

HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.7552 of 2005

ORDER:

Heard Mr.J.U.M.V.Prasad for petitioners and the learned Assistant Government Pleader (Revenue) for respondents.

One Battu Basamma W/o.Late Sanjanna filed appeal before the Joint Collector, Mahabubnagar-2nd respondent under Section 78 of the A.P.Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act'). The 2nd respondent through the order impugned in the writ petition dismissed the appeal primarily on the grounds that the appeal is filed after lapse of 21 years and seven months from the date of order under appeal i.e., 25.03.1983 and that the appeal is not accompanied by an affidavit with a prayer to condone the delay.

Mr.J.U.M.V.Prasad draws the attention of the Court to the endorsement, dated 08.10.2004 issued by the Revenue Divisional Officer, Gadwal-1st respondent, which reads thus :-

“.....

In this regard, the petitioner is hereby informed that the Occupancy Rights Certificate has been issued in respect of the above land vide RDO, Gadwal file No.B/ 1798/ 80, dated 25.03.1983 in favour of B.Sunkari Seshiah, S/o.Yellaiah, R/o.Kodandapur Village. The question of resumption does not arise as the Occupancy Rights Certificate has already been issued in respect of the subject land.”

and contends that the 1st petitioner was not a party to the proceedings before the 1st respondent and having regard to the nature of right held by an Institution, the remedy under the Act is availed. The appeal ought not to have been dismissed on merits and opportunity ought to have been given to file an affidavit disclosing sufficient cause for condoning the delay. He further submits that the petitioners have independent right of appeal under the A.P. (Telangana Area) Inams Abolition Act, 1955 (for short 'the Inams Abolition Act'), against order dated 25.03.1983 and they may be given liberty to work out the said remedy as well.

The Assistant Government Pleader submits that the petitioners are working out their remedies in a very casual manner and no indulgence should be shown to such parties.

I have taken note of submissions of the counsel appearing for parties and perused the record.

Prima facie, this court is of the view that the rejection order dated 19.03.2005 is unsustainable, for the case of petitioners is that the 1st petitioner was not aware of the order, dated 25.03.1983. Further, the scope of appeal under Section 78 of the Act ought to have been appreciated. To meet the ends of justice and with a view to give the petitioners an opportunity, the order impugned in the writ petition is set aside and the matter is remitted to 2nd respondent for fresh consideration.

The petitioners are given liberty to file an application for condonation of delay along with an affidavit within two months from the date of receipt of a copy of this order.

As requested by Mr. Prasad, the petitioners, if so advised, can also pursue remedy against the order of the 1st respondent dated 25.03.1983 under the Inams Abolition Act.

The writ petition is ordered as indicated above. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

Dt: 25-01-2018
Prv

S. V. BHATT, J

