

(2022) 06 KAR CK 0034
In the Karnataka High Court
Case No : Review Petition No. 393 Of 2022

Shivaraju & Others

APPELLANT

Vs

Deputy Commissioner Bengaluru Urban District
Bengaluru-560001 & Others

RESPONDENT

Date of Decision : 28-06-2022

Acts Referred:

Karnataka Schedule Caste And Schedule Tribes (Prohibition Of Transfer Of Certain Lands) Act, 1978 — Section 4, 5
Code Of Civil Procedure, 1908 — Order 22 Rule 9(2)(3), Order 47 Rule 1
Constitution Of India, 1949 — Article 226

Citation : (2022) 06 KAR CK 0034

Hon'ble Judges : Ritu Raj Awasthi, CJ; Ravi V Hosmani, J

Bench : Division Bench

Advocate : Jayakumar S. Patil, H.R. Showri, L.P.E. Rego

Final Decision : Allowed

Judgement

Ravi V. Hosmani J

1. Challenging judgment dated 17.01.2022 passed by Division Bench of this Court in W.A.No.850/2021, this review petition is filed.
2. Heard learned counsel for review applicant as well as learned Additional Government Advocate for Respondent Nos. 1 and 2 and learned counsel for Respondent Nos. 7 and 8. The appearance of Respondent Nos. 3 to 6 is dispensed, as they were not contesting parties in the writ petition and writ appeal being the legal heirs of original allottees.
3. Sri. Jayakumar S. Patil, learned Senior Counsel appearing for Sri. Raveendra V. Reddy, Advocate for review petitioners submitted that review petitioners are legal representatives of Laguma @ Dekka, who was originally granted land bearing Sy.No.94 measuring 2 acres 37 guntas of Thanisandra village, Krishnarajapuram Hobli, under Darkhast Rules, on 20.01.1937.

4. On 16.12.1994, Sri A. Stephen - husband of respondent no.7, purchased said land from two out of six children of original grantee, under registered sale deeds. However, on 16.02.1999, other legal heirs filed O.S.No.1311/1999 seeking for relief of partition and separate possession of granted land. In said suit, purchaser Sri A.Stephen was arrayed as defendant no.3. Said suit came to be dismissed on 17.04.2012 by holding defendants no.2 and 3 therein as absolute owners of suit property. Challenging said decree, RFA No.1436/2012 is filed, which is pending before this Court.

5. In meanwhile on 30.03.2013, application seeking for restoration of lands was filed under Section 4 of Karnataka Schedule Caste and Schedule Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (hereinafter referred to as 'PTCL Act' for short) by review petitioners no.1 to 3 and 5 herein.

6. As Sri. A. Stephen died on 06.05.2012, respondents no.7 and 8 herein i.e. his wife and son were arrayed as parties to said proceedings. On, 30.03.2015, 2nd respondent - Assistant Commissioner, Bengaluru, passed order in K.SC.ST.no.115/2013-14, for restoration of granted land to legal representatives of original grantee. Sale deeds under which granted land were purchased by respondents no.7 and 8 were held as null and void.

7. On 20.06.2015, order of Assistant Commissioner was given effect to and revenue records were mutated in name of applicants.

8. Aggrieved by order of Assistant Commissioner, respondents no.7 and 8 filed appeal before respondent no.1 herein. Said appeal registered as SCST Appeal No.24/2015 came to be dismissed on 20.09.2017. Thereafter, they filed W.P.No.48351/2017 before this Court.

9. On 22.07.2021, said writ petition was allowed and orders of Deputy Commissioner and Assistant Commissioner were set aside on ground of limitation, relying upon two judgments of Hon'ble Supreme Court i.e., Nekkanti Rama Lakshmi Vs. State of Karnataka (2020) 14 SCC 232 and Vivek M. Hinduja Vs. M. Ashwatha (2020) 14 SCC 228.

10. It was submitted that learned Single Judge erroneously assumed that application for restoration was filed before Assistant Commissioner after lapse of 21 years which could not be termed as being within reasonable period of time.

11. It was submitted that on date of disposal, writ petition was taken up out of turn, at end of day for disposal, brushing aside request by junior advocate for adjournment on ground of non-availability of Senior Counsel. As writ petition was allowed without affording opportunity, it was virtually an ex-parte order.

12. Aggrieved by said order, Writ Appeal No.850/2021 was filed. However, under impugned order, Division Bench dismissed appeal. It was submitted that impugned order suffered from error apparent on face of record and warranted review. It was submitted that first ground of challenge was lack of opportunity before learned Single Judge, especially, as ground of delay or limitation was

neither urged nor opportunity of meeting same was afforded.

13. Second ground of challenge was violation of principles of audi alteram partem, since no opportunity was given to explain reasons for delay in filing application for restoration. It was submitted that Division Bench of this Court in case of Smt. P. Kamala Vs. State of Karnataka represented by its Secretary, Revenue Department and others (2019) 5 Kant LJ 485 and in case of Smt. Kavita Vs. Deputy Commissioner and others W.A.No.100893/2015, disposed of on 02.07.2020, it was held that applications could not be rejected on ground of delay and laches without giving opportunity to applicants to explain reasons for delay.

14. It was also contended that though application for restoration was filed on 30.03.2013, after dismissal of suit for partition, learned Single Judge as well as Division Bench assumed period of delay to be 21 years. Even reliance upon decisions in Nekkanti Rama Lakshmi (supra) and Vivek M. Hinduja (supra) was not justified as they were clearly distinguishable on facts. It was submitted that while in Vivek M. Hinduja (supra), action for restoration was initiated by Assistant Commissioner suo-moto, 20 years after date of alienation of granted lands, in Nekkanti Rama Lakshmi (supra) alienation was in year 1977 i.e., prior to coming into force of PTCL Act and hence prior permission of Government was not necessary for alienation after lapse of period of non-alienation. Unlike in present case where alienation during 1994 i.e. after coming into force of PTCL Act, prior permission of Government was mandatory and which was admittedly not obtained.

15. Learned Senior Counsel further submitted that though it was settled law that where no period of limitation was prescribed, action ought to be initiated within reasonable period, what would be 'reasonable period' would depend on facts and circumstances of each case. As review petitioners were not afforded opportunity of explaining reasons for delay, he sought for remand of matter to authorities. It was submitted that Hon'ble Supreme Court in case of Satyan Vs. Deputy Commissioner and others (2020) 14 SCC 210 after referring to various earlier decisions including Nekkanti Rama Lakshmi (supra) and Vivek M. Hinduja (supra), had held that delay of 8 years in filing application would not come in way of competent authority taking action. It was also held that any alienation of granted land after commencement of PTCL Act without obtaining prior permission of Government would be invalid, null and void.

16. It was submitted that though these decisions were referred to, without proper consideration and assuming period of delay as 21 years, Hon'ble Division Bench dismissed appeal. As assumption regarding delay and failure to consider decisions for providing opportunity for explaining delay were errors apparent on face of record, learned Senior Counsel sought for allowing review petition.

17. On other hand, Sri. L.P.E. Rego, learned counsel for respondents no.7 and 8 opposed review petition and sought its dismissal. It was submitted that though

date of alienation was 16.12.1994, application for restoration was filed before original authority only on 30.03.2013 i.e., nearly after two decades and only explanation offered was pendency of civil suit.

18. It was submitted that said suit was collusive in nature between legal representatives of original grantee. In said suit, fact that suit property was 'granted land' as defined in PTCL Act was suppressed to avoid invocation of bar of jurisdiction of civil Court. When said suit was dismissed after full contest, application for restoration was filed under provisions of PTCL Act. It was submitted that a party in a writ petition cannot be permitted blow hot and cold and principles of estoppels would apply.

19. Learned counsel further submitted that all contentions urged and decisions cited herein were considered by Division Bench and therefore, there was no error apparent on face of record or any other sufficient reason, justifying review.

20. We have heard rival submissions of contesting parties regarding scope of review petition. Hon'ble Supreme Court in the case of Haridas Das v. Usha Rani Banik (2006) 4 SCC 78, has summarized scope and ambit of review as under:

"14. In Meera Bhanja v. Nirmala Kumari Choudhury [(1995) 1 SCC 170] it was held that: "8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. In connection with the limitation of the powers of the court under Order 47 Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution, this Court, in Aribam Tuleshwar Sharma v. Aribam Pishak Sharma [(1979) 4 SCC 389] speaking through Chinnappa Reddy, J. has made the following pertinent observations:

'It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found, it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court."

15. A perusal of Order 47 Rule 1 shows that review of a judgment or an order could be sought: (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge

of the applicant; (b) such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of the record or any other sufficient reason.

16. In *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* [(1979) 4 SCC 389] this Court held that there are definite limits to the exercise of power of review. In that case, an application under Order 47 Rule 1 read with Section 151 of the Code was filed which was allowed and the order passed by the Judicial Commissioner was set aside and the writ petition was dismissed. On an appeal to this Court it was held as under:

"It is true as observed by this Court in *Shivdeo Singh v. State of Punjab* [AIR 1963 SC 1909] there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."

17. The judgment in *Aribam* case [(1979) 4 SCC 389] has been followed in *Meera Bhanja* [(1995) 1 SCC 170]. In that case, it has been reiterated that an error apparent on the face of the record for acquiring jurisdiction to review must be such an error which may strike one on a mere looking at the record and would not require any long-drawn process of reasoning. The following observations in connection with an error apparent on the face of the record in *Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale* [(1960) 1 SCR 890] were also noted:

"An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ."

18. It is also pertinent to mention the observations of this Court in *Parsion Devi v. Sumitri Devi* [(1997) 8 SCC 715] . Relying upon the judgments in *Aribam*

[(1979) 4 SCC 389] and Meera Bhanja [(1995) 1 SCC 170] it was observed as under:

"9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be 'reheard and corrected'. A review petition, it must be remembered has a limited purpose and cannot be allowed to be 'an appeal in disguise'."

21. It is clarified that review proceedings are not by way of an appeal and have to be strictly confined to scope and ambit of principles of Order XLVII Rule 1 of CPC. Review petition cannot be allowed to be an appeal in disguise.

22. In Aribam Tuleswar Sharma Vs. Arbam Pishak Sharma 1979(4) SCC 389, it is held that there is nothing in Article 226 or Constitution to preclude a High Court, exercising power of review which inheres in every Court of plenary jurisdiction, to prevent miscarriage of justice or to correct grave and palpable errors committed by it.

23. In the light of scope and parameters of review, it is to be examined whether grounds on which review is sought are tenable.

24. First contention is misconception about extent of delay, which was assumed to be 21 years computing it from year of sale transactions i.e., 1994 to date of order passed by Assistant Commissioner on 30.03.2015. There is no dispute that in present proceedings, alienation of granted land was in the year 1994 i.e. after coming into force of PTCL Act. Further, filing of O.S.No.1311/1999 on 16.02.1999, its dismissal on 17.04.2012, and filing of application for restoration before Assistant Commissioner on 30.03.2013 are also not in dispute.

25. Firstly, as suit was filed within 4 years and two months after alienation and said suit was pending for 13 years, duration spent in prosecuting suit cannot be considered towards delay. Application for restoration is filed shortly after dismissal of suit. In any case, RFA No.1436/2012 filed challenging dismissal of suit is still pending before this Court. Excluding time spent in prosecuting suit, delay may be shortly in excess of 4 years. Therefore, assumption of duration of delay to be 21 years is on face of record, erroneous.

26. Secondly, Hon'ble Supreme Court in Satyan (supra) has held that after commencement of PTCL Act, alienation without prior permission of State Government would be invalid, null and void. It is also held that delay of 8 years would not come in way of competent authority taking action, as contemplated under the Act, considering the purport of the Act as a beneficial legislation.

27. Likewise, referring to decision in Satyan (supra), Nekkanti Rama Lakshmi (supra) and Vivek M Hinduja (supra), Division Bench of this Court in P. Kamala

(supra), considering similar submissions in paragraph 10, has held in paragraphs 21 to 24 as follows:

"10. The Learned Senior Counsel further submits that the purchasers should not be allowed to take advantage of the recent decisions in Nekkanti, (supra) and Vivek Hinduja, (supra), since the question of delay and laches were never raised or argued before the fact finding authorities or the Learned Single Judge. Indeed, the grantee is taken by surprise that the question of delay and laches is raised for the "first time before this Court, that too because of the latest decision in the case of Nekkanti, (supra) and Vivek Hinduja, (supra). Even otherwise, it is submitted that the decisions of the Apex Court in the case of Nekkanti, (supra) and Vivek Hinduja, (supra) should not be taken or read in the manner that without affording an opportunity to the grantee to explain the delay, if any, the decisions could be made applicable and the grantee who has succeeded before the fact finding authorities should be shown the door. It is therefore submitted that the minimum that is required is to afford an opportunity under the principles of natural justice, to the grantee to explain the delay, if any.

... ..

21. Similarly, in a situation where a plea of limitation was not raised at the earliest instance, an application seeking to raise the question of limitation was permitted to be made even at the appellate stage or before the Apex Court in a Special Leave Application. Reference may be made to larger bench decisions in the case of Management of the State Bank of Hyderabad v. Vasudev Anant Bhide [(1969) 2 SCC 491 : AIR 1970 SC 196] , and Town Municipal Council, Athani v. Presiding Officer, Labour Courts, Hubli [AIR 1969 SC 1335.] . In that context, in the case of Town Municipal Council, Athani, (supra), notice of such application, seeking to raise the plea of limitation, was served on the respondent well in time, so that, by the time the appeals came up for hearing they knew this point was sought to be raised by the appellant. Their Lordships held that a question of limitation raises a plea of want of jurisdiction and, in these cases, this question could be decided on the basis of the fact on the record, being a pure question of law.

22. While considering the words "sufficient cause", as provided in Order XXII Rule 9(2)(3) of the Code of Civil Procedure, the Hon'ble Supreme Court, in the case of Bal Want Singh v. Jagdish Singh [(2010) 8 SCC 685] , held that liberal construction of the expression "sufficient cause" is intended to advance substantial justice which itself pre supposes no negligence or inaction on the part of the applicant, to whom want of bonafide is imputed. The expression "sufficient cause" implies the presence of legal and adequate reasons. The "sufficient cause" should be such that it persuades the Court, in exercise of its judicial discretion, to treat the delay as an excusable one. It would be apposite to notice the observations of the Hon'ble Supreme Court in the case of Thirumalai Chemicals Limited v. Union of India [(2011) 6 SCC 739] , wherein, on the question of law of limitation, it was held that law of limitation is capable of effectively depriving

persons of accrued rights and therefore, they need to be approached with caution.

23. Time and again, the Hon'ble Supreme Court has held that there cannot be straight jacket formula to decide as to what is a reasonable period for filing an application or a writ petition, where there is no prescription of limitation. What is 'reasonable', depends on the facts and circumstances of each case and the statutory provisions governing a particular case. To give an illustration, if a person is granted land in the year 1975 and in violation of the terms of grant, alienates the land in the year 1980 and dies immediately thereafter, leaving behind a minor son as his sole legal heir and the son makes an application under Section 5 of the Act, in the year 2000, a few years after attaining majority, the question that begs consideration is whether delay of 20 years in filing the application could be rejected on the ground of unreasonable delay or without sufficient cause? Obviously, the answer would be that sufficient cause is shown. There are any number of precedents where delay of more than 20 years have been condoned in matters relating to payment of compensation under Land Acquisition Act and the like.

24. As noted earlier, there is nothing on record to suggest whether the purchaser raised an objection or plea regarding delay and laches, before the Assistant Commissioner. On the face of the record, it is evident that the grantee was not called upon to explain the delay. The least that is expected, on the principles of audi alteram partem is that an opportunity should be given to the grantee to explain the delay. The grantee, if afforded such an opportunity, may file an affidavit along with cogent evidence and such an explanation may be examined, which would satisfy the basic tenets of law."

28. Further observation that opportunity to explain delay was available to review petitioners but not availed would be contrary to record as respondent Nos.7 and 8 did not raise such plea before Assistant Commissioner or Deputy Commissioner.

29. Therefore, reason assigned to hold that ratio of above decisions would not be attracted to this case is palpably erroneous.

30. As impugned order under review suffers from above mentioned errors which are apparent on face of record, it warrants review.

31. Considering fact that respondents no.7 and 8 have raised ground of application for restoration being belated in Writ Petition for first time, we find it would be proper to remand the matter back to authorities to afford opportunity to parties to contest on issue of delay and authorities to decide the same.

For aforesaid reasons, we pass following :

ORDER

Review Petition is allowed.

The judgment and order dated 17.01.2022 passed in Writ Appeal No.850/2021

and judgment and order dated 22.07.2021 passed in Writ Petition No.48351/2017 are hereby set aside. The matter is remanded back to the file of respondent No.2 with a direction to provide a reasonable opportunity to review petitioners as well as respondent Nos. 7 and 8 herein to contest the proceedings on delay and laches and thereafter pass a fresh order by considering rival contentions in accordance with law within a period of three months from the date of receipt of copy of this order. For purpose of reconsideration, the order dated 30.03.2015 passed by respondent No.2 in K.SC.ST. No.115/2013-14 and 20.09.2017 passed by respondent No.1 in SC.ST. Appeal No.24/2015 which were challenged in writ petition are quashed. We make it clear that we have not tested the merit of the above orders and it will be the discretion of the authority concerned to take appropriate decision after considering the question of delay.