

THE HONB'E SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.23300 OF 2012

ORDER:

This writ petition is filed challenging the orders dated 29.08.2011, passed by the Regional Joint Commissioner, Endowments Department, Tirupati, in I.A.No.19 of 2010 and dated 11.07.2012, passed by the 3rd respondent-Regional Joint Commissioner in Appeal No.108/2011.

The facts of the case in the writ petition are not in dispute. By the proceedings dated 21.10.2003, the 2nd respondent-Assistant Commissioner, who is the designated competent authority after its due enquiry in terms of Rule 3 of A.P. Charitable and Hindu Religious Institutions and Endowments Service Rules, 2002 (for short, "the Rules"), while recognising the petitioner as a cultivating tenant over an extent of Ac.5.05 cents, declared him as a landless poor person as defined under Section 82 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, "the Act"). The said declaration became final as no appeal was filed within the statutory prescribed time limit. However, in the year, 2010, the 1st respondent-Executive Officer invoked the jurisdiction of the 3rd respondent who is a designated appellate authority under the Rules questioning the orders of the 2nd respondent dated 21.10.2003. As the time for filing appeal, in terms of Rule 4 of the Rules was only 30 days, the 1st respondent also filed an application seeking to condone the delay of 2402 days in filing the appeal. On notice being issued to the petitioner, the petitioner filed objections contending that the appeal filed by the first respondent is barred by limitation and the 3rd respondent himself is not authorised to condone the delay as Section 5 of the Limitation Act, 1980 has no application to the proceedings before the 3rd respondent. Petitioner also contended that there was no sufficient cause shown for condoning the delay. Ignoring the contentions raised by the petitioner, the 3rd

respondent had allowed the delay condonation petition by an order dated 29.08.2011. Thereafter, on 11.07.2012, the Appeal No.108/2011 itself was allowed. The present writ petition is filed challenging both the orders of condoning the delay and as well as allowing the appeal.

Sri Guru Gopal, learned counsel for the petitioner contends that the 3rd respondent being the authority under the Act has to act within the four corners of the Rules and in terms of the Rule 4 of the Rules, the appeal can be entertained only within 30 days from the date of passing of the order or from the date of receipt of the copy of the order passed by the primary authority and there is no power to condone the delay and thereby the very condonation of delay is *ultra vires* the powers of the 3rd respondent. Apart from that, the learned counsel contends that no notice was given to the petitioner and no hearing was done before passing the order in delay condonation petition on the ground that the issue relating to the power as to whether the Regional Joint Director is empowered to condone the delay, was pending before this Court in a batch of writ petitions. Though, initially, the matter was adjourned, thereafter, the impugned order condoning the delay was passed without there any notice to the petitioner to put forward his contentions with respect to the merits and maintainability of the delay condonation petition. Petitioner was not aware about the filing of the delay condonation petition and he was not issued with any notice before the said petition is being taken up for hearing by the 3rd respondent on merits. It is only based on the submissions made on behalf of the 1st respondent, the impugned order condoning the delay came to be passed in violation of the principles of natural justice. Reliance is placed on the order dated 25.06.2012 of this Court in W.P.No.18313 of 2011.

Though a counter-affidavit is filed on behalf of the 1st respondent, the crucial contentions with respect to the petitioner having not been

issued notice either in the delay condonation petition or in the main appeal, have not been controverted. Even with respect to the contention that the 3rd respondent not been empowered to condone the delay, was also not controverted. However, a reference is made to the judgment reported in **Donthireddy Sambhi Reddy v. Commissioner, Endowments Department, Hyderabad and others**¹, wherein this Court had held that the cultivating tenant must be a person in possession of the land under duly registered lease deed. The learned standing counsel for the respondents submits that inasmuch as the petitioner had failed to produce a lease deed, he has no right even to be declared as landless poor person.

The issue in relation to the power of the 3rd respondent to condone the delay is no longer *res integra* and the same is decided by this Court vide common order dated 25.06.2012 in W.P.No.18313 of 2011 and batch while dealing with the delay condonation as held:

“24. Section 82(1) of the Act provided exemption to leases held by landless poor persons from the general cancellation of all leases of agricultural lands subsisting on the date of commencement of the Act and the Rules under G.O.Ms. No.379 Revenue (Endowments.I) Department, dated 11-03-2003 were made in exercise of the powers conferred under Section 82 read with the general rule making power under Section 153(1). While Rule 3 thereof provides for determination of landless poor person, Rule 4 provides for an appeal to the Regional Joint Commissioner having jurisdiction within 30 days from the date of receipt of the decision or order made or passed under Rule 3 by any person aggrieved by such decision or order and the decision or order of the Regional Joint Commissioner is made final. The period of 30 days from the date of the receipt of the decision or order by the aggrieved person, within which the appeal has to be, thus, filed under the statutory rules, is not expressly or impliedly impressed with any elasticity either by the statutory rules or by the statute under which the rules were made. The above background may clearly exclude the application of Section 5 of the Limitation Act to such appeals.

25. Section 5 of the Limitation Act providing for extension of prescribed period in certain cases like any appeal or any application, enabled admission of such an appeal or application only if the appellant or the applicant satisfies the “Court” that he had a sufficient

¹ 2008(6) A.L.D 121

cause for not preferring the appeal or making the application within such period. The word “Court” itself, not defined by the Limitation Act, 1963, but defined by A.P. Act 30 of 1987 for its purposes, does not include the Regional Joint Commissioner of Endowments in any view.

26. Section 29(2) of the Limitation Act, 1963 provided that the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as and to the extent to which they are not expressly excluded by such special or local law, where any such special or local law prescribed for any suit, appeal or application a different period of limitation than prescribed by the Limitation Act, 1963. A.P. Act 30 of 1987 being a complete code in itself may, thus, make any applicability of Section 5 of the Limitation Act, 1963 to the appeals provided by the statutory rules above referred to, not arise with reference to Section 29(2) of the Limitation Act, 1963, apart from Section 5 specifically referring to satisfaction of the Court in this regard. The principles laid down by a Division Bench of this Court in **K. Venkaiah v. K. Venkateswara Rao** (7 supra) upheld by the Apex Court in **Sakuru v. Tanaji** (6 supra) and the ratio decidendi of the other precedents above referred to, make Section 5 of the Limitation Act, 1963 inapplicable to appeals under Rule 4 of the Rules in the absence of any express or even an implied provision under A.P. Act 30 of 1987 to consider such application even remotely possible. The limitation on exercise of such power by a statutory authority, who is a persona designata, is circumscribed by the very statutory provisions, which conferred quasi-judicial powers and any other equitable considerations cannot provide shelter to exercise of any such power against the unambiguous letter of the statute and if so, Section 5 of the Limitation Act, 1963 could not have been taken aid by the Regional Joint Commissioner to entertain applications for condonation of delay in filing the appeals under Rule 4 of the Rules and condone the delay by allowing any such applications on any ground.”

In the above quoted paras in no uncertain terms, this Court had declared that the 3rd respondent is incompetent to condone the delay as the proceedings before the 3rd respondent are not the proceedings before a Court and Section 5 of the Limitation Act has no application to the proceedings before the 3rd respondent. In view of the law declared, the 3rd respondent was not having been vested with the power to condone the delay, the impugned order condoning the delay of 2402 days is the order passed without jurisdiction and as such is liable to be declared as void and nonest in law. Inasmuch as, without there being condonation of delay, the entertaining of appeal and passing the orders in appeal

would not arise. In those circumstances, the orders dated 29.08.2011, passed by the Regional Joint Commissioner, Endowments Department, Tirupati, in I.A.No.19 of 2010 and dated 11.07.2012, passed by the 3rd respondent-Regional Joint Commissioner in Appeal No.108/2011, being passed by an authority without there being any power are declared as *ultra vires* and liable to be set aside.

However, it may be noted that in view of the Andhra Pradesh State Reorganisation Act, 2014 and in view of the A.P. Capital Region Development Authority Act, 2014 and A.P. Capital City L.P.S (F&I) Rules, 2015, the land belonging to Sri Lakshmi Narasimha Swamy Temple, Mangalagiri Town and Mandal, Guntur District, has been taken over by the Government of Andhra Pradesh and the same is in the possession and enjoyment of the authority constituted under the said Act. Learned counsel for the petitioner also placed on record the order dated 30.07.2015, passed by this Court in W.P.M.P.No.20286 of 2015 in W.P.No.11812 of 2005. Inasmuch as this Court is only considering the validity or other wise of the orders passed by the 3rd respondent in purported exercise of Rule 4 of the Rules, there is no necessity for this Court to deal with the aspect of the lands having been taken possession, this Court granting permission subject to certain conditions of the lands of the temple being taken possession by the C.R.D.A, the order is strictly confined to validity or otherwise of the matter. However, this order shall not deprive the petitioner from availing the legal rights, if any, with respect to the lands of the temple being taken over by the C.R.D.A. The petitioner shall also be at liberty to agitate his rights in accordance with the law.

Accordingly, the writ petition is allowed setting aside the orders dated 29.08.2011, passed by the Regional Joint Commissioner, Endowments Department, Tirupati, in I.A.No.19 of 2010 and dated

11.07.2012, passed by the 3rd respondent-Regional Joint Commissioner in Appeal No.108/2011. No order as to costs.

Miscellaneous Petitions, if any, pending in this writ petition, shall stand closed.

Date:21.12.2016,
Gk.

CHALLA KODANDA RAM,J



THE HONB'E SRI JUSTICE CHALLA KONDANDA RAM



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Gk.