
(2007) 05 OHC CK 0053
In the Orissa High Court

Sureswar Bhoi

APPELLANT

Vs

Ujagar Urma and Others

RESPONDENT

Date of Decision : 11-05-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Limitation Act, 1963 — Section 10, 11, 12, 13, 14

Citation : (2007) 104 CLT 154 : (2007) 2 OLR 24

Hon'ble Judges : R.N. Biswal, J;P.K. Tripathy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard.

2. This writ petition has been filed challenging the order Annexure-4 passed by the Collector, Bargarh in Lease Revision Case No. 1 of 1997.

3. Undisputed facts situation is that on 31.10.1985 Tahasildar settled Ac. 0.04 decimals of lands in favour of each of the opp. parties describing them to be homesteadless persons and belonging to tribal communities. Such land was allotted to them from Plot No. 1192(P) out of Khata No. 179 of Mouza Jhankarpali under Bargarh Police Station. Ten years after that settlement writ petitioner as member of the Managing Committee of Chakarkend M. E. School filed appeal before the Sub-Divisional Officer-Sub-Collector, Bargarh challenging to the order granting lease inter alia on the ground that, that premises is in possessions of the said school and being utilized as play ground of the children. Application u/s 5 of the Limitation Act filed by the petitioner was rejected on the ground of abnormal delay. Petitioner filed aforesaid Revision Case No. 1 of 1997 and learned Collector, Bargarh also dismissed the claim of the petitioner on the ground of delay in filing the appeal.

4. Mr. Gautam Mishra, learned Counsel addressing on behalf of Mr. S.K. Padhi argues that in view of the fact situation involved in the case, petitioner could not

have been aware of the order of settlement and soon after being aware about the order of lease he did not cause any delay and filed the appeal. He argues that in view of the ratio in the case of Collector, Land Acquisition, Anantnag and Anr. v. Mst. Katiji and Ors. AIR 1987 SO 1353 and Nand Kishore Vs. State of Punjab, , learned S.D.O. should have condoned the delay and heard the appeal on merit and on his failure to do the needful, learned Collector should have adopted that course. Accordingly petitioner prays to set aside the interim order and direct the Sub-Collector to hear and dispose of the appeal on merit.

5. Mr. S.N. Mohapatra, learned Counsel for opp. party Nos. 1 to 6 and 8 to 13 on the other hand argues that land was settled in favour of the O.Ps. on 31.10.1985 after observing all the formalities and therefore, when the proclamation notice was issued and no objection was filed by the petitioner or anybody else, settlement of land on the opp. party members could not have been challenged by the petitioner after lapse of 10 years. Learned Counsel also submits that application u/s 5 of the Limitation Act does not convey any good grounds for condonation of delay. Accordingly he argues to dismiss the writ petition.

6. In the case of Collector Land Acquisition Anantnag (supra) their Lordships analyzing and interpreting the terms "sufficient cause" held 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.

In the case of Nanda Kishore (supra) similar view has been expressed by the Apex Court relating to advancement of substantial justice

7. While entertaining prayer of the writ petitioner, we are not interfering with the order of lease granted in favour of the opp. party member, but considering the

legality and propriety of impugned order of the Sub-Collector and the Collector in refusing to condone the delay.

8. Provision of law on limitation is to be effectively applied to be it for condonation of delay or otherwise. It is neither the law nor the ratio flowing from the above quoted wisdom of the Apex Court that deliberate delay or negligent conduct is to be condoned without due consideration. Limitation is a valuable right, if available, to be invoked by a person opposing a suit, appeal or application for which time limit has been prescribed under any Article of the Schedule in the Indian Limitation Act, 1963 (for short the Act). Therefore, when an application is filed for condonation of delay, a Court is not to jump to a conclusion either for condonation of delay or otherwise. Hasty or arbitrary exercise of jurisdiction would result in failure of justice.

9. Section 3(1) of the Act provides that:

Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

In this case Section 5 of the Act was invoked by the petitioner to condone the delay of over ten years. Section 5 is an exception to statutory mandate in Section 3(1) of the Act. It provides for subjective satisfaction of the Court regarding existence of sufficient cause for not filing the appeal or application within the prescribed period of limitation. Section 5 of the Act does not put any limitation on the extent of the period of delay. Therefore approach of the Courts below in rejecting the application u/s 5 of the Act only on the ground of ten years delay is illegal and not sustainable.

10. Learned Counsel for the petitioner states that application for lease was taken up by learned Tahasildar on 27.9.1985 and he directed to send a copy of the application to Revenue Inspector, Govindpur to enquire and report by 30.9.1985. On 30.9.1985 he passed order to issue proclamation. On 31.10.1985 he disposed of the case. The aforesaid fact situation are sufficient to substantiate the ground taken by the petitioner that though the school is in possession of the case land used as play ground of the students yet order of settlement was passed obviously behind the back of the petitioner and therefore delay was caused in filing the appeal. We do not make assessment of the aforesaid factual contention of the petitioner justifying the delay because we consider the matter in exercise of jurisdiction under Article 227 read with Article 226 and leave that aspect to be appropriately considered by the appellate Court.

11. As noted above provisions of law in Section 5 of the Act remains as an exception to Section 3 of the Act. It is trite law that limitation is regarded as adjective i.e., procedural law. Such legal provision in a dispute of present nature (regarding condonation of delay) is flexible and discretion vested with the adjudicating forums has to be exercised judiciously in furtherance of rendering substantial justice. Therefore, at the cost of repetition we state that impugned

approach of the Courts below in rejecting the prayer for condonation of delay on the ground of ten years delay is devoid of legal sanction and judicial conscience. Thus we set aside the impugned order of the appellate and revisional Court and remand the case to the Court of Sub-Collector, Bargarh to take up the appeal for hearing from the stage of consideration of the application u/s 5 of the Act. We direct the Sub-Collector to hear the application u/s 5 of the Limitation Act and dispose of the same expeditiously within a period of one month from the date of receipt of a copy of this order and if the delay is condoned, then he may take up the appeal and dispose of the same equally expeditiously by avoiding unnecessary delay. In furtherance of the above direction we direct the parties to appear before the Sub-Collector on 29.6.2007. Petitioner is directed to produce certified copy of this order in the Court below on that date failing which this order shall be treated as non-est. Default in appearance of any of the parties be regarded as such.

The writ petition is accordingly allowed. No cost.