
(2015) 05 MP CK 0033
In the Madhya Pradesh High Court
Case No : S.A. No. 323 of 2011

State of Madhya Pradesh	Vs	APPELLANT
Shrimant Tukojirao Panwar		RESPONDENT

Date of Decision : 13-05-2015

Acts Referred:

Limitation Act, 1963 — Section 5
Madhya Pradesh Land Revenue Code, 1959 — Section 57(3)

Citation : (2015) 3 MPHT 359 : (2015) 3 MPLJ 705

Hon'ble Judges : S.R. Waghmare, J

Bench : Single Bench

Advocate : Pramod Meetha, Learned Govt. Advocate, for the Appellant; Mukul Mandloi, Learned Counsel, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.R. Waghmare, J.—By this second appeal appellant/State is aggrieved by the judgment dated 06.07.2006 passed by the III Additional District Judge, Dewas in Civil First Appeal No. 13-A/06 dismissing the appeal on ground of limitation.

2. Briefly stated the facts of the case are that the order dated 28.02.2003 was passed by the Revenue Authority Dewas in Revenue Case No. 2/A-1/2001-2002 concerning land survey No. 293 area 5.30 acre situated in Ganji Compound, Dewas. The respondent Shrimant Tukojirao Panwar had filed a suit under Section 57(3) of Land Revenue Code before the II Civil Judge Class-II, Dewas for declaration and permanent injunction against the State Government, claiming the land on his owner ship and that he was in possession for more than 65 years and had acquired Bhumi Swami rights. The State filed the written statement before the trial Court and denied the right of the plaintiff respondent and submitted that the land belonged to the State Government and was recorded in the Revenue record as Nazul Land and after coming to the force that MP Land Revenue Code the land vested in the State Government and the plaintiff respondent had no right title over the same, and it also challenged the

jurisdiction of the trial Court to try the suit. The trial Court however, granted the decree of title in favour of the plaintiff and the order passed by the Revenue Authority, declaring the land to be Nazul land was quashed.

3. Being aggrieved, the appellant-State had filed an appeal before the III Additional District Judge, Dewas and the appeal was registered as No. 13-A/2006, however the Appellate Court dismissed the appeal on ground of limitation and hence the present second appeal.

4. Counsel for the appellant-State has candidly admitted that the appeal was barred by 382 days and the application under Section 5 of Limitation Act has been filed for condonation of delay since the time was spent in obtaining the certified copy and other sanctions and the State has prayed that the delay be condoned.

5. The Appellate Court also considering the fact that the respondent plaintiff was in possession of land through out, even during the period of limitation and moreover the State was unable to explain the delay especially since the judgment and decree were fixed for particular date and prompt action was not taken and they could not claim lack of knowledge. Moreover Counsel placed reliance on the Apex Court judgment *Special Tehsildar, Land Acquisition, Kerala Vs. K.V. Ayisumma*, (1996) 5 AD 739 : AIR 1996 SC 2750 : (1996) 7 JT 204 : (1996) 5 SCALE 548 : (1996) 10 SCC 634 : (1996) 3 SCR 848 Supp , whereby the Court observed that even the State could be excused, for not filing appropriate application, since, it was well known that the business of the Government is always done leisurely by officers, who had no or evince no personal interest at different levels and it would be very difficult to explain the day to day delay. Counsel submitted that the attitude of the appellate Court in this light was perverse illegal and ought to be set aside and the appeal should have been decided on merit. Counsel urged that the respondent plaintiff has now been declared Bhumi Swami over the Government land. The State has undoubtedly failed to take action promptly but the essential action was taken by Revenue Authority by order dated 28.02.2003 and it was fully in accordance with provisions of law and in this light the judgment of the trial Court also needed to set aside.

6. At this juncture, however Counsel candidly admitted that the present second appeal is also barred by 1687 days, which is more than four years. He however is placed reliance in the matter of *Special Tehsildar (supra)* whereby the Government was seeking condonation of delay and the Apex Court had directed that approach of the Court should be pragmatic but not pedantic and the Government should not be insisted upon to explain each and every day's delay. Counsel submitted that since several permissions were required for filing the appeal in the present case also and it was not received on time and the delay has occasioned. Officers and Agencies of the State Government were moving at a slow pace and as observed by the Court that encumbered process of pushing the files from table to table and keeping it on the table for a considerable time was

the cause of delay. Counsel submitted that delay in the present case also be condoned. He further placed reliance in the matter of *State of Karnataka Vs. Y. Moideen Kunhi (dead) by Lrs. and Others*, AIR 2009 SC 2577 : (2009) 13 JT 560 : (2009) 6 SCALE 677 : (2009) 13 SCC 192 : (2010) 1 SCC(L&S) 230 : (2009) 7 SCR 392 : (2009) 5 UJ 2366 : (2009) AIRSCW 4491 , whereby the word "sufficient cause" was thoroughly discussed and the Apex Court held that since there was no element of fraud alleged in delay against Government officials and persons concerned; penalizing them and the Government served sufficient fruitful purpose and the Court held that the strict proof of compliance and it's proof sometimes fails to bring public justice and although it also resulted in public mischief by so many delays in process in filing the appeal.

7. Counsel submitted that in the said case more than 4000 acres of land was involved and the High Court imposed Rs. 10,0000/- (ten lakh) to the concerned officials and the Apex Court, therefore was inclined to condone the delay. Counsel submitted that in the present case there was only delay of 1687 days. Finally Counsel placing reliance in the matter of *Pyarelal Vs. State of Madhya Pradesh and Others*, (2010) ILR (MP) 33 : (2010) 3 MPJR 10 : (2010) 3 MPLJ 351 , whereby our own Court was concerned that the public properties being declared as property of individuals requires a bi-parte decision on merit and the First Appellate Court rightly condoned the delay of so many days by the State Government. Counsel submitted that the application needs to be allowed.

8. On considering the above submissions, however I find that the first appeal itself is barred by 382 days and now the second appeal is barred by 1687 days and delay has not been properly explained. Moreover most important fact that cannot be marginalized is that the respondent plaintiff has been in possession of the said land for more than 75 years now and this Court has even in the matter of *Pyarelal (supra)* has categorically held that the law of limitation makes no distinction amongst the State and the Citizens of the Country and, therefore, the State has to approach the Court well within prescribed period of limitation. However when the "State" as an abstract entity prays for condonation of delay, the requirement of strict proof sometimes leads to miscarriage of justice. The approach of the Court should be pragmatic but not pedantic.

9. On considering the application for condonation of delay in this light also, I find that in all the aforesaid cases dealt with limitation as required to be condoned at certain stage in the first appeal; but this is the second appeal in which the delay of 1687 days has occasioned. In the first appeal also there was a delay of 382 days and now in the second appeal also Counsel is praying for condonation of delay of more than 1000 days and such negligence and bureaucratic attitude of State can not be accepted,. And moreover in the present appeal the respondent's fundamental right to the property is effected: more so when person is in possession for such a long period of 75 years. This Court in the matter of *Chunnilal s/o Shri Sakhamam* passed in Second Appeal No. 162/2009 placing reliance on *Lanka Venkateswarlu (D) by L.Rs. Vs. State of A.P. and*

Others, AIR 2011 SC 1199 : (2011) 112 CLT 152 : (2011) 2 RCR(Civil) 880 : (2011) 2 SCALE 703 : (2011) 4 SCC 363 : (2011) 3 SCR 217 : (2011) AIRSCW 1459 : (2011) 2 Supreme 174 , held that the discretion should be exercised systematically and the Court should not override substantial law of limitation, especially when Court finds no justification for delay. The Apex Court was considering the delay of 3703 days condoned by the High Court. The Apex Court held thus:

"High Court not justified in allowing applications for condonation of delay, High Court failed to exercise its discretion to condone delay in reasonable impartial and objective manner. Hence, applications dismissed and appeal of respondents before High Court held to have abated."

10. In this regard also, I find that the application for condonation of delay cannot be allowed. The delay has not been properly explained in the instant case, even considering the fact that the first appeal was dismissed by the lower Court on grounds of limitation; again a colossal delay has occasioned again at the time of filing this second appeal Such high handedness and bureaucratic attitude cannot be permitted at any costs. This appeal is, therefore dismissed for want of limitation.

11. No costs.