

**(2017) 03 KAR CK 0106**  
**In the Karnataka High Court**  
**Case No : 3452 to 3455 of 2016 (GM-CPC)**

Swamy Alias Yelayappa and others

APPELLANT

Vs

Shiva Alingaiah and others

RESPONDENT

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**Date of Decision :** 01-03-2017

**Acts Referred:**

<a href=3998>Constitution of India</a>, <a href=3998-226>Article 226</a>, <a href=3998-227>Article 227</a>, <a href=3998-136>Article 136</a> - Power of High Courts to Issue certain writs - Power of superintendence over all courts by the High Court - S

**Citation :** (2017) 03 KAR CK 0106

**Hon'ble Judges :** B. Veerappa

**Bench :** SINGLE BENCH

**Advocate :** Manjula D., L. Srinivasa Babu

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## Judgement

1. These writ petitions are filed by the petitioners against the order dated 3-10-2015 made in MA No. 27 of 2011 on the file of the II Additional District Judge, Mysuru, dismissing the appeal, on the ground of inordinate delay of 13 years in preferring the appeal against the order dated 28-6-1999 passed by the Tahsildar under the Karnataka Village Offices Abolition Act, 1961. 2. It is the case of the petitioners that, Sy. Nos. 71 and 72 of M. Shettyhalli Village, Ravanduru Hobli, Periyapattana Taluk, measuring 11 acres 23 guntas and 9 acres 19 guntas respectively, totally measuring 21 acres 2 guntas was granted to the grandfather of the petitioners in the year 1940-41. Subsequently, the legal heirs of late Barky Siddaiah were in possession and enjoyment of the said properties. The petitioners came to know that the Tahsildar, Periyapattana Taluk, by an order dated 28-6-1999, has regranted the land to respondents 1 to 17 including the present petitioners. Thereafter the petitioners applied for the records in the year 2000. Accordingly, the Tahsildar issued endorsement on 30-8-2000 stating that the records are not available. It is further contended that the petitioners are in peaceful possession and enjoyment of the said lands. During the year 2010, the respondents 1 to 17 were interfered by trespassing the land and obstructed the

peaceful possession and enjoyment of the petitioners stating that the land has been re-granted to them by the jurisdictional Tahsildar. Therefore, the petitioners again approached the Tahsildar by filing an application under Right to Information Act, 2005, wherein the Tahsildar by an endorsement dated 23-6-2010 and 30-4-2010, stating that the records are not available in respect of the said survey numbers. Thereafter the petitioners filed Miscellaneous Appeal No. 27 of 2011 before the District Court, Mysuru, against the order passed by the Tahsildar, Periyapattana, re-granting the lands in favour of respondents 1 to 17 including the present petitioners. There was delay in filing the appeal, therefore separate application was filed to condone the delay. In the delay application, it was stated that they came to know that the impugned order was passed by the Tahsildar only in the month of December 2010 and thereafter, after getting the records of re-grant of land in favour of respondents 1 to 17 including the present petitioners and they were able to get the order from the Office of the Tahsildar, Periyapattana in the year 2010 and after collecting all the papers, filed the appeal before the District Court, Mysuru and also contended that the appellant/2nd petitioner-Siddaramaiah was not well and he was suffering from Tuberculosis and therefore there was a delay in filing the appeal. 3. The learned II Additional District Judge, Mysuru, after hearing both the parties, by the impugned order dated 3-10-2015, dismissed the appeal mainly on the ground of inordinate delay of 13 years. Hence, the present writ petitions are filed. 4. Smt. Manjula, learned Counsel appearing for the petitioners vehemently contended that the impugned order passed by the Tahsildar on 28-6-1999 came to the knowledge of the present petitioners only in the month of December 2010. Thereafter, they have applied for certified copies and after obtaining necessary copies, they have filed appeal before the District Judge, Mysuru in MA No. 27 of 2011. The appeal was filed within time, from the date of the knowledge. Absolutely there was no delay. Therefore, she contended that the impugned order passed by the II Additional District Judge, Mysuru in dismissing the appeal on the ground of delay and laches is erroneous and contrary to law and facts of the case. 5. The learned Counsel for the petitioners further contended that Exs. A. 1 to A. 7 which clearly indicate that the second petitioner-Siddaramaiah was suffering from T.B. disease and the same was not appreciated by the District Judge. She further contended that the learned District Judge has not considered the non-availability of the document in respect of Sy. Nos. 71 and 72 and that they have applied for certified copies before the Tahsildar, Periyapattana, who has issued the endorsement dated 23-6-2010 and 30-4-2010. Thereafter they have applied for certified copies and obtained and have filed the appeal before the District Court within time from the date of the knowledge. The District Court, only on the ground of delay dismissed the appeal without looking into the merits. Therefore, she sought to allow the writ petitions by quashing the order passed by the II Additional District Judge, Mysuru. 6. In support of her contentions, she has sought to rely upon the dictum of the Hon'ble Supreme Court in the case of State of Bihar and Others v. Kameshwar Prasad Singh and Another reported in (2000) 9 SCC 94, wherein the Hon'ble Supreme Court condoned the delay of

679 days in filing the SLP. She also sought to rely upon the judgment of the Hon"ble Supreme Court in the case of Manoharan v. Sivarajan and Others (2014) 4 SCC 163 wherein the Hon"ble Supreme Court condoned the delay for nonpayment of Court fee within time. 7. In view of the aforesaid contentions urged by the learned Counsel for the petitioners, the only point that arises for consideration in these writ petitions, is: "Whether the II Additional District Judge, Mysuru is justified in dismissing the appeal in MA No. 27 of 2011 only on the ground of inordinate delay of 13 years in filing the appeal in the facts and circumstances of the present case?" 8. I have given my thoughtful consideration to the arguments advanced by the learned Counsel for die petitioners and perused the entire material on record carefully. 9. It is an undisputed fact that Sy. No. 71 and 72 situated at M. Shettahalli Village, Ravanduru Hobli, Periyapattana Taluk were Inam lands. The Tahsildar after holding detailed enquiry as contemplated under the provisions of Karnataka Village Offices Abolition Act, 1961 by an order dated 28-6-1999, regranted the lands in favour of respondents 1 to 17 including the present petitioners jointly as per their occupation in respect of the said lands. On the same day, the Tahsildar has sent a copy of regrant to all the grantees including the petitioners and also sent the same to the Deputy Commissioner and Assistant Commissioner for information. 10. Though in the application for condonation of delay, before the District Court it was sworn to by the second petitioner to the effect that he came to know the order passed by the Tahsildar only in the month of December 2010 and he was suffering from T.B. disease, he could not file the appeal within time, in the entire affidavit, accompanying the application, the petitioners have not stated what happened to the re-grant order made in the year 1999 to all the petitioners and respondents jointly. In pursuance to the said order, the parties should have the revenue records in their favour including the present petitioners. They have not whispered anything about the entries in the revenue records on the basis of the regrant order passed by the Tahsildar. Even assuming that the second petitioner-Siddaramaiah was not well and was suffering from T.B. disease, what prevented the other petitioners to file appeal within time is not forthcoming. The material on record clearly depicts that all the petitioners signed the vakalathnama and filed the appeal jointly. In the absence of proper explanation and sufficient cause to condone the delay of 13 years, it is not possible to accept the contention of the learned Counsel for the petitioners that the delay has to be condoned and the Court should not dismiss the case on technicalities when the rights of the parties are involved. 11. The respondents filed objections before the District Court and specifically contended that the Tahsildar, after considering the circular issued by the Government dated 4-1-1997, has obtained report from the Deputy Commissioner and also permission from the Assistant Commissioner and has re-granted the lands in question in favour of children of Dyavaiah, Puttaiah, Siddaiah and Biliyaiah by an order dated 28-6-1999 and the parties were directed to pay premium to the Government. Accordingly, parties to the proceeding have paid premium and katha have been registered accordingly. It is further contended that, passing of the impugned order by the Tahsildar was

within the knowledge of the petitioners/appellants and the petitioners and respondents are cultivating the lands by paying taxes from the year 1999 separately. As such, the contention that they were not aware of passing of orders by the Tahsildar is untenable. The petitioners have produced endorsements obtained from the Tahsildar only to show that they were not aware and they have created the said endorsements and also denied that the second petitioner was suffering from ill health. 12. Considering the entire material on record, the learned II Additional District Judge, Mysuru held that according to the appellants, the second appellant was suffering from T.B. disease, as such, he could not approach the Court in time. In the cross-examination, the second appellant has admitted that the first appellant has obtained the certified copy of the impugned order way back in the year 2001 and in spite of obtaining this document in the year 2001, the appellants have not challenged the impugned order at any point of time. Having regard to the medical records produced by the second appellant, the District Judge opined that the ailment of the second appellant was not of such a gravity as to lay hurdle for the appellants to prefer the appeal and the other ground that the certified copy of the impugned order obtained in the year 2001 was misplaced, goes to show that the appellants are not diligent. They always wanted to drag the proceedings and ultimately dismissed the appeal on the ground of inordinate delay of 13 years. 13. The fact remains that the re-grant was made in favour of the present petitioners and respondents jointly is not in dispute. It is also not in dispute that, in pursuance to re-grant order made by the Tahsildar in the year 1999, all the revenue records were entered in the names of the respective applicants in terms of re-grant order passed by the Tahsildar including the petitioners. 14. Knowing fully well the petitioners have not filed any appeal for more than 13 years and absolutely no explanation is offered for the inordinate delay. In the absence of any explanation, the contention of the learned Counsel for the petitioners that delay has to be condoned with liberal approach cannot be accepted. 15. This Court is aware of the fact that the Hon'ble Supreme Court while considering the delay in the case of Collector, Land Acquisition, Anantnag and Another v. Mst. Katiji and Others, (1987) 2 SCC 107, has laid down the principle of condoning the delay and ultimately held that, the Court should be liberal in condoning the delay only in the case where sufficient cause is shown. 16. Admittedly, in the present case, the petitioners knowing fully well that other parties rights are involved in respect of re-grant proceedings by the Tahsildar, kept quiet for a period of 13 years without any reason and suddenly woke up in the year 2011 and filed the appeal. Absolutely no reasons are assigned to condone the delay. Therefore, the judgment relied upon by the learned Counsel for the petitioners in the case of State of Bihar and Others v. Kameshwar Prasad Singh and Another, (2000) 9 SCC 94, where the Hon'ble Supreme Court exercising the powers of Article 136 of the Constitution of India, condoned the delay of 679 days while deciding the matter with regard to service (seniority), has no application to the facts and circumstances of the present case. 17. Insofar as the other judgment relied upon by the learned Counsel for the petitioners in the case of Manoharan v. Sivarajan and Others, (2014) 4 SCC 163,

which was a case where the suit came to be dismissed for non-payment of Court fee within time, in spite of the applicant being granted sufficient time. Therefore, in those circumstances, the Hon"ble Supreme Court held that merely not paying the Court fee within time, the Court should not have been dismissed the suit and the Court fee should have been paid within 8 weeks, but he has paid after eight weeks. Therefore, under the said circumstance, the Hon"ble Supreme Court condoned the delay. The facts of the said case and the facts of the present case are entirely different, wherein in the said case, the appellant has explained the delay and sufficient cause was made out and therefore the Hon"ble Supreme Court has condoned the delay. 18. Admittedly in the present case, the appellants have not made out any sufficient cause to condone the inordinate delay of 13 years in filing the appeal, where the appeal time prescribe 90 days. Absolutely, no explanation is offered in the application made before the District Court for the inordinate delay of 13 years. Considering all the material facts, it is clear that the petitioners have not come to the Court with clean hands and therefore the petitioners have not made out any prima facie case to take a lenient view to condone the unexplained delay of 13 years in filing the appeal. 19. The Hon"ble Supreme Court while considering the "delay defeats equity" in the case of S.S. Balu and Another v. State of Kerala and Others, (2009) 2 SCC 479 at para 17, held as under: "17. It is also well-settled principle of law that "delay defeats equity". Government order was issued on 15-1-2002. Appellants did not file any writ application questioning the legality and validity thereof. Only after the writ petitions filed by others were allowed and State of Kerala preferred an appeal there against, they impleaded themselves as party respondents. It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment. It is, thus, not possible for us to issue any direction to the State of Kerala or the Commission to appoint the appellants at this stage. In New Delhi Municipal Council v. Pan Singh and Others, (2007)9 SCC 278, this Court held: "16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a longtime. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a longtime, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the Court after a longtime. Delay and laches are relevant factors for exercise of equitable jurisdiction."" 20. The Hon"ble Supreme Court while considering the provisions of Section 5 of Limitation Act, 1963 in the case of Shankara Co-operative Housing Society Limited v. M. Prahakar and Others, reported in (2011) 5 SCC 607 at paras 46

and 54, held as under: 46. Re: Delay and laches. - Delay and laches is one of the factors that requires to be borne in mind by the High Courts when they exercise their discretionary power under Article 226 of the Constitution of India. In an appropriate case, the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his rights taken in conjunction with the lapse of time and other circumstances. 54. The relevant considerations, in determining whether delay or laches should be put against a person who approaches the Writ Court under Article 226 of the Constitution is now well-settled. They are: (1) There is no inviolable rule of law that whenever there is a delay, the Court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts. (2) The principle on which the Court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because Court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners. (3) The satisfactory way of explaining delay in making an application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he seeks after a remedy not provided in the Statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the petitioner chooses to believe in regard to the remedy. (4) No hard and fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts. (5) That representations would not be adequate explanation to take care of the delay." 21. In view of the aforesaid reasons and in view of the dictum of the Hon'ble Supreme Court stated supra, this Court is of the considered opinion that, absolutely the petitioners have not made out any sufficient ground to condone the inordinate delay of 13 years in filing the appeal. Therefore, the point raised in these petitions has to be answered in the affirmative holding that the II Additional District Judge, Mysuru was justified in dismissing the appeal on the ground of inordinate delay of 13 years. Therefore, the petitioners have not made out any ground to interfere with the same in exercise of supervisory writ jurisdiction of this Court under Article 227 of the Constitution of India. Accordingly, these writ petitions are dismissed. No costs.