(2004) 03 AP CK 0127

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4881 of 2004

Sri Sobhanadri Lakshmi Narasimhaswamy Varla Veda Pathasala — APPELLANT

Vs

District Collector and Others — RESPONDENT

Date of Decision : 22-03-2004

Acts Referred:

Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 — Section 3(4)
Limitation Act, 1963 — Section 14(2), 29(2), 5

Citation : (2004) 4 ALD 240 : (2004) 4 ALT 349

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : V.V. Prabhakara Rao, for the Appellant; Government Pleader for Revenue for Respondent Nos. 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

N.V. Ramana, J.—Impugning the order dated 21-2-2004, passed by the Revenue Divisional Officer, Nuzvid, refusing to entertain the appeal filed by the petitioner against the order of the Mandal Revenue Officer, dated 31-3-2002 on the ground that the same is barred by limitation, the petitioner filed the present writ petition.

2. The petitioner, which is an educational institution, was started in 1908. The petitioner claims to have purchased an extent of Ac.49-38 cents in Telaprolu Village, Krishna District, which are inam lands, under different sale deeds in 1916, 1936 and 1937. Before and after the purchase of the land, the petitioner states that some persons were cultivating the land purchased by them as tenants. The petitioner states that as the land purchased by them is an inam land, having regard to the provisions of Section 4(2)(b) of the A.P. (A.A.) Inams (Abolition and Conversion into Ryotwari) Act, 1956 (for short ''the Act''), they are entitled to be granted ryotwari patta in respect of the land held by them.

3. The petitioner states that in 1981, when they demanded rents from the

tenants, the tenants refused to pay rents on the ground that they were granted ryotwari patta in respect of the land in question. The petitioner, challenging grant of ryotwari patta to the tenants, filed appeal in Appeal Nos. 1 to 20 of 1990 before Respondent No-2-Revenue Divisional Officer, who by order dated 3-4-2000 disposed them of. Thereagainst, the tenants filed writ petition before this Court in W.P.No. 8835 of 2000, which by order dated 20-7-2000 was disposed of by this Court remanding the matter to Respondent No. 2, who it appears, is said to have, while disposing of the appeals held that tenants were not granted ryotwari patta. Pursuant thereto, the petitioner filed writ petition in W.P. No. 8912 of 2001 before this Court seeking direction to the revenue authorities to mutate their name in 10(1) Adangals. This Court by order dated 7-9-2001 disposed of the said writ petition directing the petitioner to file appropriate application before the Mandal Revenue Officer seeking mutation of the names in the revenue records.

4. In pursuance thereof, the petitioner filed application before the Mandal Revenue Officer, seeking mutation of the name of the petitioner in the revenue records. The said application, by order dated 31-3-2002, was dismissed by the Mandal Revenue Officer. Thereagainst, it appears that the petitioner instead of filing appeal before the Revenue Divisional Officer, had filed the appeal before the Joint Collector, Krishna, and on his refusal to entertain the same, filed appeal before Respondent No. 2-Revenue Divisional Officer, u/s 3(3) of the Act. The Revenue Divisional Officer, by order dated 21-2-2004, refused to entertain the appeal on the ground that the same was filed with a delay of eight months and seventeen days. Aggrieved thereby, the petitioner filed the present writ petition.

5. Heard the learned Counsel for the petitioner and the learned Government Pleader for Revenue for the respondents.

6. The learned Counsel for the petitioner submits that inasmuch as the petitioner instead of filing the appeal before the Revenue Divisional Officer, had approached the wrong forum, namely Joint Collector, and filed appeal in time, the Revenue Divisional Officer, ought to have entertained the appeal when the Joint Collector refused to entertain the appeal on the ground that he had approached the wrong forum, and more so when the time gap between the date of the impugned order and preferring appeal thereagainst before the wrong forum, is saved by the provisions of Section 14 of the Indian Limitation Act, 1963 (for short, ''the Limitation Act''). He, thus prayed that the impugned order passed by Respondent No-2-Revenue Divisional Officer, refusing to entertain the appeal be quashed and set aside, and respondent No. 2 be directed to entertain the appeal and adjudicate the same on merits,

7. The learned Government Pleader for Revenue appearing on behalf of the respondents submitted that u/s 3(4) of the Act, Respondent No. 2-Revenue Divisional Officer, is empowered to entertain the appeal even beyond the period of limitation, and there is no specific bar imposed not to entertain appeal beyond the period of limitation, and the provisions of Section 5 of the Indian Limitation

Act, 1963 are applicable to the proceedings under the Act, and if the delay is properly explained, Respondent No. 2 can condone the delay and entertain the appeal. Inasmuch as Respondent No. 2 placing reliance on the judgment of this Court in R. Balasubrahmanyam Reddy v. District Collector 1990 (1) An.WR 95, had refused to entertain the appeal, the said decision being no more good law, having regard to the subsequent decision of the Apex Court in Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker, , and the decision of the Division Bench of this Court in Mahendra Kumar Goyal Vs. Ex-Officio Joint Secretary and Addl. Commissioner of Civil Supplies and Another, , the impugned order cannot be sustained, for Respondent No. 2 can entertain appeals u/s 3(4) of the Act beyond the period of limitation, if the delay is properly explained.

8. The only question that arises for consideration in this writ petition is whether the Revenue Divisional Officer is empowered to condone the delay in filing appeal u/s 3(4) of the A.P. (A.A.) Inams (Abolition and Conversion into Ryotwari) Act, 1956 by invoking the provisions of the Indian Limitation Act, 1963?

9. To consider this question, a reference be made to the provisions of Section 3(4) of the Act, which reads thus:

Any person or institution aggrieved by a decision of the Tahsildar under Sub-section (3) may appeal to the Revenue Court within sixty days from the date of communication of the decision and the Revenue Court may after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders on the appeal as it thinks fit.

10. A bare perusal of the aforementioned provision would disclose that a person or institution aggrieved by a decision taken by the Tahsildar under Sub-section (3), can appeal to the Revenue Court within sixty days from the date of communication of the decision, and the Revenue Court may after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders on the appeal as it thinks fit. Though there is no provision under the Act, which provides for condoning of delay in filing appeals u/s 3(4) thereof, there is no express exclusion as regards applicability of the provisions of the Limitation Act.

11. A reference may also be made to the provisions of the Indian Limitation Act, 1963. Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in Court without jurisdiction. Sub-section (2) of Section 14 of the Limitation Act, reads thus:

In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

12. Section 29 of the Limitation Act, deals with savings. Sub-section (2) of

Section 29 of the Limitation Act, reads thus:

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 in 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 contained in Sections 4 - 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law.

13. From a reading of the provisions of Sub-section (2) of Section 14 of the Limitation Act, it becomes clear that in computing the period of limitation, the time during which the applicant has been prosecuting with due diligence another civil proceeding in another forum, whether in a Court of first instance or of appeal or revision, against the same party for the same relief, shall be excluded, if such proceeding was prosecuted in good faith in a Court which did not entertain for defect of jurisdiction or other cause of a like nature. In the instant case, admittedly, the petitioner against the order of the Mandal Revenue Officer instead of preferring appeal before the Revenue Divisional Officer had preferred appeal before the Joint Collector, and such appeal was preferred by the petitioner within sixty days as provided under the Act. Inasmuch as the Joint Collector refused to entertain the appeal on the ground of defect of jurisdiction and the petitioner having been diligent in filing appeal and prosecuting the same in good faith, the Revenue Divisional Officer, ought to have entertained the appeal, and more so when the time taken in prosecuting the appeal before the wrong forum in good faith, is excluded from computing the period of limitation. This apart, a reading of the provisions of Section 29(2) of the Limitation Act, would disclose that in the absence of any express exclusion of preferring appeals beyond the period of limitation, the provisions of Limitation Act would apply to any special or local law, and as such, the provisions of Limitation Act, would apply to the provisions under the Act, and more so when there is no express exclusion in the Act nor is there any prohibition imposed for entertaining appeal u/s 3(4) of the Act beyond the period of limitation. In Mukri Gopalan v. C.P. Aboobacker (supra) the Apex Court was confronted with a question whether the appellate authority constituted u/s 18 of the Kerala Buildings (Lease and Rent Control) Act, 1965, has power to condone the delay in filing of appeal before it under the said section. The Apex Court answering this question in the positive, held thus:

... the appellate authority constituted u/s 18 of the Kerala Rent Act, 1965 functions as a Court and the period of limitation prescribed therein u/s 18 governing appeals by aggrieved parties will be computed keeping in view the provisions of Sections 4 - 24 of the Limitation Act, 1963 such proceedings will attract Section 29(2) of the Limitation Act and consequently Section 5 of the Limitation Act would also be applicable to such proceedings. Appellate authority will have ample jurisdiction to consider the question whether delay in filing such appeals could be condoned on sufficient cause being made out by the concerned applicant for the delay in filing such appeals. The decision rendered by the High Court in the present case as well as by the appellate authority taking contrary view are quashed and set aside...

14. In Mahendra Kumar Goyal v. Additional Commissioner (supra), the question before the Division Bench of this Court was whether the provisions of Section 5 of the Limitation Act can be made applicable to the appeals filed u/s 6-C of the Essential Commodities Act, 1955 and the Orders made thereunder. The Division Bench of this question considering the provisions of Section 29(2) of the Limitation Act, held as under:

In view of Section 29(2) of the Limitation Act, 1963, Sections 4 - 24 of the said Act are applicable to the proceedings not only before the Civil Court, but also before all other authorities and not only to the proceedings under the Civil Procedure Code, but to all other proceedings even under the Special or local law, provided two conditions, namely (1) that the special or local law does not exclude the operation of the Limitation Act, 1963; and (2) that the limitations prescribed under the special or local law is different from what is prescribed under the schedule to the Limitation Act (exist). The same is a stare decisis traceable to Article 141 and is the law of the land. As such, all other judgments holding contra are inapplicable and the judgments of this Court, be it of single Judge or Full Bench referred to above stood impliedly overruled.

15. Upon considering the applicability of the provisions of Section 5 of the Limitation Act to the appeals u/s 6-C of the Essential Commodities Act and the Orders made thereunder, the Division Bench of this Court held thus:

E.C. Act is a special law. Under the said Act, appeal is maintainable against the orders of the primary authority, if filed, within a period of one month of communication. In some orders passed in exercise of the powers u/s 3 of the Essential Commodities Act like A.P. Scheduled Commodities (Regulation and Distribution by Card System) Order, 1973, the period of limitation prescribed for appeal is 30 days from the date of communication. As such, the period of limitation prescribed therein are different from what is prescribed in the schedule appended to the Limitation Act and in fact, the Limitation Act does not prescribe any such limitation to the appeals filed under E.C. Act or under the Orders issued thereunder. Neither E.C. Act nor the Orders issued thereunder exclude the operation of the Limitation Act. If that be so, Section 29(2) of the Limitation Act, 1963 is applicable and as a necessary corollary. Sections 4 - 24 thereof automatically apply to the appeals u/s 6-C of the E.C. Act, 1955 and also under the orders issued in exercise of the powers u/s 3 of the said Act.

16. In the above view of the matter, and having regard to the provisions of the Indian Limitation Act, 1963 and there being no provision in the A.P. (A.A.) Inams (Abolition and Conversion into Ryotwari) Act, 1956 which expressly excludes the applicability of the provisions of the Limitation Act to appeals u/s 3(4) of the said

Act, I am of the considered opinion that the impugned order cannot be sustained, and it is accordingly set aside.

17. In the result, the writ petition is allowed. Respondent No. 2 before entertaining the appeal, shall consider the application that may be filed by the petitioner for condoning the delay in filing the appeal, and pass appropriate orders thereon, in accordance with law. No costs.