
(2013) 08 KAR CK 0198
In the Karnataka High Court
Case No : Writ Petition No. 5922 of 2009

Smt. Eramma

APPELLANT

Vs

Smt. Chikkamma and Others

RESPONDENT

Date of Decision : 07-08-2013

Acts Referred:

Karnataka Village Officers Abolition Act, 1961 — Section 3, 3(2)

Citation : (2013) 08 KAR CK 0198

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : K.P. Bhuvan in W.P. No. 5922/2009, Sri N. Subba Shastry in W.P. No. 5924/2009 and Sri N. Subba Shastry in W.P. No. 6744/2008, for the Appellant; Mahesh R. Uppin, Advocate for R2 and R3, R4-Service Held Sufficient V/C/O DTD. 22.7.2013 and Sri Gopal Bilal Mani, HCGP for R5 in W.P. No. 5922/2009 and Sri Mahesh R. Uppin, Advocate for R2 and R3, Sri Gopal Bilal Mani, HCGP FOR R5 and Service Held Sufficient R-1, 4 and 6) in W.P. No. 5924/2009 and Sri Mahesh R. Uppin, Advocate for R2 and R3, Sri Gopal Bilal Mani, HCGP FOR R6 and Service Held Sufficient R-1, 4 and 5 in W.P. No. 6744/2008, for the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy, J.—Since common question of law and that of fact arise for decision making, with the consent of learned Counsel for the parties, petitions are clubbed together, finally heard and disposed of by this order. Petitioners having filed applications for regrant of land attached to the village office of Kulavadi Service Inam under the Karnataka Village Offices Abolition Act, 1961 (for short "KVOA" Act), led to forwarding papers by Assistant Commissioner and Deputy Commissioner, to the Tahsildar, for necessary enquiry and orders thereon. It appears that the Tahsildar passed order dated 20.06.2000 and 27.06.2000 regranting portions of land in survey Nos. 32, 74 and 58 of Kamadihalli village, in favour of Hanumavva, W/o. Anandaiah-appellant in M.A. (VOA) No. 29/2004; Nagaiah, S/o. Lakkaiah(respondent No. 3), Chikkamma W/o. Siddaiah (respondent No. 1) & Eramma W/o. Siddaiah (appellant) in M.A. (VOA) No.

28/2004; & Javaraiah S/o. Ningaiah and also the husband of Hombalamma-appellant in M.A. (VOA) No. 27/2004.

2. Hombalamma W/o. late Javaraiah S/o. Ningaiah, filed M.A. (VOA) No. 27/2004, Eramma, W/o. Siddaiah filed M.A. (VOA) No. 28/2004, while Hanumavva W/o. Anandaiah filed M.A. (VOA) No. 29/2004 along with the application I.A. No. 1 in each of the appeals to condone the delay in preferring the appeals u/s 3(2) of the KVOA Act. The District Judge, by orders of even date 15.12.2007, rejected I.A. No. 1 in each of the appeals, on the premise that the appellants affixed either their signatures or thumb impressions on the order dated 19.6.2000 in each of their cases, found in the record of the Tahsildar and sequentially, appeals were dismissed. Hence, these petitions.

3. It is no doubt true that the petitioners did affix their thumb impression or signature on the orders passed by the Tahsildar as is obvious from records made available by the Government Pleader. Therefore, they were fully aware of the orders dated 20.6.2000 & 27.6.2000. The District Judge having noticed the affixing of the signature or thumb impression of the appellants on the orders passed by the Tahsildar, jumped to the conclusion that the appellants had full knowledge of the orders and therefore, there was no ground or sufficient cause to condone the delay and that the appellants swore to false affidavits.

4. The discretion to condone the delay like any other judicial discretion must be exercised with vigilance & circumspection, according to justice, commonsense, and sound judgment. The discretion is to know through law, what is just. The words "sufficient cause" should receive a liberal construction so as to advance the cause of substantial justice, when no negligence nor inaction nor want of bona fide is imputed to the applicant, is the well established principle.

5. Yet again, it is well settled law that a liberal approach is adopted on the principle, as it is realised that:-

- i) ordinarily, a litigant does not stand to benefit by lodging an appeal late;
- ii) refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when the delay is condoned, the highest that could happen is that a cause would be decided on merit after hearing the parties;
- iii) "every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in an ordinary commonsense and a pragmatic manner;
- iv) when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred and it cannot claim to have a vested right in injustice being done because of non-deliberate delay;
- v) there is no presumption that delay is caused deliberately or on account of

culpable negligence or on account of malafide. A litigant does not stand to benefit by resorting to delay; in fact, he runs a risk;

vi) it must be grasped that judiciary is respected not on account of its power to legalise injustice on technical ground but because it is capable of reasoning by removing injustice and is expected to do so.

6. Applying the aforesaid principles and making a justice oriented approach from this perspective, in my opinion, the trial Court fell in error in construing sufficient cause to condone the delay.

7. Having had a glimpse at the orders dated 20.06.2000 and 27.6.2000 of the Tahsildar, what is demonstrative is that the order at page 91 of the file though dated 19.06.2000, is signed on 20.06.2000, while the original of the typed order at page 93 discloses that the Tahsildar affixed his signature on 27.06.2000. Similar are the orders of the Tahsildar with two dates in respect of other regrantees. Yet again, what is patent is that the Tahsildar's orders are in a printed format by filling up the blanks.

8. Section 3 of the KVOA Act requires the Tahsildar to decide certain questions namely, a) whether any land was granted or continued in respect of or annexed to a village office by the State, or b) whether any person is a holder of a village office, or c) whether any person is an authorised holder, or d) whether any person is an unauthorised holder, after giving the party affected an opportunity to be heard and after holding an enquiry in the prescribed manner to decide the question.

9. The prescription in Rule-3 of the Karnataka Village Offices Abolition Rules, 1961, requires notices to be issued to parties, dates of hearing to be fixed, while Sub Rule 6 requires the Tahsildar to make a decision or order containing full statement of the grounds on which it is made and shall be written and signed by the Tahsildar making the order or from the dictation of the Tahsildar, in which case, a certificate to that effect shall be made and signed by the Tahsildar in his own hand. Apparently, compliance of the mandatory provisions of the Rules is not forthcoming in the orders of regrant impugned.

10. The District Judge having failed to assess whether the orders impugned were legal and valid, though having had a glimpse at the orders, has occasioned grave injustice to the parties by rejecting I.A. No. 1 on technical reason and sequentially dismissing the appeals.

11. In the circumstances, ends of justice would be met by allowing I.A. No. 1 in each of the appeals, condoning the delay in filing M.A. (VOA) Nos. 27, 28, & 29/2004 and also allowing the appeals by setting aside the order dated 19.06.2000 directing regrant of lands not only to the appellants-petitioners herein but also to the contesting respondents. In the result, writ petitions are allowed. All the orders impugned of the Tahsildar insofar as they relate to regrant of lands in survey No. 32, 74 & 58 of Kamadihalli Village, Bindiganavile Hobli,

Nagamangala Taluk are quashed and the orders of even date 15th December 2007 of the District Judge, passed in M.A. (VOA) Nos. 27, 28, & 29/2004 are also quashed. M.A. (VOA) Nos. 27, 28, & 29/2004 are allowed. The proceeding is remitted to the Tahsildar, Nagamangala Taluk, for consideration afresh over the claims of the parties for regrant under the KVOA Act after extending reasonable opportunity of hearing to all the parties concerned and following the procedure prescribed, supra, and to pass an order by assigning reasons, findings and conclusions. The Tahsildar to conclude the proceeding by February 2014.