

(2015) 01 KAR CK 0490
In the Karnataka High Court
Case No : Writ Petition No. 85398 of 2013 (LR)

Nagappa Gouda and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 09-01-2015

Acts Referred:

Citation : (2015) 2 KarLJ 604

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : S.G. Kadadakatti, for the Appellant; Ravi Hosamani, Government Advocate, Advocates for the Respondent

Judgement

Aravind Kumar, J.—Government Advocate is directed to take notice to respondents. Heard Sri S.G. Kadadakatti, learned Counsel appearing for petitioners and Sri Ravi V. Hosamani, learned Government Advocate appearing for respondents 1 and 2.

2. Petitioners are seeking for issuance of a writ of mandamus to the 2nd respondent to consider Form 7 filed by the father of petitioners insofar it relates to land bearing Sy. No. 358/2 measuring 0-21-0, situated at Kumta Taluk, Uttar Kannada District.

3. It is the contention of Sri S.G. Kadadakatti, learned Counsel appearing for petitioners though father of petitioners had applied for grant of occupancy rights in respect of Sy. No. 358/2 measuring 0-21-0 area of land along with other 22 items, Tribunal committed a serious error in not considering the claim of the father of petitioners to grant occupancy rights in respect of this particular survey number, though in respect of adjacent and abutting 22 items of lands Tribunal granted occupancy rights and petitioners' father having continued in possession of this land i.e. Sy. No. 358/2, 2nd respondent, as such, he directed to consider the claim of petitioners' father and now petitioners being in possession of said property, the claim of petitioners for grant of occupancy rights in respect of said

land be directed to be considered by the Tribunal.

4. Learned Government Advocate Sri Ravi V. Hosamani would raise an initial objection with regard to maintainability of this writ petition on the ground that it is belated namely filed after lapse of 37 years and the delay has not been explained and as such, petitioners ought to be denied the relief sought for on the ground of delay and laches as held by Hon"ble Apex Court in the case of Union of India (UOI) and Others Vs. Suksha International and Nutan Gems and Another, AIR 1989 SC 690 : (1989) 1 CompLJ 225 : (1989) 20 ECC 21 : (1989) 25 ECR 159 : (1989) 39 ELT 503 : (1989) 1 JT 10 : (1989) 1 SCALE 4 : (1989) 1 SCC 422 Supp : (1989) 1 SCR 1 : (1989) 1 UJ 310 . When a of unexplained delay in filing writ petition is raised, it would be necessary for this Court to adjudicate the same as the 1st instance itself namely as to whether delay has been satisfactorily explained or not. It has been held by Hon"ble Apex Court in above said judgment to the following effect:

"11. Sri Subba Rao would say that the reference in the order by learned Single Judge to the contention on the point of delay as bar to relief had nothing to do with the specific contention of the appellants" that there was inordinate and unexplained delay in approaching the Court. This, learned Counsel submits, would be clear, by a reference to the aspect of the delay dealt with the considered in W.P. No. 2477 of 1984, on which the learned Single Judge relied. The order of the same learned Single Judge in W.P. No. 2477 of 1984, in which the particular aspect of delay is considered is at para 8 of that order. That para in the order in W.P. No. 2477 of 1984 reads:

"Mr. Joshi, learned Counsel for the respondents, submitted that the petitioners were not entitled to relief because of delay. It is not possible to agree. After the redemption certificate on 16th November, 1983, application for revalidation and OGL endorsement was made within four months therefrom on 12th March, 1984. There is, in the circumstances, no such delay as to warrant its ejection on that ground. The contention thus fails and is rejected."

Sri Subba Rao submits that the delay referred to in the above paragraph is the delay in seeking revalidation and endorsement after the issue of redemption certificate and not the delay in filing the writ petition and that in both the present cases the plea of delay in filing the writ petitions has not received due consideration by the High Court. Sri Subba Rao referred to as number of pronouncements of this Court, to substantiate that such unexplained delay particularly in matters dealing with import licences would bar relief and that unexplained delay, but itself and without more, is a factor disentitling a person to relief. He submitted that absence of prejudice to the opposite party, by itself, would not justify delay and that in the context of grant of import licences passage of time brings with it, as here, problems of conflicting policy considerations. Where changes of policy would impart crucial significance to the delays, Courts, learned Counsel says, should insist upon even a higher degree of promptitude. He, accordingly, submitted that the writ petitions should be

dismissed on the ground alone of delay in filing them.

This contention of the appellant cannot be brushed aside. If appellants had raised a specific plea of delay as a bar to the grant of relief - and the delays in the present cases, having regard to the nature of the subject-matter, were not inconsiderable - it was perhaps necessary for the High Court to have specifically dealt with the plea. The aspect of delay adverted to by the learned Single Judge in the course of the order was a different one.

However, we think it would be somewhat unfair for the respondents, who have succeeded in the High Court, to decide this question without an opportunity to them to satisfy the Court as to the reasons, if any, for the delay and as to the sufficiency of such reasons. We assume that the plea had been taken before the High Court by the appellants as this submission of the learned Counsel for the appellant was not controverted. We think it would be appropriate that the appellants' appeals before the High Court are remitted to the High Court for such consideration as the Appellate Bench may now bestow on this contention of the appellants. If the Appellate Bench is persuaded to view that the delay is satisfactorily explained it may proceed to confirm the orders of the learned Single Judge, subject, of course, to the question of permissibility of the importable items to be determined in the light of the pronouncements of this Court referred to at contention (c). If, on the contrary, the delay is held by the Division Bench to be such as to disentitle respondents to relief, the Division Bench may proceed to allow the appeals and dismiss the writ petitions. All other controversies in the appeal shall be held to have been concluded in favour of the respondents".

In the present writ petition, there is no whisper as to why petitioners have not approached this Court after the order of Tribunal came to be passed on 24-7-1977 i.e., about 37 years back whereunder claim for grant of occupancy rights in respect of Sy. No. 358/2 had been denied. This unexplained delay of 37 years would disentitle petitioners for grant of any discretionary relief by this Court. Further, it requires to be noticed that undisputedly, father of petitioners had applied for grant of occupancy rights in respect of 23 items out of which 22 items have been granted and only this particular Sy. No. 358/2 has been denied. Father of petitioners expired in the year 1998 i.e., on 11-2-1998, as could be seen from the averments made in the writ petition. Even during his lifetime that for a period of 21 years, he did not raise his little finger challenging the order of Tribunal. As such, petitioners who now having succeeded to the estate of their father cannot be heard to contend that Tribunal had committed any error in rejecting the claim of their father for grant of occupancy rights in respect of Sy. No. 358/2. Even on merits, petitioners do not have a semblance of right to claim for grant of occupancy rights in respect of this survey number. Hence, on the ground of delay and laches and also on merits, writ petition is hereby rejected.

Sri Ravi V. Hosamani, Government Advocate is permitted to file memo of appearance within three weeks from today.