

(2011) 06 OHC CK 0002

In the Orissa High Court

Case No : Misc Case No. 224 of 2010 (Arising out of Rvwpet No. 304 of 2010)

State of Orissa

APPELLANT

Vs

Daitary Rout and Others

RESPONDENT

Date of Decision : 29-06-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 79
Limitation Act, 1963 — Section 5

Citation : (2011) 2 ILR (Ori) 90

Hon'ble Judges : L. Mohapatra, J;B.K. Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

L. Mohapatra, J.—The review petition out of which this Misc. Case arises has been filed by the State of Orissa challenging the legality of the order passed by this Court dated 22.11.1993 in O.J.C.No. 3768 of 1993. The impugned order was passed on 22.11.1993 and the review petition has been filed on 24.12.2010. Accordingly, there is delay of almost seventeen years in presenting the review petition.

Misc. Case has been filed for condoning the inordinate delay in filing the review petition.

2. In paragraph-3 of the Misc. Case, it is stated that the review petitioner i.e. the State of Orissa represented through its Special Secretary to Government of Orissa, G.A. Department was not a party in the writ petition and the impugned order was passed behind the back of the review petitioner. The review petitioner could know about the said order on 13.10.2009 when the Power of Attorney Holder of opposite parties 2 to 8 submitted an application for issuance of No-Objection Certificate in respect of the land in question. It is further stated that while examining the records in connection with issuance of No Objection Certificate, the Tahasildar, Bhubaneswar was reminded to furnish the report along with relevant records/documents in August, 2010. In September, 2010 the

Tahasildar, Bhubaneswar submitted the report and file was processed and examined. Thereafter, the file was endorsed to Law Department on 12.9.2010 for its opinion as to whether the review petition is to be filed or not. The file returned from the Law Department on 3.11.2010 with an opinion to file a review petition against the impugned order. On 25.11.2010, file was re-endorsed to the Law Department for obtaining concurrence on the proposal for filing the review petition and it was received from the Law Department on 2.12.2010. Thereafter, the review petition was filed on 24.12.2010.

3. Learned Advocate General appearing on behalf of the petitioner submitted that the land belongs to G.A. Department but the said Department was not made a party in the writ petition. In absence of the General Administration Department as a party to the writ petition, an order was passed on 22.11.1993 disposing of the said writ petition. Long thereafter the opposite parties filed another writ application before this Court vide W.P.(C) No. 7380 of 2010 alleging non-disposal of a petition filed by them before the Special Secretary, G.A. Department, Government of Orissa for grant of No Objection Certificate and this Court disposed of the said writ application on 22.4.2010 with an innocuous order directing the petitioner to pass orders on the petition with regard to grant of No Objection Certificate within a specified time. In compliance of the said order, when the opposite parties drew attention of the petitioner to the petition dated 12.10.2009 filed by their Power of Attorney Holder the impugned order dated 22.11.1993 came to the notice of the review petitioner. Thereafter, the file was immediately processed and decision was taken to file review petition. According to the learned Advocate General, in view of the above, delay of almost 17 years in filing the review stands explained.

4. Shri R.K. Mohanty, learned Senior Counsel appearing for the opposite parties submitted that the Courts are always liberal while considering an application for condonation of delay specially when filed on behalf of the State authorities but in the present case, delay is almost 17 years and no reasonable explanation has been given in the petition filed for condonation of delay. The only ground taken in the petition is that the review petitioner was not a party to the writ application. The State of Orissa represented through the Secretary, Department of Revenue and Excise, Member, Board of Revenue, Orissa, Collector, Puri and Tahasildar, Bhubaneswar were parties to the writ application. Once the State of Orissa is represented through a Department, it is no more open for the review petitioner to take a ground that General Administration Department was a necessary party. The Collector being the custodian of the property in dispute and the order having been passed in presence of the Collector represented through the learned Advocate General, the ground taken in the review petition for condonation of delay is unacceptable.

Learned Advocate General and Shri R.K. Mohanty, learned Senior Counsel appearing for the parties in course of their submission cited some decisions in support of their respective submission.

5. As is evident from the record, the order sought to be reviewed by the review-petitioner is the order dated 22.11.1993 passed by this Court in O.J.C.No. 3768 of 1993. The State of Orissa represented by the Secretary, Department of Revenue and Excise, Member, Board of Revenue, Orissa, Cuttack, Collector, Puri and Tahasildar, Bhubaneswar were the opposite parties in the said writ application. The learned Additional Government Advocate represented for the aforesaid State authorities at the time of hearing of the writ application. It is clear from the impugned order that it was passed after hearing the Learned Counsel for the petitioner therein as well as the learned Government Advocate on the relevant issues involved in the case. At no point of time any objection had ever been raised by the learned Government Advocate to the effect that the General Administration Department is a necessary party to the proceeding. We looked into the original record and found that the opposite parties had not filed any counter in the case and contested the proceeding without filing a counter affidavit. No objection with regard to non-inclusion of the review petitioner as a party to the proceeding having been taken at the time of hearing of the writ application, it is no more open for the review petitioner to say that it was a necessary party to the proceeding. Not only the Collector, Puri who is the custodian of the property in dispute but also the Tahasildar, Bhubaneswar were parties to the proceeding. The State of Orissa was also a party represented through the Secretary, Department of Revenue and Excise. Under the above circumstances, we are inclined to accept the contention of the Learned Counsel appearing for the opposite parties that the State of Orissa had been heard on the relevant issues at the time of hearing of the writ application. Learned Advocate General relied on a decision of the Apex Court in the case of State of Karnataka Vs. Y. Moideen Kunhi (dead) by Lrs. and Others, . From the said reported judgment, it appears that agricultural lands to the extent of 4000 acres had been purchased through registered partnership firm M/s. Y. Moideen Kunhi company. The declaration u/s 66(4) of the Karanataka Land Reforms Act, 1961 was filed by the three partners of the firm who were respondents before the Apex Court for determination of the excess holding. In the very declaration, it was stated that the lands being the plantation lands are exempted u/s 104 of the said Act. The Land Tribunal by order dated 27.9.1982 held that the declarants were holding the lands to an extent of 368.16 acres in excess of the ceiling limit. The said order was challenged before the High Court by the declarants in a writ application and the State of Karnataka also challenged the order of the Land Tribunal in another writ application. The declarants withdrew the writ application filed by them and the writ application filed by the State of Karanataka was heard by the High Court and it was dismissed on 7.11.1990 on merits holding that there were no error in the order passed by the Land Tribunal. Challenging the order of the High Court, the State of Karanataka approached the Hon"ble Supreme Court by way of a Special Leave Petition. There were delay of 605 days in filing the SLP against the original order passed by the High Court in the writ application and about 300 days delay against the order passed by the High Court in the review petition.

The Hon''ble Supreme Court in para-22 of the judgment observed that expression "Sufficient Cause" as appears in Section 5 of the Limitation Act, 1963 must receive a liberal construction so as to advance substantial justice. At the same time in paragraph-20 of the said judgment, it was observed that even though the courts are liberal in dealing with the belated presentation of appeals/applications, yet there is a limit up to which such liberal attitude can be extended. Many matters concerning the State Government and the Central Government are delayed either by the nature of bureaucratic process or by deliberate manipulation of the same by taking advantage of loopholes in the conduct of litigation. Several instances have come to the notice of the Court wherein appeals have been filed where the revenue involved runs to several crores of rupees. Occasionally delay occurs which is inexplicable in normal circumstances. Considering the explanation given and the application filed by the State of Karnataka for condoning the delay, delay of 605 days was condoned by the Hon''ble Supreme Court on payment of exemplary cost of Rs. 10 lakhs.

There are distinguishable features in the present case. The extent of land involved in the reported case is more than 4000 acres whereas in the present case the extent of land is less than one acre. In the reported case, there is delay of 605 days and in the present case, delay is almost 6200 days. In the reported case reasonable explanation had been given for not being in a position to file the SLP within the time whereas in the present case the only explanation given is that the G.A. Department was not a party in the writ application. We are therefore of the view that the above decision cited by the Advocate General is clearly distinguishable on facts. Learned Advocate General also relied on another decision of the Apex Court in the case of State of Nagaland Vs. Lipok AO and Others, . While interpreting Section 5 of the Limitation Act, 1963, the Apex Court held that the Government and private parties cannot be put on same footing in the matter of showing sufficient cause for condonation of delay. Peculiar characteristic of functioning of Governmental conditions requires adoption of pragmatic approach and certain amount of latitude is permissible. In the said reported case, delay of 57 days in filing the appeal against an order of acquittal was condoned and leave to appeal was granted. Even if we take a liberal view in the matter of condonation of delay considering the fact that the review petitioner is the State as observed by the Hon''ble Supreme Court in the case of State of Karnataka V. Y. Moideen Kunhi and others, there is a limit up to which such liberal attitude can be extended.

6. Section 79 of the Code of the Civil Procedure deals with suits by or against the Government. A plain reading, Section 79 shows that in a suit by or against the Government, the authority to be named as plaintiff or defendant, as the case may be, in the case of the Central Government, the Union of India and in the case of the State Government, the State, which is suing or is being sued. This observation has been made by the Hon''ble Supreme Court in the case of Chief Conservator of Forests, Govt. of A.P. Vs. The Collector and Others, Though Shri R.K. Mohanty, learned Senior Counsel appearing for the opposite parties also

referred to para-13 of the judgment, we find that the observation made by the Hon"ble Supreme Court in the said paragraph may not be relevant for the purpose of this case.

7. In view of the discussions made above, we find no justification to condone the inordinate delay of about seventeen years in filing the review petition and, accordingly dismiss the petition. Consequently, the review petition also stands dismissed.