

HONOURABLE SRI JUSTICE N. BALAYOGI

Civil Revision Petition No.1679 of 2008

ORDER:

The first Revision Petitioner-K. Chandra Sekhara Rao as the sole petitioner filed the Civil Revision Petition and after his death, petitioners 2 to 4 are substituted as Legal Representatives of the first petitioner.

2. The petitioner-late K. Chandra Sekhara Rao, aggrieved by the orders dated:16.9.1994 in file No.J/718/94 passed by the respondent No.3 and also orders of the respondent No.2 in file No.F1/1188/2006, dated:9.5.2006, preferred this Revision.

3. The brief facts of the Revision are that, the revision petitioner and three others namely, (1). Sri Ch. Anjaneya Varaprasad, (2) Smt. Leela and (3) Sri K. Seshagiri Rao have jointly purchased property to an extent of Ac.84.35 Gts in Survey No.222 of Gajularamaram village, Qutbullapur Mandal, Ranga Reddy District under the agreement of sale dated:07.9.1981 from the legal heirs of Inamdars. As the vendors failed to perform their contract and executed regular sale deeds, the revision petitioner and others filed O.S.No.190/1987 for specific performance of contract of sale and the same was decreed on 10.3.1992. Since then, they are in possession and enjoyment of the said property of Ac.84.35Gts in Survey No.222 of Gajularamaram village, Qutbullapur Mandal, Ranga Reddy District.

In pursuance of the said judgment and decree, the entire sale consideration was paid to the vendors. In the meanwhile, the respondents 5 to 20 herein approached respondent No.3 and applied for issuance of Occupancy Rights Certificate (ORC) by creating false and fabricated documents stating that they have already entered into agreement of sale with Inamdars in the year 1973 itself.

4. The respondent No.3-Revenue Divisional Officer (East) granted occupancy rights in favour of respondents 5 to 20 by proceedings No.J/7/18/94, dated:16.9.1994 illegally without following the procedure under the Act. After came to know of the said order, immediately, the 1st petitioner approached the respondent No.3 and requested to supply copies of the said orders, but respondent No.3 refused to furnish the certified copies in spite of repeated requests.

Thereafter, the petitioner, having no other go, filed Writ Petition No. 3521 of 1999 and the High Court vide orders dated:13.4.1999 directed respondent No.3 to supply certified copies of the order and thereafter, the respondent No.3 furnished certified copies through post after 19.7.2000. After receiving the certified copies of the order, due to ill-health and old age, the revision petitioner was bed ridden for more than seven months and not in a position to move. Therefore, he filed an appeal questioning the proceedings with a delay of 356 days. The said delay is neither wilful nor wanton, but it is only due to ill-health. The Joint Collector, Ranga Reddy District passed final orders on 29.6.2004 allowing the appeal by setting aside the

orders of the respondent No.3 and remanded back the matter for fresh consideration.

5. The respondent no.3 granted Occupancy Rights Certificate to respondents 5 to 20 basing on the alleged deed of assignment dated:6.5.1993 which is fake and fabricated. As per section 17 of Registration Act, a deed of assignment in respect of immovable property is compulsorily registerable and unless it is registered, they cannot claim any right or interest in the immovable property.

6. Aggrieved by the order of the appellate authority dated:29.6.2004, the respondents 21 and 22 filed C.R.P.No.4601/2005 and the same was allowed on 27.1.2006 remitting back the matter to the respondent No.2-Joint Collector to pass comprehensive order dealing with the merits of the appeal filed by the petitioner and also to record a finding on the application of condonation of delay.

7. The respondent No.2 dismissed the appeal filed by the petitioner solely on the ground that the petitioner has not explained the delay satisfactorily in filing the appeal. Even though the High Court directed the respondent No.2 to pass orders on merits, he has not passed orders on merits. Along with appeal, the petitioner filed an affidavit showing the reasons for condonation of delay, but the pleadings, contentions and grounds taken by the petitioner have not been considered by the respondent No.2. The finding of the respondent No.2 on condonation petition that the absence of knowledge is not sufficient cause for condonation of delay is contrary to settled

principles of law. The absence of knowledge is a good ground for condonation of delay. Unless there is knowledge, nobody can be expected to file an appeal questioning proceedings. The date of knowledge is criteria for condonation of delay. Admittedly, the petitioner is not impleaded as party to the proceedings initiated before respondent No.3 and no notice was served to him, from which it is clear that he had no knowledge about the said proceedings. The orders were passed even without issuing notice and without giving proper opportunity of personal hearing and they have even refused to furnish the certified copies of the impugned orders for the reasons best known to them.

8. Now, the point that arises for determination is:

“Whether the impugned order passed by respondent No.2 suffers from legal infirmity warranting interference?”

9. The grounds of the revision, as well as written arguments, reply arguments, besides oral submissions of the petitioner show that the respondent No.3 in collusion with the claimants, who are respondents 5 to 20 and who played fraud, passed the impugned order without even issuing notice and affording an opportunity of personal hearing to the petitioner strictly in accordance with Rule 6 of A.P. (TA) Abolition of Inams Rules, 1975. The document on which the respondent relied is an unregistered document of the year 1973, which is concocted and fabricated one and that the respondents are not in occupation and they are not protected tenants over the said land.

Therefore, the proceedings are illegal, null and void. The petitioner has shown sufficient cause for delay stating that he has no knowledge of the proceedings till he received copies of the document in the year 2000. Further, the respondents in whose favour the Occupancy Rights Certificate was granted, have not filed Agreement of Sale and also GPA said to have been executed in their favour and with a *mala fide* intention, they suppressed the true facts and they have played fraud, particularly the original owners before the Revenue Divisional Officer clearly stated that they have executed agreement of sale in favour of petitioner and three others. The Revenue Divisional Officer-respondent No.3, without considering the aforesaid facts, issued Occupancy Rights Certificate in collusion with them, which is null and void. The legal heirs of the deceased are already on record, therefore, there is no necessity to bring them on record. There cannot be any question of abatement and there is no need to again bring them on record. Already the petitioner was exempted from bringing the LRs on an application filed under Order 22, Rule 4 of Civil Procedure Code, 1908.

10. *Per contra*, the respondents' common contention is that :

(i) no notices have been taken by the revision petitioner after admission of the C.R.P., hence, C.R.P cannot be heard for final hearing on this ground alone; (ii) the co-decree holders in O.S.No.190/1987 are necessary parties, without adding them by the petitioner, CRP is not maintainable; (iii) the order in Revision is an appealable order, hence,

Revision is not maintainable; and (iv) since the petitioner is a third party, in the absence of source of knowledge, delay cannot be condoned, particularly, when the petitioner failed to explain sufficient cause for the delay and that the vested rights of the respondents cannot be unsettled at the instance of the petitioner who is not vigilant and negligent in pursuing his rights.

11. With regard to the point-(i), the contention of respondents is that on admission of the revision for hearing, such revision shall be disposed of only after service of notice on the parties/respondents as per Rule 41-C of the High Court appellate side Rules. But, whereas, the petitioners replied that notices were served on some of the contesting respondents and also notices were issued to respondents by way of substituted services, but no body appeared in pursuance of substituted services. More so, the High Court allowed the petition filed under Order 22 Rule 4(4) of C.P.C. and granted exemption which became final, as the same is neither modified nor set aside.

12. Order 41 Rule 12 contemplates that the appellate court shall fix a date for hearing the appeal. Rule 14 contemplates that notice of the date fixed for hearing under Rule 12 shall be affixed in the appellate Court house, like a notice shall be sent by the appellate court to the court from whose decree the appeal is preferred and shall be served on the respondent or his pleader in the appellate court in the manner provided for service on defendants of summons to appear and answer. Sub-Rule 2 of Rule 14 of Order 41 empowers the appellate

court that the appellate court itself can cause notice to be served on the respondent or on his pleader instead of sending the notice to the court from whose decree the appeal is preferred.

13. The State of Andhra Pradesh inserted the provision in Order 41 Rule 14 in Sub-Rule 1 enabling the appellate court to dispense with the service of notice on the respondents whoever remain absent, against whom the suit has been proceeded *ex parte* in the Court from whose decree the appeal is preferred or who have been declared absent by the said Court.

14. No doubt, Chapter 9A, Rule 99 and 101 mandate notice to the respondents on admission. There is a distinction between notice before admission and notice after admission for hearing of revision. The record shows that the C.R.P. was admitted on 4.8.2017. In fact, the proceedings sheet clearly shows that the C.R.P. M.P. No.831 of 2010 was filed to bring the petitioners 2 to 4 being legal representatives of the deceased – 1st petitioner which was ordered on 17.6.2015. In C.R.P. M.P. No.2242 of 2015 the petitioners were directed to serve notice on respondents who are respondent Nos. 10, 11 and 14 to 20 by substitute service by way of publication in Eenadu daily newspaper of district editions of Hyderabad, Ranga Reddy District, Krishna District and East Godavari District by mentioning the date of hearing as 27.7.2015. The paper publication was filed in USR No.3753 of 2015 on 2.7.2015.

15. In total, there are 22 respondents in the C.R.P. and notices were issued to all the respondents. Respondents 1, 2, 4, 7, 8 and 13 were served with notice, but none appeared. A substituted service was ordered for respondents 3, 5, 6, 11 and 14 to 22 by way of publication in Eenadu daily newspaper on 30.6.2015 and proof of service was filed in USR No.3753 of 2015. In response to the notice, Sri B.Venkata Rama Rao, counsel appeared for R9 and R12 and Sri Challa Ajay Kumar appeared for R21 and R22.

16. The record further shows that in spite of notices by substituted service in the Eenadu daily newspaper, none appeared in response to substituted services. Except R7, through a counsel, none appeared before the Joint Collector also, in spite of substituted service by way of publication in Vartha daily newspaper of Guntur, Vijayawada, West Godavari and Hyderabad editions on 20.3.2002. Sri B.Venkata Rama Rao is appearing in the appeal for respondents 2 to 6 and 8 to 17. Even after admission of the C.R.P., the same counsel who appeared before admission continued their appearance and contested the revision. The High Court itself posted the main C.R.P. for hearing and now during the course of arguments, respondents' counsel came with a plea that there is no notice after admission of C.R.P. This objection was never raised even after posting the main C.R.P. for arguments, except at the stage of arguments.

17. The further contention of respondents is that the petitioners failed to bring on record L.Rs. of the deceased –

respondents 10 and 18, therefore, the petition stands abated.

18. In reply, the petitioner contended that the notice sent to R18 was returned and a paper publication was also issued and there is no communication regarding the death of R18, therefore, the whereabouts of R18 are not known. The V.R.O. intimated to the 4th petitioner that no family members of R18 are residing in the village and their whereabouts are not known and to that effect issued certificate dated 5.12.2015, therefore, they filed application under Order 22 Rule 4.

19. In the case of *B.C.Harinarayanamma and Others Vs. V.Narasimha and others* (2001 (4) ALT 580), relied on by the respondents, this High Court held that in a suit for declaration of title and for recovery of possession of the suit land from the defendants, if the suit against one of the plaintiffs, who is a co-owner stands dismissed by abatement, due to the death of the said co-owner and if the suit is decreed for declaration of title and possession in favour of the surviving co-owners, it leads to conflict of judgments. The difficulty arises always when there is a joint decree.

In the case of *Meka Chinnappa Reddy and another Vs. Meka Pulla Reddy* (2000(4)ALD 492) the suit was for mere injunction on the ground that the defendants were trespassers and were interfering with the possession of plaintiffs. Even in the absence of legal representatives of one of the plaintiffs, the decree in favour of

surviving plaintiff for injunction would not result in any conflict of decisions or contradictory findings. Further, such a decree cannot be said to be inexecutable.

But the facts of this case would disclose that it is a suit for declaration of title and for recovery of possession of the suit land from the defendants. There is no escape from holding that failure to bring on record the legal representatives of the deceased appellant would result in abatement of the suit in its entirety inasmuch as the trial court has passed the decree in the absence of legal representatives of one of the plaintiffs.

20. In the case of *Mohd. Safdar Shareef (died) per LRs Vs. Mohammed Ali (died) per LRs* (1993 (1) ALT 522) this Court held that common decree for possession and profits is sought for against all the defendants. The decree in question is joint and indivisible. Even according to the written statement, the defendants contend that they are jointly in possession and enjoyment of 1932 square yards of site. Therefore, it is clear that any decree that may be passed against some of the defendants would be inconsistent with a decree of dismissal of the suit in respect of other defendants. Ultimately, this High Court held that CCCA filed by the plaintiff has abated since legal representatives of the 2nd respondent were not brought on record.

21. The respondents in support of their contention that the petition is bad for non-joinder of necessary parties, relied on decision in *P.Govinda Reddy Vs. Golla Obulamma* (AIR 1971 AP 363)

wherein the Apex Court in a suit for recovery of amount on the foot of mortgage held that Order 34 Rule 1 of Code enjoins that all those interested in right to redemption or in security have to be joined as parties to suit and such prohibition does not apply to case where mortgagors had severed their interest in mortgage.

22. In the case on hand, admittedly, respondents 8 and 9 are legal heirs of the 10th respondent. The settled law is that if some of the heirs of the respondents are already on record, there is no necessity to bring all other L.Rs. on record and persons already on record are entitled to prosecute the case.

23. The petitioner in support of his contention that some of the respondents are contesting the matter and the petition is maintainable even without bringing other L.Rs. in view of the fact that whereabouts of other legal heirs of R18 are not known, relied on decision in the case of *Mahmud Mian (dead) through L.Rs. and another Vs. Shamsuddin Mian (dead) through L.Rs. and others* ((2005) 11 SCC 582) wherein the apex Court held that in a suit for partition on account of death of one of the parties, the appeal could not have abated in its entirety.

24. In *Mohammad Arif Vs. Allah Rabbul Alamin and others* (AIR 1982 SC 948(1)) it was held in the second appeal itself that Mohammad Arif had been joined as a co-appellant along with his vendor Mohammad Ahmad. On the death of Mohammad Ahmed all that was required to be done was that the appellant who was on record should have been shown as legal representative inasmuch as he was the

transferee of the property in question and at least as an intermeddler was entitled to be treated as legal representative of the Mohammed Ahmed. He being on record the estate of the deceased appellant *qua* the property in question was represented and there was no necessity for application for bringing the legal representatives of the deceased appellant on record.

25. Similarly, in the case of ***Changki village Vs. Tibungba ao*** (1990 AIR SC 73) the Apex Court held that apart from the fact that one of the heirs of respondent no.4 was already on record and the time to bring the legal representatives of Respondent No.4 has not elapsed. It has to be borne in mind that the provisions of the Civil Procedure Code were not applicable in all their force and vigour to civil disputes in Nagaland.

26. In the case of ***T.Gnanavel Vs. T.S.Kanagaraj And Anr.*** the Apex Court by judgment dated 25.2.2009 in Civil Appeal No.1259 of 2009 held that the Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.

27. In *Sushil K.Chakravarty (D) through L.Rs. Vs. M/s.Tej Properties Pvt. Ltd.* the Apex Court by judgment dated 19.3.2013 in Civil Appeal Nos.2600-2601 of 2013 held that it is open to the Court to exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.

28. In the case of *Mahabir Prasad Vs. Jage Ram* (AIR 1971 SC 742) the apex Court held that under Order 41 Rule 4 CPC it is open to the appellate court when other persons who were parties to the proceeding before Subordinate Court and against whom a decree proceeded on a ground which was common to the appellant and to those other persons are either not impleaded as parties to appeal or are impleaded as respondents. Even if there are other heirs and legal representatives and no application for impleading them is made within the period of limitation prescribed at the limitation act the proceedings will not abate.

29. In the case of *Government of Andhra Pradesh v. Pratap Karan* {2016 (4) ALD 2 (SC)} the Apex Court held that indisputably all the plaintiffs had equal shares in the suit property left by their predecessors. Hence, in the event of death of any of the plaintiffs, the

estate is fully and substantially represented by the other sharers as owners of the suit property. Therefore, it is of the view that by reason of non-substitution of the legal representative(s) of the deceased plaintiffs, who died during the pendency of the appeal in the High Court, entire appeal shall not stand abated. Remaining sharers, having definite shares in the estate of the deceased, shall be entitled to proceed with the appeal without the appeal having been abated.

30. In the case of ***B.Ramachandra Reddy and others Vs. Nelli Subbamma*** (2003 (1) ALD 763) this High Court held that since the 1st appellant, as father of 2nd appellant was managing the estate of the 2nd appellant, he, for the purpose of Section 2(11) C.P.C., would be deemed to be a legal representative to the estate of the deceased-2nd appellant. It is well settled that when one of the legal representatives is already on record, the proceedings against a deceased party do not abate, and his other legal representatives, who also represent his estate, can be brought on record or allowed to come on record at any time even beyond the period of limitation prescribed.

31. In the case of ***Chaganti Subbarao Vs. Thimmaraji Satyanarayana*** (2007 (3) ALT 408) this High Court held that where several defendants are impleaded in a suit, the question whether the death of one of them, would bring about a total abatement, would depend upon the nature of cause of action, in the suit. If the cause of action is divisible, the abatement will be restricted to that portion of the claim, made against the deceased party, and the rest of the claim would

survive. On the other hand, if the cause of action is indivisible, the entire suit would abate, if steps are not taken to bring the legal representatives, within the stipulated time.

32. In the case of ***Mohd. Kaleemullah Vs. Mohd. Azizullah and others*** (2005 (6) ALD 303) this High Court held that whenever a party to the suit dies during the pendency of the proceedings, corresponding obligation is cast upon the parties concerned, to bring the legal representatives of the deceased party, on record. Failure to do so would entail in abatement of the suit. Sub-Rule (4) of Rule 4 of Order XXII CPC enables the Court, to relieve the plaintiff in a suit, from the obligation to bring the legal representatives of the deceased defendant on record, in case, such defendant remained *ex parte*. The basis for such a course is that when the party did not choose to respond to the summons issued by the Court during his lifetime, his estate cannot stand on a better footing, after his death.

33. In the case of ***Velamala Appa Rao Vs. Baggu Appayya*** (2005 (5) ALT 695) this High Court held that order 22 Rule 4 CPC discloses that the death of one of the defendants, *ipso facto*, does not result in abatement of the entire suit. Much would depend on the nature of reliefs claimed against them and the severability of the cause of action. Sub-rule (1) thereof, discloses that the abatement would result if only the right to sue survives, vis-à-vis the dead person. Sub-Rule (3) mandates that, where no steps are taken to bring the legal

representatives on record, the suit shall abate against the deceased-defendant.

34. In the case of ***Gema Coutinho Rodrigues Vs. Bricio Franciso Pereira*** (AIR 1994 SC 1199) the Apex Court held that so long as one of the heirs has been brought on record, substantially representing estate of the deceased plaintiff, application would not be dismissed on the ground that the suit has abated or it could not proceed.

35. In the case of ***Newanness Vs. Shaikh Mohamad*** (1995 Supp (2) SCC 529) the Apex Court held that since the 3rd defendant is already on record representing all the heirs of the first defendant widow, the question of abatement does not arise.

36. In the case of ***Sahdeo Singh Vs. Ramchhabila Singh*** (AIR 1978 PATNA 258) the Patna High Court held that where during pendency of a suit by co-owners for declaration of title and possession against trespassers one of the co-owners dies the suit will not abate for non-substitution of his legal representatives for the reason that the suit is maintainable even by some of the co-owners.

37. From the above decisions the settled law is that if some L.Rs. are already on record, there is no necessity to bring all other L.Rs. on record. On account of death of one of the parties, the appeal could not be abated in its entirety. Further, when the right to sue survives upon the surviving parties, Order 22 Rule 2 CPC will come into operation. Further, when a party did not choose to respond to the

summons issued by the Court during his lifetime, his estate cannot stand on a better footing, after his death. Under Order 22 Rule 4(4) CPC the Court is empowered to exempt the petitioner before judgment is pronounced. This Court in I.A. No.2 of 2017 (CRP MP No.5418 of 2017) exempted the petitioners from bringing L.Rs. of the 18th respondent. Admittedly, respondents 8 and 9 herein are the L.Rs. of the deceased respondent No.10. The counsel for respondent No.9 who is the L.R. of the 10th respondent also not intimated or communicated the date of death and legal heirs of the 10th respondent as contemplated under Order 22 Rule 10-A of CPC. More so, in this case in fact notices were served on respondents 1, 2, 4, 7, 8 and 13, but none appeared. A substituted service was ordered for respondents 3, 5, 6, 11 and 14 to 22 by way of publication in Eenadu daily newspaper on 30.6.2015 and proof of service was filed in USR No.3753 of 2015. In response to the notice, Sri B.Venkata Rama Rao, counsel appeared for R9 and R12 and Sri Challa Ajay Kumar appeared for R21 and R22. Earlier also, as discussed above, in the year 2008 itself a paper publication was given on 4.2.2008, in pursuance of the paper publication and notice, on another time also, none appeared. On behalf of respondents, one advocate appeared before the Joint Collector. Again, paper publication was made on 20.3.2002 in Guntur, Vijayawada, West Godavari and Hyderabad editions of Vartha daily newspaper. Thereafter, one Advocate appeared for respondents 2 to 6 and 8 to 17, which shows that all the respondents appeared before the appellate authority, but in C.R.P., none appeared representing respondents 5 to 8, 10, 11 and 13 to

20. Though notices were served on respondents 1,2,4,7,8 and 13, none appeared on behalf of respondents 7,8 and 13. The V.R.O. also issued certificate on 5.12.2015 that the whereabouts of the legal heirs of the 18th respondent are not known. After the V.R.O. issued the said certificate on 5.12.2015, the petitioners herein filed I.A. No.2 of 2017 (CRP MP No.5418 of 2017) and this Court granted exemption.

38. Respondents 8 and 9 are legal representatives of the 10th respondent and in view of the exemption granted by the High Court in the application filed under Order 22, Rule 4(4) this petition is tenable on the principle that so long as one of the heirs has been brought on record, substantially representing the estate of the deceased plaintiff, application would not be dismissed on the ground that the suit has abated or it could not proceed. Hence, there can be no abatement as some of the legal representatives are already on record.

39. The contention of the petitioners is that the limitation for filing appeal commences from the date fraud is discovered, that is to say from the date of knowledge of the order.

40. In support of their contention, they relied on decision in the case of *State of Punjab Vs. Mst.Qaisar Jehan Begum* (AIR 1963 SC 1604) wherein the Apex Court held that a literal and mechanical construction of the words “six months from the date of the Collector’s award” occurring in the second part of clause (b) of the proviso would not be appropriate and the knowledge of the party affected by the award, either actual or constructive, being an essential requirement of

fair play and natural justice, the expression used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. Where the award was never communicated to the party, the question is when did the party know the award either actually or constructively. Knowledge of the award does not mean a mere knowledge of the fact that an award has been made. The knowledge must relate to the essential contents of the award.

41. In the case of *Nakul Chandra Dutta Vs. Ajit Kumar Chakrabarti* (AIR 1982 CALCUTTA 564) the Calcutta High Court held that in the case of an application to set aside a sale on the ground of fraud under Order 21, Rule 90 CPC limitation runs not from the date when the applicant has some hearsay knowledge of the factum of sale, but when he has a clear and definite knowledge of the facts constituting the fraud.

42. In the case of *Dhurjati Mohan Das Vs. Balai Chandra Das* (AIR 1978 CALCUTTA 262) the Calcutta High Court held that the limitation commences from the date fraud is discovered by the landlord.

43. In the case of *Babubhai Bhagwanji Mehta Vs. State of Gujarat* (2004 (2) CCC 149 (Guj.)) the Gujarat High Court held that the period of limitation would start only from the date of the knowledge.

44. In the case of ***A.Balaiah Vs. The District Collector, Hyderabad District*** an unreported decision dated 15.12.1982 in W.P. No.575 of 1981 and C.R.P. No.1947 of 1982, this High Court held that a perusal of Section 24 discloses that a wide discretion was given to the authority to entertain the appeal under its discretion. The 30 days time prescribed under Section 24 of the Act is enlarged at the discretion of the appellate authority. The proceedings under Sections 6 and 8 are in the nature of public deliberations and the conversion of tenure of an inam into ordinary tenure has to take place in the public interest. The ordinary test of sufficient cause would not apply in the case of an aggrieved party showing sufficient cause for every day's delay in filing the appeal. Section 5 of the Limitation Act has no application as Section 24 itself has given power to the authority to entertain the appeal.

45. In the case of ***Meenakshi Ammal Vs. Somasundara Nadar*** (AIR 1970 MADRAS 242) it was held that where the period of limitation is prescribed from the date of order, it means that the period should be counted from the date of knowledge of the order, actual or constructive, would seem to be applicable to all enactments.

46. In the case of ***Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer*** (AIR 1961 SC 1500) the Apex Court in the case where an order was not passed in the presence of the parties or after notice to them of the date when the order would be passed, the expression within 30 days after making of the order used in the said

section means within 30 days after the date on which the communication of the order reached the parties affected by it. The time can begin to run only from the date on which the decision is communicated to the parties.

47. *Per contra*, the respondents in support of their contentions that the petitioner was very much conscious of the fact of the orders passed by the R.D.O. and further the expression sufficient cause used in Section 5 of the Limitation Act, 1963 and other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which serves the ends of justice, relied on a decision in the case of ***B.Madhuri Goud v. B.Damodar Reddy*** ((2012) 12 SCC 693) wherein it was held that it is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. If there was any iota of truth in the respondent's story that the certified copies of the documents were misplaced by the office of his counsel and the same were noticed by the counsel on 2.3.2010 while preparing arguments in A.S. No.200 of 2001, the minimum which he was expected to do was to file an affidavit of the advocate concerned. Therefore, the contention of the respondent about the misplacement of the documents by the office of the advocate was vague to the core.

48. In the case of *Shiv Kumar Sharma Vs. Santosh Kumari* ((2007) 8 SCC 600) it was held that a court of law cannot exercise its discretionary jurisdiction de'hors the statutory law. Its discretion must be exercised in terms of the existing statute.

49. In the case of *State of Nagaland Vs. Lipok AO* ((2005) 3 SCC 752) the Apex Court held that proof of sufficient cause is a condition precedent for exercise of the extraordinary discretion vested in the court. What counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion.

50. In the case of *N.Balakrishnan Vs. M.Krishnamurthy* ((1998) 7 SCC 123) the Apex Court held that what is sufficient cause should be construed liberally. Acceptability of the explanation is the only criterion, length of delay is not relevant. While condoning the delay, the Court should also keep in mind the consequent litigation expenses to be incurred by the opposite party and should compensate him accordingly.

51. In the case of *D.Vidya Bai and others Vs. Anil Kumar R.Kamdar (died) per LRs.* (2012 (1) ALD 518) this High Court held the delay of 10 days in filing cannot be condoned, when petitioners are negligent, there is inaction on their part and more over they have adopted dilatory tactics.

52. In the case of ***Majji Somulu @ Swamynaidu Vs. Majji Nagaraju @ Nagesh*** (2015 (6) ALT 301) this High Court held that for condonation of delay, sufficient cause be shown. Court must not be pedantic in deciding delay condonation petition. It should not be dismissed on the mere ground of long delay if the explanation offered is *bona fide*.

53. In the case of ***Mohd. Rafiuddin Vs. Sri Amruthlal*** (2012 (3) ALT 673) this High Court held that the inaction or negligence on the part of petitioner in prosecuting the suit is wanton and deliberate and the cause for the delay mentioned in the petition as ill-health is false which cannot be condoned.

54. In the case of ***Postmaster General Vs. Living Media India Ltd.*** ((2012) 3 SCC 563) the Apex Court held that condonation of delay is an exception and should not be used as an anticipated benefit for government departments and offering usual explanation that file was kept pending due to procedural red tape is not a sufficient cause.

55. From the above decisions settled law is that the expression 'within 30 days after making of the order' means within 30 days after the date on which communication of the order reached the affected party. The time can begin to run only from the date on which the decision is communicated. The date of order mentioned in Section 5 of the Limitation Act means date of knowledge of that order. Knowledge means knowledge of the contents of the order, but not mere knowledge that an order was passed.

56. Further, the settled principle of law is that the 30 days time prescribed under Section 24 of the Act can be enlarged at the discretion of the appellate authority. The proceedings under Sections 6 and 8 of A.P. (TA) Abolition of Inams Act are in the nature of public deliberation and the conversion of tenure of an inamdar into ordinary tenure has to take place in the public interest. Ordinary test of sufficient cause would not apply in the case of an aggrieved party showing sufficient cause for every day's delay in filing the appeal and that Section 5 of the Limitation Act has no application as Section 24 itself has given power to the authority to entertain the appeal.

57. In the case on hand the assertion in the petition is that late K.Chandra Sekhara Rao and three others jointly purchased an extent of Ac.84.35 guntas in Sy.No.222 of Gajularamaram Village, Rangareddy District from the heirs of inamdar under an agreement of sale date 7.9.1981. In view of the fact that the regular sale deed was not executed by the vendors, the purchasers filed O.S. No.190 of 1987 for specific performance and the said suit was decreed on 10.3.1992. The respondents 5 to 20 herein approached the 3rd respondent and applied for issuance of Occupancy Rights Certificate in their favour by producing documents, which according to petitioners fabricated documents. Further, the petitioners relied on the letter No.VCS/1112/05 dated 28.1.2005 issued by the Commissioner & I.G. of Registration & Stamps, A.P., Hyderabad to the petitioner informing that in the reference 2 and 3 dated 27.1.2005 the Central Record Room,

Superintendent has informed on verification that the name of Mr.Nasurulla Khan as stamp vendor is not existing in their office as requested by the petitioner herein in the years 1972, 73 and 74. The Deputy Inspector General (R&S) Hyderabad range, Hyderabad in Memo. No.SV/120/05, dated 23.2.2005 informed to the petitioner that the District Registrar, Hyderabad reported that the stamp vendor named Sri Nasurulla Khan of Chatta Bazar, Hyderabad is not forthcoming in the list of Stamp Vendors of Hyderabad District.

58. According to respondents, they purchased stamp papers from the stamp vendor Mr.Nasurulla Khan. According to the above said endorsements, no such stamp vendor is there at that time and it is the case of the petitioners that the 3rd respondent issued ORC without conducting proper enquiry about the documents relied on by the respondents.

59. It is also the case of the petitioner that no notice as contemplated under Rule 6 (2) of the A.P. (T.A.) Abolition of Inams Rules 1975 was issued by the 2nd respondent to petitioners – interested parties. The alleged agreement of sale on which the respondents claiming is not registered document as required under Section 17 of Registration Act, 1908 and it does not create any rights.

Even the alleged GPA was also not registered. It is also further alleged that the original owners gave statement before the R.D.O. that they have not executed any agreement of sale in favour of respondents.

60. The specific allegation of the petitioners is that R.D.O. passed the orders dated 16.9.1994 granting ORC to respondents without issuing any notice or affording an opportunity of personal hearing and further that the order is passed in collusion with the respondents who played fraud.

61. Aggrieved by the orders dated 16.9.1994, petitioners filed appeal under Section 24 of the Act and the Joint Collector – 2nd respondent disposed of the said appeal vide order dated 29.6.2004 directing the R.D.O. for fresh consideration and disposal on merits in accordance with law after giving opportunity to both parties within a period of two months from the date of receipt of the order. The specific plea of the petitioner is that he never executed any documents assigning the decree in favour of respondents 2 to 17 and the whole proceedings are illegal. The 10th respondent died, his L.Rs. are respondents 8 and 9, but the respondents 2 to 6 and 8 to 17 have not appeared before the appellate authority either in person or through their counsel in spite of notices and also substitution of service by publication in the newspapers dated 20.3.2002. Respondents 8 to 17 in the appeal are respondents 11 to 20 herein. Respondents 21 and 22 came on record by filing an implead petition before the Joint Collector/2nd respondent and respondents 9, 12, 21 and 22 appeared through their counsel. Before the 2nd respondent, respondents 9 and 12 appeared through counsel and their counsel also counsel of respondents 11 to 20 herein who are respondents 8 to 17 in the appeal. The 2nd

respondent – Joint Collector by order dated 29.6.2004 set aside the orders dated 16.9.1994 and remanded back the matter to the 3rd respondent – R.D.O. for fresh consideration and disposal on merits. Questioning the same, C.R.P. No.4601 of 2005 was filed and the same was allowed remitting the matter to the Joint Collector - 3rd respondent therein. The Joint Collector dismissed the appeal on the ground that there is delay of 8 years.

62. It is the specific allegation of the petitioners that the 1st petitioner – deceased acted in diligence and in spite of repeated approach, they have not supplied the copy of the order to the petitioner and even after direction issued by the High Court, there is a lot of delay of one year three months in supplying the copy of the order to the 1st petitioner. The petitioner in the impugned application clearly stated that no notice was issued giving an opportunity of hearing and that the copy of the order was not supplied, but the appellate authority did not consider the same. A copy of the order was supplied to the petitioner after 19.7.2000 and as such there is delay of only 356 days. There is a delay of 6 years in supplying the copy of the order to the petitioner by the 3rd respondent. The petitioner, as earlier stated above, came to the knowledge of the order on the communication of the order dated 16.9.1994 by the appellate authority only after 19.7.2000 i.e., after more than 6 years. As held by the Apex Court and also our High Court the delay starts to run only from the date of communication of the order i.e., after 19.7.2000 and thus the delay is not 8 years as held by the

appellate authority in the impugned order. Accordingly, there is delay of only 356 days.

63. The 2nd respondent in the impugned order dated 9.5.2006 observed that as per Section 24 of the A.P. (TA) Abolition of Inams Act, 1955 an appeal has to be preferred within 30 days from the date of decision or such further time as prescribed authority may for sufficient cause allow. The institution of proceedings 7 years after the issuance of Occupancy Rights Certificate militates against all canons of justice and one who has slept over his rights for such an extraordinary length of time should not be allowed to litigate in respect of those rights. The appeal is barred by the sheer antiquity and obscurity of the transaction.

64. Though the Joint Collector in the order stated that the appellant has taken the plea of absence of knowledge for condonation of delay, he found that mere plea of absence of knowledge is not sufficient cause for condonation of delay. He observed that the real test in all such cases is the earliest opportunity the appellant had for securing knowledge of the impugned order. The appellant staking a claim for occupancy rights, ought to have applied for Occupancy Rights Certificate immediately after the date of vesting. That he did not do so which indicate lack of diligence on the part of appellant. The Occupancy Rights Certificate was granted in the year 1994 and the appeal was filed in the year 2001. The delay mentioned in the application is 356 days. On 18.3.2006 the appellant advocate mentioned that additional grounds for condonation of delay will be

filed but no further grounds are filed as on date. Hence, the 2nd respondent found that petitioner has not explained the delay of 8 years in filing the appeal and dismissed the application.

65. The legal position is succinctly expounded in the judgment of the Hon'ble Supreme Court in *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy* (2013 (12) SCC 649), wherein while interpreting the provisions of Section 5 of the Limitation Act regarding condonation of delay, the principles applicable thereto were summarised as follows :-

- (i) There should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.
- (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.
- (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.
- (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.
- (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.
- (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief

because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

66. The specific case of the petitioner is that even though he applied for certified copies of the order, the R.D.O. supplied copies only after 19.7.2000 and the limitation starts to run from the date on which he received copy of the order i.e., after 19.7.2000, on which date the petitioner got knowledge of the contents of the orders against them. The limitation starts to run after 19.7.2000, accordingly there is delay of 356 days, but the appellate authority misinterpreted the date of complete knowledge of the order, which means contents of the order. The order of the R.D.O. was without issuing any notice or affording an opportunity of hearing to the petitioner. The petitioner got knowledge of the order only after receiving copy of the order i.e., after 19.7.2000, as such the delay is 356 days, but not 8 years as held by the 2nd respondent. The petitioner properly explained the delay of 356 days, but the 2nd respondent, without considering this fact of delay in supplying the copy and knowledge of copy of the order and also the date of knowledge i.e., after 19.7.2000, erred in finding that the petitioner has not shown sufficient cause.

67. In the facts and circumstances discussed above, I am of the considered view that some of the respondents have received notices and some other respondents were served notices by substituted service by publication in the newspapers of different district editions where respondents are residing on 20.3.2002. The 9th respondent, who is L.R. of the 10th respondent, is on record and properly represented. Some of the respondents, having received notices by way of substituted service,

did not appear. This is an application under Section 24 of AP (TA) Abolition of Inams Act and Section 5 of Limitation Act to condone the delay only. The High Court also exempted the petitioner under Order 22 Rule 4(4) CPC for bringing L.Rs. of 18th respondent in view of the certificate issued by the V.R.O. that the whereabouts of the remaining L.Rs. of 18th respondent are not known. The orders passed by the Court in granting exemption became final and they have not approached any Court questioning the said order. Co-sharers are not necessary parties and in their absence also the dispute in an application to condone the delay can be decided.

68. I am further of the view that the Court should take liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an application under Section 5 of the Limitation Act. The Courts are not supposed to legalise injustice but are obliged to remove injustice. The term sufficient cause should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation. Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis. The cause shown is a *bona fide* cause to condone the delay which is sufficient and relevant fact. Strict proof should not affect public justice and cause public mischief. Therefore, the court should be vigilant so that in the ultimate eventuate there is no real failure of justice. Further, courts are required to weigh the scale of

balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach. The court also should be vigilant that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation

69. After carefully scrutinizing the entire facts and circumstances and basing on the paradigm of judicial discretion, I am of the view that the delay is properly explained by the petitioner as due to lack of knowledge and due to non-supply of copy of the orders. Admittedly, petitioner is not a party to the impugned proceedings while issuing occupancy rights certificate. No notice in the said proceedings was issued to the 1st petitioner late K.Chandra Sekhara Rao who is the co-sharer and no opportunity of hearing was afforded. The delay is 356 days from the date of knowledge i.e., supply of copy of the order passed by the RDO i.e., after 19.7.2000. The order passed by the 2nd respondent is erroneous, perverse and without considering the fact that the limitation starts to run from the date of knowledge i.e., after 19.7.2000 and he dismissed the delay petition finding that application is filed with the delay of more than 8 years, ignoring the fact that the copies of the document were supplied after 19.7.2000 i.e., the date from which the limitation starts to run. Accordingly, there is 356 days delay. The petitioners have properly explained the delay. The appellate court did not consider the settled principle of law that in view of Section 24 of the Act, Section 5 of the Limitation Act does not

apply. The order suffers from legal infirmities hence liable to be set aside.

70. Accordingly, the delay in filing the appeal is condoned while setting aside the impugned order dated 9.5.2006 in Case No.F1/1188/2006 passed by the 2nd respondent and the 2nd respondent - Joint Collector is directed to hear the appeal filed by the petitioner and since it is the oldest matter, the 2nd respondent is directed to dispose of the appeal on merits and in accordance with law within 3 months from the date of receipt of a copy of the order. In the meanwhile, both parties are directed to maintain status quo till the disposal of the appeal.

71. In the result the Civil Revision Petition is allowed, but however, without costs.

72. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE N. BALAYOGI

20th November, 2018

Gnr/Skmr