

***THE HON'BLE SRI JUSTICE SANJAY KUMAR**

**WRIT PETITION NOS.17882, 17888,
17889 AND 17891 OF 2004**

% 23-01-2015

Gadde Krishna Murthy and others

... Petitioners

Vs.

\$ The Mandal Revenue Officer, Sitanagaram,
East Godavari District and others

...Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioners : Sri VLN Gopala Krishna Murthy

^ Counsel for respondents : Govt. Pleader for Revenue

? CASES REFERRED:

1. 2005(4) ALD 311
2. 2014(2) ALT 97
3. 1957 The Andhra Weekly Reported 106
4. 1999(1) ALT 327
5. 1995 (3) ALT 685

THE HON'BLE SRI JUSTICE SANJAY KUMAR

**WRIT PETITION NOS.17882, 17888,
17889 AND 17891 OF 2004**

DATED 23rd JANUARY, 2015

W.P. No.17882 of 2004

Between:

Gadde Krishna Murthy and others

... Petitioners

and

The Mandal Revenue Officer, Sitanagaram,
East Godavari District and others

... Respondents

W.P. No.17888 of 2004

Between:

Gangiri Appa Rao and others

... Petitioners

and

The Mandal Revenue Officer, Sitanagaram,
East Godavari District and others

... Respondents

W.P. No.17889 of 2004

Between:

Thammiseti Krishna Murthy

... Petitioner

and

The Mandal Revenue Officer, Sitanagaram,
East Godavari District and others

... Respondents

W.P. No.17891 of 2004

Between:

Gangiseti Rama Rao

... Petitioner

and

The Mandal Revenue Officer, Sitanagaram,
East Godavari District and others

... Respondents

THE HON'BLE SRI JUSTICE SANJAY KUMAR

**WRIT PETITION NOS.17882, 17888,
17889 AND 17891 OF 2004**

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COMMON ORDER

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Individual orders dated 06.06.1986 were passed by the Settlement Officer, Visakhapatnam, rejecting certain applications filed under Section 11(a) of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 (for brevity, 'the Act of 1948'). The said applications were made by the petitioners in these cases and/or their predecessors-in-title for grant of ryotwari pattas in relation to various extents of land in Singavaram Village of Korukonda Taluk, East Godavari District, claimed by them under registered sale deeds. These lands formed part of Gangulapudi Zamindari estate, which was notified and taken over by the Government in the year 1950 under the Act of 1948.

The Settlement Officer, Visakhapatnam, rejected the subject applications on the ground that they were not filed within 30 days from the date of introduction of settlement rates, as prescribed under Rule 2(4) (wrongly described as Rule 4) of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Grant of Ryotwari Patta Rules, 1973 (for brevity, 'the Rules of 1973'). The orders of the Settlement Officer were confirmed in revision by the

Director of Settlements, Andhra Pradesh, Hyderabad, by common order dated 28.11.1996. The said common order was subjected to further revision before the Commissioner, Appeals, Office of the Chief Commissioner of Land Administration, Andhra Pradesh, Hyderabad, and was again confirmed under the common order dated 02.02.2002.

Aggrieved thereby, the petitioners are before this Court seeking Writs of Certiorari to call for the records relating to the three orders and to quash the same along with a consequential direction to the Settlement Officer, Visakhapatnam, to entertain their applications for issuance of pattas under Section 11(a) of the Act of 1948.

By individual interim orders dated 05.10.2004 passed in all the writ petitions, this Court directed *status quo* obtaining as on that day with regard to the possession of the land in question to be maintained until further orders.

The short issue that falls for consideration in these cases is whether the authorities concerned were correct in holding that the applications filed by the petitioners and/or their predecessors-in-title were barred by limitation.

In W.P. No.17882 of 2004, the petitioners claim to be the legal heirs of Gadde Nagabhushanam and Chokka Lovaraju, who purchased an extent of Ac.7.00 in Sy.No.11 of Singavaram Village under a registered sale deed of the year 1948. In W.P.No.17888 of 2004, the petitioners claim to be the legal heirs of Gangiri Tatabbai, who purchased an extent of Ac.3.50 cents in Sy.Nos.12, 13, 15, 101 and 102 of Singavaram Village under a registered sale deed of 1948. In W.P.No.17889 of 2004, the petitioner claims to be the legal heir of Thammiseti Posayya, who purchased an extent of Ac.16.00 in Sy.No.10 of Singavaram Village under a registered sale deed dating back to the year 1950. In W.P.No.17891 of 2004, the petitioner claims to be the legal heir of Gangiseti Appa Rao, who purchased an extent of Ac.3.50 cents in Sy.Nos.12, 13, 101 and 102 of Singavaram Village. It is the admitted case that the applications under Section 11(a) of the Act

of 1948 were filed only on 15.12.1985, long after ryotwari settlement of Gangulapudi estate was effected under Section 22 of the Act of 1948. It is also the admitted position that no petitions were filed by the applicants for condonation of the delay in the filing of applications under Section 11(a) of the Act of 1948 before the Settlement Officer, Visakhapatnam. It was only before the Director of Settlements, Andhra Pradesh, Hyderabad, that such petitions were filed by all the petitioners under Section 5 of the Limitation Act, 1963.

Perusal of the individual orders dated 06.06.1986 passed in all the cases by the Settlement Officer, Visakhapatnam, manifests that the said authority was of the opinion that as the applications were not filed within 30 days after introduction of settlement rates under Section 22 of the Act of 1948, as laid down under Rule 4 (*sic*) of the Rules of 1973, the applications were barred by limitation. He therefore concluded that the applications could not be entertained and accordingly returned the same. In revision, the Director of Settlements, Andhra Pradesh, Hyderabad, *vide* his common order dated 28.11.1996, opined that as the rule, which permitted the Settlement Officer to condone the delay in the entertainment of an application, had been omitted thereafter, the action of the Settlement Officer, Visakhapatnam, in rejecting the claims of the applicants under Section 11(a) of the Act of 1948 on the ground that they were time barred was correct. The Director of Settlements, Andhra Pradesh, seems to have been under the impression that the petitions for condonation of delay were filed by the applicants before the Settlement Officer, Visakhapatnam, which was factually incorrect. He therefore failed to deal with the petitions for condonation of delay filed before him by the applicants along with the revision petitions. In further revision, the Commissioner, Appeals, in his common order dated 02.02.2002, referred to the fact that the earlier rule, which permitted condonation of delay in the entertainment of applications under Section 11(a) of the Act of 1948, had been omitted thereafter and opined that as the revision petitioners had not filed any documentary evidence

showing reasons for condonation of the delay by the Settlement Officer, no reason was made out to interfere with the common order dated 28.11.1996 passed by the Director of Settlements, Andhra Pradesh, Hyderabad. However, this order does not manifest any reasons as to why the condone delay petitions filed by the petitioners failed to demonstrate sufficient reason for condonation of the delay.

In so far as the legal position is concerned, it may be noticed that Section 67(2)(e) of the Act of 1948 empowers the Government to make rules for application of the provisions of the CPC and the Indian Limitation Act to applications, appeals and proceedings under the Act of 1948. In exercise of this power, the Government of Andhra Pradesh framed a rule, which was notified in the *St. George Gazette* dated 17.10.1950, which reads as follows:

“In exercise of the powers conferred by Section 67 (2)(e) of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 (Madras Act XXVI of 1948), His Excellency The Governor of Madras hereby makes the following rule :-

The provisions of Sections 4,5,12(o) and (2), 17(1) and 18 of the Indian Limitation Act, 1908 (Central Act IX of 1908) shall apply to all proceedings under the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 (Madras Act XXIV of 1948) or under the rules thereunder, before the Tribunals, Special Tribunals, authorities and officers having jurisdiction under the latter Act.”

It may also be noted that the Government is empowered, under Section 67(2)(d) of the Act of 1948, to make rules prescribing the time within which applications and appeals may be presented under the Act of 1948, in cases where no specific provision has been made in that behalf. In exercise of this power, the Government of Andhra Pradesh framed the Rules of 1973 which were notified in G.O.Ms.No.50, Revenue (J-1), dated 16.01.1974. Rule 2(4) of the Rules of 1973 originally read as follows:

“(4) Notwithstanding anything in sub-rule (2) but subject to the provision of sub-rule (5), where in respect of an estate in which the ryotwari settlement under Section 22 has already been

effected before the commencement of these rules, such an application may be filed before the Settlement Officer within thirty days from the date of such commencement.

Provided that the Settlement Officer may, for good and sufficient reasons shown by the applicant, entertain an application filed before him after the period of thirty days aforesaid.”

However, an amendment was effected to the Rules of 1973 by way of the ‘Amendment to the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Grant of Ryotwari Patta Rules, 1973’, notified under G.O.Ms.No.911, Revenue (J), dated 15.06.1983. The amendment is extracted hereunder:

“In exercise of the powers conferred by clause (d) of sub-section (2) of section 67 read with section 11 of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 (Act, XXVI of 1948), the Governor of Andhra Pradesh, hereby makes the following amendment to the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Grant of Ryotwari Patta Rules, 1973, issued in G.O.Ms.No.50, Revenue, dated the 16th January, 1974.

Amendment

The proviso under sub-rule (4) of rule 2 of the said rules shall be omitted.”

Thus, by virtue of this amendment, the power of condoning the delay, provided under the proviso to Rule 2(4), stood omitted.

Again in the year 1986, a further amendment was effected to the Rules of 1973 by the ‘Amendment to the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Grant of Ryotwari Patta Rules, 1973’. By way of this amendment, the following proviso was added to Rule 2(4) of the Rules of 1973.

“Provided that the Settlement Officer may condone the delay, if such delay is caused due to the pendency of a dispute in a Court or for good and sufficient reasons shown by the applicant for the delay caused, and thereafter entertain an application filed before him after said period of thirty days.”

The above amendment was notified under G.O.Ms.No.551,

Revenue (J), dated 19.05.1986, i.e. after submission of the applications on 15.12.1985 by the applicants in the present cases. Therefore, at the time when these applications were submitted, the said proviso was not in existence.

It appears that by way of a further amendment effected under G.O.Ms.No.400, Revenue (JA), dated 24.04.1993, the proviso added in the year 1986 was again omitted.

The learned counsel for the petitioners in this batch of cases would however contend that irrespective of the amendments effected to the Rules of 1973, whereby the power of condoning the delay in the submission of applications, was extant for certain periods of time and was omitted during certain other periods of time, the earliest rule framed under Section 67(2)(e) of the Act of 1948, extending the provisions of Section 5 of the Limitation Act to applications under the Act of 1948, remained untouched and therefore, the Settlement Officer, Visakhapatnam, enjoyed such power independently. It may be noticed that this aspect was not raised before any of the authorities below and was not adverted to even in the pleadings in these cases. However, as the issue is a purely legal one revolving around application of a statutory rule, this Court finds no reason to reject the argument on the ground that it was not raised earlier. It may also be noted that the petitioners specifically raised the issue of condonation of the delay in the filing of the applications before the Commissioner, Appeals, and the defence of the Government was that illiteracy and ignorance of the legal provisions was not a ground available in law. It was therefore for the authorities concerned to apply the correct legal position irrespective of whether the applicants adverted to or invoked the same.

The learned Assistant Government Pleader for Revenue fairly admits that the rule framed under Section 67(2)(e) of the Act of 1948 on 17.10.1950, extending the provisions of Section 5 of the Limitation Act to applications under the Act of 1948, remains untouched notwithstanding the amendments made to the Rules of 1973 framed

under Section 67(2)(d) of the Act of 1948.

The cases on hand therefore present a classic example of the rule making authority, viz. the Government, being in a state of utter confusion as to the legal position in so far as condonation of delay in the filing of applications under Section 11(a) of the Act of 1948 is concerned. On the one hand, the rule framed under Section 67(2)(e) of the Act of 1948 continues to hold the field, whereby Section 5 of the Limitation Act was extended to and remained in force as regards submission of applications for grant of ryotwari pattas, while on the other, the rule framed under Section 67(2)(d) of the Act of 1948 was subjected to amendments time and again, whereby the power to condone the delay was extended and/or omitted from time to time. As long as the rule framed under Section 67(2)(e) of the Act of 1948 holds the field without interruption, the changing stands of the Government as to the rule framed under Section 67(2)(d) of the Act of 1948 cannot and do not make any inroads into the applicability of the Limitation Act to proceedings under the Act of 1948.

It is also relevant to note that the applicability of the provisions of Section 5 of the Limitation Act to a similar case fell for consideration before this Court in ***GANDHAM VAJRAMMA V/s. COMMISSIONER OF SURVEY, SETTLEMENTS AND LAND RECORDS, HYDERABAD***^[1]. A learned Judge of this Court referred to the rule framed under Section 67(2)(e) of the Act of 1948 and the separate rules framed under Section 67(2)(d) of the Act of 1948 and opined that as the earliest notification dated 17.10.1950, whereby the rule was framed under Section 67(2)(e), remained untouched and was still in force, the statutory power conferred thereby could not be tinkered with by the framing and amendment of rules under Section 67(2)(d) of the Act of 1948. The learned Judge therefore concluded that the provisions of Section 5 of the Limitation Act made applicable under the notification dated 17.10.1950 continued to have an application to all proceedings before the authorities constituted under the Act of 1948. This principle

squarely covers the present cases.

The other issue germane for disposal of these cases is whether the failure on the part of the petitioners and/or their predecessors-in-title in seeking condonation of the delay in their filing applications under Section 11(a) of the Act of 1948 before the Settlement Officer, Visakhapatnam, would be fatal to their case. Admittedly, such applications were filed only before the Director of Settlements, Andhra Pradesh, Hyderabad.

In this regard, the learned counsel for the petitioners would place reliance on **BASHEERUNNISA BEGUM (DIED) PER L.RS. V/s. MEER FAZEELATH HUSSAINI (DIED) PER L.RS.**^[2], and more particularly para 28 thereof. Therein, this Court was concerned with the question whether a formal application was necessary for condonation of delay. Referring to earlier decisions of various High Courts, the learned Judge held that the language of Section 5 of the Limitation Act did not expressly or by necessary implication mandate the filing of a written application to obtain relief under the said Section; that it vested judicial discretion in Courts to exercise their inherent power and excuse the delay even on an oral application having regard to the circumstances of a particular case. Reference was also made to a Division Bench judgment of this Court in **C.V.G. CHOWDARY V/s. DOPPALAPUDI SESHIAH**^[3], wherein it was held that it is not necessary that there should be a formal petition to excuse delay and it is always open to a Court or a Tribunal to condone the delay if the person concerned is able to convince it that there were justifiable grounds for the delay in presenting an appeal or a petition. The Division Bench further held that the filing of a formal petition for excusing delay is not the *sine qua non* for exercise of that power. The learned Judge also referred to the judgment of this Court in **MOVVA ANJAMMA V/s. ABHINENI ANASUYA**^[4], wherein it was held that even if an application to set aside an order dismissing the suit for default was not accompanied by

an application for condonation of delay despite lapse of nine months, the affidavit filed in support of the application for restoration could make out sufficient cause for condonation of the delay and there is no necessity for filing a separate application for condonation of the delay.

In **A. GOVINDAIAH V/s. V. VENKATAMMA**^[5], this Court held that the delay could be condoned even without filing a separate application for condonation of delay, if the delay is otherwise explained in the affidavit filed in support of the application made to set aside the *ex parte* decree. In that case, the petitioner was a rustic villager residing in a remote village and was an illiterate and this Court held that he had made out sufficient cause for condonation of the delay.

Given the aforestated legal position, it is clear that the initial failure on the part of the petitioners and/or their predecessors-in-title in seeking condonation of the delay in the filing of applications under Section 11(a) of the Act of 1948 would not be fatal. In the applications filed before the Settlement Officer, Visakhapatnam, the petitioners and/or their predecessors-in-title specifically stated that they had no knowledge of the legal requirements and further explained the delay in their separate applications filed before the Director of Settlements, Andhra Pradesh, Hyderabad. These applications were never considered on merits.

In the totality of the above circumstances, as the authorities concerned stood vested with the power available under Section 5 of the Limitation Act by virtue of the notification dated 17.10.1950, which remained untouched all through, their ignorance of the same and their bald refusal to consider condonation of the delay, on the short ground that the rules framed under Section 67(2)(d) of the Act of 1948 denied them such power, cannot be countenanced. The lack of clarity on the part of the authorities in this regard finds resonance in their counter-affidavits filed before this Court in these cases. On one hand, the Tahsildar, Sitanagaram Mandal, East Godavari District, who deposed to these affidavits, sought to justify the rejection of the claim petitions on

the ground that they were time barred while at the same time, he admitted in para 6 of the counter affidavits that the Settlement Officer had the power to condone the delay in entertaining the claim petitions but as the petitioners failed to submit their applications within a reasonable time, they were rejected as time barred. This statement, on the face of it, is self-contradictory and to compound the same, the orders passed by the authorities below reflect that there was no actual consideration of the reasons put forth by the petitioners seeking condonation of the delay in filing claim petitions under Section 11(a) of the Act of 1948.

As the valuable property rights of the petitioners are at stake and as the legal position, as set out *supra*, was ignored by the authorities in so far as the extant rule under Section 67(2)(e) of the Act of 1948 is concerned, this Court has no hesitation in holding that the summary rejection of the applications filed by the petitioners and/or their predecessors-in-title under Section 11(a) of the Act of 1948 on the short ground that they were time barred, applying the rules framed under Section 67(2)(d) of the Act of 1948, cannot be sustained.

The orders impugned in these writ petitions are accordingly set aside and matter is remitted to the Settlement Officer, Visakhapatnam, for re-consideration on the issue of the delay in the filing of the applications under Section 11(a) of the Act of 1948, on merits. It is made clear that this Court has not ventured into the merits of the claims made by the petitioners as to their entitlement for grant of ryotwari pattas or even for condonation of the delay in the filing of such applications. It is for the Settlement Officer, Visakhapatnam, to deal with the same on the independent and individual merits of each case and pass appropriate reasoned orders thereon in accordance with law.

The writ petitions are allowed to the extent indicated above. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. In the circumstances, there shall no order as to costs.

23rd JANUARY, 2015

Note: L.R.Copy to be marked
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- [\[1\]](#) 2005(4) ALD 311
 - [\[2\]](#) 2014(2) ALT 97
 - [\[3\]](#) 1957 The Andhra Weekly Reported 106
 - [\[4\]](#) 1999(1) ALT 327
 - [\[5\]](#) 1995 (3) ALT 685