respondent therein. A draft statement was notified in terms of sub-section (3) of Section 11 of the Act. No objection petition was filed to the draft statement within the time specified but was filed

thereafter. The objection petition was rejected by the Competent Authority on the ground that the application had been filed beyond the period prescribed under sub-section (3) of Section 11 of Madhya Pradesh Act and that Section 5 of the Limitation Act was not applicable to the objections petition filed under sub-section (3) of Section 11 of the Madhya Pradesh Act. Aggrieved by the order of the Competent Authority the respondent therein filed a civil suit agitating certain question of title and also challenged the order passed by the Competent Authority. The Trial Court as also the First Appellate Court held that Civil Court had no jurisdiction in view of the provisions contained in sub-section (4) of Section 11 of the Madhya Pradesh Act. The respondent thereafter filed a second appeal before the High Court, which was referred to Full Bench. After referring to the provisions of the Act, the Full Bench of the Court held that:

"Therefore, our answer to the second question is that Section 5 of the Limitation Act, 1963, will be applicable for considering the question of limitation in regard to an objection petition filed under sub-section (3) of Section 11 of the Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960".

Aggrieved by the order of the High Court the Competent Authority filed an appeal in the Supreme Court contending that Section 44 of the Madhya Pradesh Act laid down that Section 5 of the Limitation Act was applicable only in case of appeal and revision under the Act. It was submitted that Section 5 of the Limitation Act was by necessary implication excluded in respect of the objections to be filed u/s 11 of the Madhya Pradesh Act. It may be noted that provisions of Section 44 of the Madhya Pradesh Act and provisions of Section 122 of the Karnataka Land Reforms Act are almost similar and deal with the same situation. In this regard the Supreme Court held that:

"...We do not find any force in the above contention. It is no doubt correct that Section 44 states that the provisions of Sections 4, 5, 12 and 14 of the Indian Limitation Act, 1908 shall apply to the filing of the appeal or application for revision, but that does not exclude the application of provisions of Section 29(2) of the Limitation Act, 1963. Section 29(2) of the Limitation Act, 1963 clearly provides as under:

"29(2). Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions containing Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which they are not expressly excluded by such special or local law".

A bare reading of the above provision goes to show that the provisions contained in Sections 4 to 24 (inclusive) shall apply unless they are expressly excluded by any special or local law. There is no provision contained in Section 11 or 44 or

any other provision of the Act expressly excluding the provisions of Section 5 of the Limitation Act from applying to any objections filed u/s 11 of the Act. The Full Bench of the High Court also taken the same view and we do not find any ground or jurisdiction to take a different view".

We are also satisfied that in the absence of specific exclusion, the provisions of Section 5 of the Limitation Act are deemed to be applicable in the present case in view of the judgment of the Apex Court and the provisions of Section 122 of the Karnataka Land Reforms Act. The learned Single Judge was therefore not justified in dismissing the application filed by the appellants vide the order impugned in the petition and was required to determine on facts whether the appellants had established the circumstances justifying the condonation of delay in approaching the Court by way of application u/s 17 of the Amendment Act or not. As the respondents had not been afforded an opportunity to file objections to the application of the appellants filed u/s 17 of the Amendment Act, we are not in a position to adjudicate upon the grounds taken in the application seeking condonation of delay.

5. Under the circumstances the appeal is allowed by setting aside the order of the learned Single Judge. The case is remanded with the observation that the application filed by the appellants for seeking condonation of delay in filing the civil petition u/s 17 of the Amendment Act may be considered and disposed of on merits after affording the other side an opportunity to rebut the allegations made therein.