

(1988) 01 KAR CK 0009
In the Karnataka High Court
Case No : Writ Petition No. 19278 of 1985

State of Karnataka

APPELLANT

Vs

Gangadhar Mari Naik

RESPONDENT

Date of Decision : 28-01-1988

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 45

Citation : (1988) ILR (Kar) 873 : (1988) 2 KarLJ 200

Hon'ble Judges : Balakrishna, J

Bench : Single Bench

Advocate : S.V. Jagannath, for the Appellant;

Judgement

Balakrishna, J.—This Writ Petition is directed against the orders passed by the Land Tribunal, Honpavar, vide Annexure "A", "B", "C" and "D" conferring occupancy rights in favour of persons claiming to be tenants who had filed applications before the Tribunal in Form No. 7 for grant of occupancy rights.

2. Whereas the impugned orders were passed on 20-7-1976, 26-9-1979, 21-6-1979 and 6-8-1979, the Writ Petition has been filed on 6-12-1985. The petitioner has questioned the orders on various grounds the merits of which cannot be gone into by this Court.

3. The short question for consideration is whether the delay in preferring the Writ Petition is satisfactorily explained by the petitioner which is the State of Karnataka. The explanation offered for the delay is contained in para 5 of the Writ Petition which reads as follows:

"The illegality committed by the Tribunal was noticed at the time of reviewing the functioning of the Tribunals for the purpose of the Act. While scrutinising the work of different Tribunals constituted for the purpose of the Act, the irregularity was noticed but for which it would not have come to day light. The petitioner-State was not a party before the Land Tribunal and as such petitioner was not aware of the order passed by the Land Tribunal till the same was reviewed. The

delay in presenting the above Writ Petition is due to the circumstances narrated above and not intentional."

4. It is very rarely that we come across an instance wherein the bureaucratic machinery which monitors the functioning of the officers who are invested with the power of implementing social welfare legislations detect that in a particular instance the officials have not discharged their duties in accordance with law or have committed acts of non-feasance. In the instant case, the explanation offered for the delay is indeed noteworthy. It has been stated by the petitioner that while scrutinising the work of different Tribunals constituted for the purpose of the Land Reforms Act, the irregularity was noticed but for which it would not have come to light. The alleged illegality committed by the Tribunal is that the Tribunal has not considered whether the respondents who sought conferment of occupancy rights as tenants did or did not hold land in excess of the ceiling area as tenants which is a duty cast on the Tribunal under the provisions of Section 45(2)(ii) of the Karnataka Land Reforms Act, 1961. It is also stated that the State was not a party before the Land Tribunal and hence the State was not aware of the impugned orders of the Tribunal. It is in these circumstances that it is submitted by Sri S.V. Jagannath, learned Government Advocate appearing for the State that the delay deserves to be condoned and the circumstance is exceptional. I am impressed by the argument of the learned Counsel for the State. Though it is not for me to go into the merits of the case since the fact-finding and adjudicating jurisdiction is vested in the Land Tribunal and the Land Reforms Appellate Authority, I have to consider in the light of the contention raised by the petitioner whether this is a fit case for condonation of delay. It is incontrovertible that the object of the Act is to prescribe a ceiling on the ownership of land by an individual and also a family. Many restrictions have been imposed by the legislature in the matter of conferment of occupancy rights even in favour of tenants. Section 45 of the Act is one of those statutory provisions which virtually prohibits the Tribunal in conferring occupancy rights in favour of tenants who are in cultivation of land beyond the ceiling limit. If, ultimately, it is discovered that the respondents who have been conferred with occupancy rights have been holding land beyond the ceiling limit, the very purpose of the legislation would be defeated. It is in these circumstances where patently the Tribunal has not gone into the question whether or not the applicants (respondents) are in cultivation of land beyond the ceiling limit that it is necessary for me to bear in mind this aspect of the matter also in considering whether or not to condone the delay. The benefit of social welfare legislation should not go to persons which the Act itself prohibits in case it is found that the applicants are holding land in excess of the ceiling limit. This is a matter for verification of the Tribunal as a statutory obligation. A perusal of the impugned orders shows that the Tribunal has not gone into this question and the fact that it had not gone into the question was discovered by the petitioner belatedly for the reason that the State was not a party to the proceedings. In a case of this type, a broad view has to be taken and the purpose of a social welfare legislation

ought to be protected against possible lapses on the part of the officials incharge of the machinery to implement social welfare measures.

5. My attention has been drawn to the decision rendered by the Supreme Court in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, of the said ruling, it was held as follows :

"The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on "merits." The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realised that :-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "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 a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

xxx xxx xxx There is no warrant for according a step motherly treatment when the "State" is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing on the buck ethos, delay on its part is less difficult to understand though more difficult to approve- In any event, the State which

represents the collective cause of the community, does not deserve a litigant non grate status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause." So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits."

6. In the peculiar facts and circumstances of this case, I am convinced that this is a fit case for condonation of delay, though it is inordinate.

7. I condone the delay and transfer this case for disposal on merits to the file of the Land Reforms Appellate Authority, Sirsi, in accordance with law leaving all the questions open. The Appellate Authority is directed to dispose of the case expeditiously after due intimation of the date of hearing and after affording a reasonable opportunity to the petitioner and all the concerned parties.