

(1981) 08 KAR CK 0037
In the Karnataka High Court
Case No : WP 13911/79

Sarojini Babu

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 26-08-1981

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1982) 1 KarLJ 65

Hon'ble Judges : N. D. Venkatesh, J

Judgement

1. By its order dated 25.5.1976 (vide Ex. E in case No. TNC. MSC. SR. 8391) the Land Tribunal, Karwar, rejected the claim of Smt. Sarojini Babu Baadkar (petitioner herein) for occupancy rights in respect of two items of agricultural lands comprised in Sy. Nos. 387/2 and 386/1 respectively of village Baad, Taluk Karwar. Smt. Meenikabai Baadkar, the 3rd respondent herein, is said to be the owner of the said lands.

2. The petition challenging that order was filed in this Court on 6.8.79, more than three years after the impugned order.

3. In view of this enormous delay in challenging the order of the Tribunal, Counsel for the petitioner was heard as to what explanation his client has to offer explaining this laches. He drew my attention to para-10 of the petition wherein it is stated about his client having filed a review petition seeking a review of the impugned order and of that petition still pending. It is not his case that his client had no notice of the proceeding or had no knowledge of the pronouncement of the impugned order. As is well known Tribunals constituted under the Karnataka Land Reforms Act, 1961. have no power to review their orders. Pursuing such a course will not be a satisfactory explanation for more than three years" delay. But, Counsel for the petitioner drew my attention to a decision of this Court in Krishna Sridhar Bhat v. Land Tribunal, Kumta, WP 2838/78 dt. 27.10.80. In that case there was nearly two years delay in filing the petition. The learned single Judge felt that the delay in that case was required to be condoned in view of the

fact that the Tribunal had committed several illegalities.

4. Since it is within the discretion of the Court to condone the delay in a given cause in the light of the facts of the particular case, it is not possible to accept any particular decision as laying down an inflexible rule in this connection. It all depends upon the facts of each case. In *Ramana Dayaram Shetty v. International Air Port Authority*, AIR 1979 SC 1628, the Supreme Court, while holding that the acceptance of tender of the 4th respondent in that case was "invalid as being violative of the equality clause of the Constitution as also of the rule of administrative law inhibiting arbitrary action", refused to quash that acceptance of tender for the reason that the petitioner had approached that court after a lapse of five months during which time the 4th respondent had spent considerable sums of money in making arrangements for setting up Restaurant and Snak Bars. The Court felt that it would be inequitous to set aside the contract at the instance of the appellant in the circumstances. We are dealing with a case wherein the parties seek a writ of certiorari quashing the impugned order of the Tribunal. The order is not ab initio void. It is voidable at the instance of the party aggrieved. The party has approached this Court after a delay of more than three years from the date of the order. It is possible that the person, in whose favour the decision of the Tribunal has gone, has made improvements on the land by investing considerable sums of money. Also, in cases like these, the possibility of the owner of the land selling the land or agreeing to sell the same cannot be ruled out. There should be some finality in these matters. The following observations of the Supreme Court in a recent decision-*Ashok Kumar Mishra v. Collector, Raipur*, AIR 1980 SC 112, may be noted:

"The power of the High Court under Art. 226 to issue an appropriate writ is discretionary and if the High Court finds that there is no satisfactory explanation for the inordinate delay, it, may reject the petition if it finds that the issue of writ will lead to public inconvenience and interference with rights of others. This rule applies also to a case in which the validity of an election to a local authority is challenged. The question whether in a given case the delay involved is such that it disentitles a person to relief under Art. 226 is a matter within the discretion of the High Court which, as in all matters of discretion it has to exercise it judiciously and reasonably having regard to the surrounding circumstances".

In that case, in connection with the holding of elections to the Raipur Municipal Corporation, steps were taken by the concerned authority to prepare electoral rolls. Under the relevant rules a notice was issued stating that claims and objections, if any, in the matter of the preparation of electoral rolls should be preferred within a period of 20 days from the date of the publication of that notice, According to the objectors (who were the petitioners in the Supreme Court) the statutory time limit to prefer objections was 30 days from the date of publication of that notice and granting only 20 days, as has been done in that case, was violative of that rule, and therefore, the entire election was vitiated. The concerned authority had published that notice on 30.9.78, but challenging

that publication a writ petition was filed in the High Court of Madhya Pradesh on 28.12.78. Between the publication of that notice and the filing of the petition there was a delay of about three months. The High Court felt that the petitioners were not entitled to any relief as they had approached the court after undue delay. The Supreme Court confirmed that finding of the High Court. It is true that the facts in Ashok Kumar Mishra's case are somewhat different from the facts of the instant case. However, it is clear, that, if a party, feeling aggrieved by an administrative act or a decision of the Tribunal, fails to act with diligence in invoking the writ jurisdiction of superior courts, thereby allowing time to lapse and circumstances to change, should not be heard unless he satisfactorily explains the delay in approaching the Court.

5. After considering all aspects of the matter I am of the view that this enormous delay in preferring this petition has not been satisfactorily explained and, therefore, the petition deserves to be dismissed for the said laches.

6. Therefore, Rule not issued and the petition dismissed. No costs.