

THE HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY
WRIT PETITION No.9813 OF 2004

Dated 18th March, 2016

Between :

Y.Ramesh Babu & others

... Petitioners

a n d

Joint Collector, Rangareddy District
& another

... Respondents

THE HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY
WRIT PETITION No.9813 OF 2004

ORDER:

This writ petition is filed to quash the order dated 10.02.2004 passed by the Joint Collector-1st respondent in Case No.F1/4837/2003 by declaring the same as illegal and arbitrary by issuing a writ of Mandamus.

2) Case of the petitioners, in brief, is that they filed an appeal before the Joint Collector-1st respondent in Case No.F1/4837/2003 against the order passed by the Revenue Divisional Officer in Case No.L/3299/99 dated 17.11.2001 along with an application to condone the delay of 544 days in filing the appeal. The 1st respondent passed the impugned order dated 10.02.2004 stating that the appellants have not given any reasons for the delay in filing the appeal, but he passed a reasoned order dismissing the appeal. The said order is under challenge before this Court on the ground that the reason assigned by the 1st

respondent for dismissing the appeal is without consideration of the application filed by the petitioners for condonation of delay explaining the reasons for delay in

paras 8 and 9 of the affidavit in interlocutory application in appeal No.F1/4837/2003.

3) Counsel for the petitioners mainly contended that the 1st respondent did not consider the reasons assigned in paras 8 and 9 of the affidavit filed along with application for condonation of delay and dismissed the appeal erroneously whereas the respondents' counsel contended that though the respondents filed counter, the same was not considered by the Joint Collector, however, the Joint Collector has rightly dismissed the appeal.

4) As seen from the material on record, petitioners filed interlocutory application in appeal No.F1/4837/2003 under Section 5 of the Limitation Act to condone the delay of 544 days. Specific reasons were assigned in paras 8 and 9 of the affidavit and they are as follows:

“ 8. It is further submitted that the lower Authority though passed the impugned order on 17-11-2001 but the same was sent belatedly to their counsel, who was on record initially, ignoring the fact that they have changed their Advocate subsequently. As such till this day the said order has not been served on the petitioners. The petitioners came to know about the order passed by the lower Authority through their cousins viz., Y.Venugopal who also filed a petition for grant of ORC in respect of the aforesaid land and immediately on knowing the same the petitioners enquired with the office of the R.D.O. Chevella Division and received a copy of the said order in the last week of May, 2003.

9. The appeal against the order is to be filed within 30 days from the date of receipt of the order and the petitioners came to in possession of the order passed under appeal during the last week of May 2003. Thus, the appeal is filed within 30 days from the date of receipt of the order. However, as a abundant superior caution and to avoid technical defect are filing this petition to condone the delay if any, in filing the Appeal in the interest of justice.”

But, the order of the first respondent is silent about consideration of the reasons mentioned in paras 8 and 9 of the affidavit annexed to the interlocutory application in Case No.F1/4837/2003 and he simply denied condonation of delay on the ground that the appellants did not assign any reason for condonation of delay and strangely passed an order on merits in appeal itself by dismissing the appeal even before it is numbered. The 1st respondent also did not consider the counter filed by the respondents in delay condonation petition.

5) Non-consideration of reasons mentioned in the affidavit in interlocutory application while dismissing the appeal on merits even before it is registered as an appeal is a serious illegality. Therefore, the order under challenge passed by the first respondent is illegal and arbitrary. Hence, the same is set aside. However, the first respondent is directed to decide the interlocutory application affording an opportunity to both the parties and pass a reasoned order therein in accordance with law, within a period of one month from the date of receipt of a copy of this order.

6) Accordingly, the Writ Petition is allowed. There shall be no order as to costs.

7) Miscellaneous petitions pending in the writ petition, if any, shall stand closed.

M.Satyanarayana Murthy, J

18th March, 2016.

sur