

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.3035 OF 2011

ORDER:

The jurisdiction of this Court, under Article 226 of the Constitution of India, has been invoked seeking a writ of certiorari to call for the records, relating to the order of the A.P. Cooperative Tribunal, Hyderabad, in I.A. No.193 of 2008 in CTASR No.711 of 2008 dated 03.06.2009, and to quash the same by declaring it to be contrary to law and as suffering from an error apparent on the face of the record. In its order, in I.A. No.193 of 2008 in CTASR No.711 of 2008 dated 03.06.2009, the A.P. Cooperative Tribunal rejected the petitioner's application to condone the delay, of six years four months and fourteen days, in preferring the appeal.

Facts, to the extent necessary, are that the petitioner, a member of the respondent society purchased plot Nos.683 and 684, and sale deeds were executed and registered in her favour. On the ground that the petitioner was liable to pay development charges, and inspite of repeated demands the development charges were not paid, the matter was referred to an arbitrator who passed an award giving the petitioner time to pay development charges on or before 31.03.2002. On the ground that the petitioner did not pay development charges by then, the respondent society sent a notice to the petitioner's last known address and, as the notice was returned unserved, they caused publication, in Eenadu newspaper, of the award having been passed. The petitioner invoked the jurisdiction of the Cooperative Tribunal contending that a copy of the award was not served upon her, and the respondent society could not cancel the registered sale deed after a lapse of 21 years.

In the order, impugned in the Writ Petition, the Tribunal observed that, being a member of the society, it was incumbent on the petitioner to pursue the matter with the society; when her address was changed, it was for her to intimate the change in address to the society; the record disclosed that the society had taken steps for communication of the matter; in the affidavit filed before it, the petitioner had not explained where she had left from her earlier address; it was not even her case that notices were sent by the society to an address other than the address furnished by her; the society had already cancelled registration pursuant to the award; and after a lapse of more than six years, the petitioner could not be permitted to reopen the issue. On the ground that sufficient reasons were not furnished, for condonation of the abnormal delay in preferring the appeal against the award, the Tribunal dismissed the I.A.

Smt. B. Vasantha Lakshmi, Learned Counsel for the petitioner, would submit that the respondent society lacked jurisdiction to cancel the registered sale deed executed in the petitioner's favour, that too after a lapse of more than twenty one years; the petitioner had invoked the jurisdiction of the Tribunal soon after she came to know of the award having been passed; she had filed the appeal before the Cooperative Tribunal on 18.03.2008; and the petitioner had obtained a copy of the award on 14.02.2008, and had preferred the appeal on 18.03.2008, well within the sixty days time limit specified under Section 76(3) of the A.P. Cooperative Societies Act.

Before examining the submission of Smt. B. Vasantha Lakshmi, Learned Counsel for the petitioner, it is necessary to bear

in mind that the jurisdiction of this Court, under Article 226 of the Constitution of India, has been invoked by the petitioner seeking a writ of certiorari to quash the impugned order. A writ of certiorari can be issued for correcting errors of jurisdiction such as in cases where orders are passed without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction or where, in exercise of the jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly. The jurisdiction to issue a writ of certiorari is supervisory and not appellate. An error of law which is apparent on the face of the record can be corrected by a Writ, but not an error of fact however grave it may appear to be. The adequacy or sufficiency of evidence, and the inference of fact to be drawn therefrom, cannot be agitated in certiorari proceedings. (**Syed Yakooob v. K.S. Radhakrishnan**¹).

If the tribunal has erroneously refused to admit admissible and material evidence, or has erroneously admitted inadmissible evidence, or if a finding of fact is based on no evidence, it would be an error of law which can be corrected by a writ of certiorari. Where the conclusion of law by the Tribunal is based on an obvious misinterpretation of the relevant statutory provisions, or in ignorance of it or even in disregard of it or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. Whether or not an error is an error of law, and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case, and upon the nature and scope of the legal provisions which are alleged to have been misconstrued or contravened. (**Syed Yakooob**¹).

¹ AIR 1964 SC 477

Unlike an appellate authority which can re-appreciate the evidence on record, the High Court, in the exercise of its powers of judicial review, would not substitute its view for that of the Tribunal nor would it re-appreciate the evidence on record to arrive at a conclusion different from that of the Tribunal whose order is impugned, in certiorari proceedings, before it. Even if two views are possible, and the Tribunal has taken one of the possible views, the High Court would not interfere, in the exercise of its certiorari jurisdiction, even if it were to be satisfied that other possible view, canvassed before it, is more attractive.

Bearing these principles in mind, let us now examine whether the order passed by the Cooperative Tribunal necessitates interference. It is not in dispute that the jurisdiction of the Tribunal was invoked by the petitioner six years four months and fourteen days after the award was passed. The petitioner claims that she secured a copy of the order on 14.02.2008, and filed an appeal well within the sixty days limitation prescribed under Section 76(3) of the Act. From the facts, as noted in the order passed by the Tribunal, it is evident that the respondent society had sent a notice to the petitioner at her last known address; they had, thereafter, caused publication, in Eenadu newspaper, of an award having been passed. The Tribunal has held, not without justification, that Eenadu was a largely circulated newspaper; when she changed her address, the petitioner had failed to inform the respondent-society of the change in her address; and it is not even the petitioner's case that the society had sent notices to an address other than the one which he had furnished to them.

The Tribunal, therefore, computed the period of limitation, for preferring an appeal, from the date of the award, and not from the date on which the petitioner procured a copy thereof. The Tribunal has furnished reasons for its refusal to condone the inordinate delay of six years four months and fourteen days from the date of the award till the date on which the appeal was preferred. The findings, recorded in the impugned order, cannot be said either to be perverse or to be based on no evidence. The order under challenge in these proceedings does not also suffer from an error apparent on the face of the record necessitating interference in certiorari proceedings under Article 226 of the Constitution of India. I see no reason, therefore, to interfere with the order. It is, however, made clear that the petitioner's contention that a registered sale deed could not have been cancelled by the society or by the arbitrator, and the only recourse the society had, to have the registered sale deeds cancelled, was to file a suit before the competent Civil Court, has not been examined in these proceedings, since the only question, which arises for consideration in these writ proceedings, is whether the Tribunal was justified in refusing to exercise its discretion to condone the delay in preferring the appeal, of six years four months fourteen days from the date of the award. The Writ Petition fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall stand closed. No costs.

RAMESH RANGANATHAN, ACJ

Date: 08.12.2017.
MRKR