HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.5932 of 2008

Date: 01.05.2015

Between:

K.R.Subramanyam s/o.late K.Rajagopal Naidu,

Aged 55 years, Business r/o.D.No.10-3-220,

Kotakommala Street, Tirupati, Chittoor District.

.. Petitioner

AND

The District Collectorm, Chittoor and others.

.. Respondents

The Court made the following:

HON'BLE SRI JUSTICE P.NAVEEN RAO

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ORDER:

Heard Sri K S Gopalakrishnan, learned counsel for petitioner, learned Government

Pleader for Revenue (AP) for respondents 1,2 and 4 and Sri Raghavan K Thalapaka learned counsel for respondent no.3.

2. Petitioner claims that his mother purchased the agricultural land to an extent of Ac.0.85 cents in Sy.No.241/5P of Tiruchanur Village, Tirupati Rural Mandal, Chittoor District, through a registered sale deed dated 15.07.1981. This village was inam village. The Inam Deputy Tahsildar, Chitoor has granted inam patta on 26.07.1990. After the grant of patta, petitioner filed O.S.No.251 of 1996 on the file of Principal Sub-Court, Tirupati for permanent injunction and the said suit was decreed on 12.03.1997. The third respondent also filed O.S.No.181 of 1997 against the petitioner claiming permanent injunction, which was dismissed.

3. Third respondent filed W.P.No.2637 of 1997 aggrieved with the proceedings of Inams Deputy Tahsildar, dated 26.07.1990. It was contended that though the petitioner has filed appeal before the District Collector, Chittoor, the same is kept pending and same was not disposed of. Having regard to the same, writ petition was disposed of by order dated 12.02.1997. Third respondent filed W.P.No.748 of 2007 contending that he was sought to be dispossessed by the authorities from out of Ac.1.01 cents in Sy.No.241/5 of Tiruchanur Village, Tirupati Rural Mandal, Chittoor District, without following due process of law. The said writ petition was dismissed on the ground that petitioner earlier filed writ petition and in O.S.No.181 of 1997 he gave statement contrary to the statement made in the writ petition. Thereafter, third respondent filed appeal before the Revenue Divisional Officer, Tirupati against grant of patta to petitioner. In response to the said appeal, notice was issued to the petitioner on 11.03.2008 calling upon him to appear before the Revenue Divisional Officer. Challenging the same, this writ petition is instituted.

4. Learned counsel for the petitioner submits that proceedings initiated by the Revenue Divisional Officer on an appeal filed by the third respondent is without jurisdiction and competence. The appeal filed by the third respondent was against the order of the Inams Deputy Tahsildar, dated 26.07.1990 and, therefore, far beyond time stipulated in Section 7(2) of the A.P. (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 (for short, 'Act, 1956'). Section 7(2) of the Act, 1956 prescribes 60 days time to prefer an appeal and Act does not vest any

power for condonation of delay in filing the appeal. In fact, third respondent did not file application for condonation of delay. He, therefore, submits that appeal is not maintainable and is liable to be set aside on that ground and since the appellate authority has no competence and jurisdiction, the proceedings are not maintainable before the Revenue Divisional Officer.

5. Learned counsel for the petitioner also argued on merits of the claim put up by the third respondent and contends that third respondent has no legal validity to make any claim and, therefore, even on merits, the third respondent is not entitled to challenge the patta granted in favour of the petitioner.

6. Learned counsel representing third respondent submits that the third respondent has, in fact, filed an appeal in the year 1990 itself, soonafter he came to know of granting of patta, but the said appeal was not taken on record and, therefore, he filed two writ petitions on earlier occasions. Learned counsel further submits that even assuming that the appeal was not filed within the time, in exercise of inherent powers vested in appellate authority he can entertain appeal by condoning the delay. The provisions of the Limitation Act are applicable and this is a fit case to condone the delay and to entertain the appeal.

7. Learned counsel for the third respondent further contends that third respondent was not aware of granting of such patta. At no point of time third respondent was put on notice and when third respondent came to know of granting of patta, he has taken course of action as warranted by law and, therefore, it cannot be said that appeal filed by the third respondent is beyond the limitation prescribed in the Act.

8. Learned counsel further contends that wrong recording was made regarding the nature of statement made by him in O.S. No. 181 of 1997 while disposing of writ petition No.748 of 2007. In fact, he did not make any wrong declaration before the Civil Court, but he was only answering the suggestions in the negative in his cross examination and if the full statement is seen, the true facts come to light. Learned counsel by relying on various documents, contends that on merits, he has a good

case and that illegally petitioner has knocked away the property of third respondent and illegally obtained patta.

9. The short point that arises for consideration in the writ petition is whether appeal filed before the Revenue Divisional Officer against the patta granted by the Inams Deputy Tahsildar is maintainable, if such appeal is not filed within the period of 60 days from the date of the order of the Inams Deputy Tahsildar.?

10. Against order of Inam Deputy Tahsildar, aggrieved person has right of appeal before the Revenue Divisional Officer under Section 7 (2) of the Act, 1956. However, Section 7 (2) prescribes 60 days time to prefer such appeal. The Act, 1956 does not provide power to condone delay if application is not filed within the time.

11. The principle of law is well settled that if the statute does not vest power in the appellate authority to condone the delay, he cannot condone the delay and entertain the appeal. The provisions of the Limitation Act are not attracted to the Act, 1956. This Court on two occasions, referred to hereunder, concerning the same issue held that no such power is vested in the Revenue Divisional Officer to entertain the appeal filed beyond the period of 60 days.

12. The same provision has fallen for consideration before this Court in **R.Balasubramanyam Reddy v. District Collector**. There also the appeal was filed beyond the time prescribed. Learned single Judge of this Court held that appeal has to be filed within the period of limitation prescribed in the Act.

13. The said decision was approved by the Division Bench of this Court in **Veerappa v. Revenue Divisional Officer, Chittoor and another**. The issue for consideration in the above case is identical to the case on hand. There also an appeal filed beyond the period of 60 days was entertained by the Revenue Divisional Officer even without an application for condonation of delay. The Division Bench also found fault with the Revenue Divisional Officer in passing straight away an order condoning the delay and entertaining the appeal, though filed after long

lapse of time. In the said case, the delay was 2555 days. Court in fact ordered to take appropriate action against such person. Having regard to the fact that such appeal was not maintainable, Division Bench held that allowing the petitioner to subject to the jurisdiction of the said authority for consideration on the issue of maintainability of the appeal and on the question of affording opportunity of hearing regarding the delay in filing the appeal would not arise.

14. In **Y. Krishna Kishore Vs Government of A.P**. relied upon by the learned counsel for the petitioner also, this Court had an occasion to consider the scope for filing of appeal beyond limitation prescribed. This Court held that appeal is not maintainable if not filed within the time prescribed.

15. On a review of entire case law on the scope of application of Limitation Act to the special statutes, this Court in W.P.No.21361 of 2009 and batch has culled out the principles laid down in various decisions as under:

> "The principles deducible from precedents are: (1) that Special Act/Local Act should provide a period of limitation different from period of limitation prescribed in Limitation Act; (2) Special Act / Local Act has not expressly excluded application of Limitation Act; (3) Such exclusion can be by necessary implication, such as incorporating power to condone delay in some Sections and not providing in other Sections of the Special Act; (4) Even if Special Act is silent on exclusion of application of Limitation Act, it is not automatic that Limitation Act would apply to Special Act; the Court ought to examine the nature of the subject and scheme of special law to ascertain whether legislature intend to exclude the operation of Limitation Act; (5) Power to condone delay cannot be implicit; (6) If the statute does not confer power to condone delay, statutory authority cannot condone the delay; (7) If Special Act incorporates non-abstante clause no other law including Limitation Act would apply; and (8) If the Act is a self-contained code, provisions of Limitation Act cannot be imported, more particularly when express provision of adoption is not made."

16. As seen from the averments in the affidavit filed in support of writ petition Nos. 2637 of 1997 and 748 of 2007, third respondent claimed to have filed appeal on 26.12.1996. Even if this date is taken, the appeal was not within time. Having regard to the principles laid down by the Division Bench in **Veerappa** case in identical facts

as in this case as the proceedings impugned in the writ petition are initiated by the Revenue Divisional Officer, resulting in issuance of notice to the petitioner, entertaining the appeal filed by the third respondent is liable to be set aside and it is accordingly set aside. However, it is made clear that this order does not come in the way of third respondent to work out his rights with reference to the entitlement and possession of the subject property in appropriate proceedings.

17. Accordingly, the writ petition is allowed. There shall be no order as to costs. Miscellaneous petitions if any pending in the writ petition shall stand vacated.

JUSTICE P.NAVEEN RAO

Date: 01.05.2015

Note: Issue C.C. by one week.

b/o.

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