

HON'BLE SRI JUSTICE S.V. BHATT

W.P. No.13769 OF 2018

ORDER:

Heard Mr.Vedula Sinivas for petitioner and Mr.S.R.Deshmukh for respondent No.5

The Tahsildar, Shamshabad Mandal, Ranga Reddy District through proceedings No.D/2655/2007 dated 04.11.2010 ordered mutation by accepting transfer in favour of petitioner. The 4th and the 5th respondents on 31.03.2012 filed appeal against the order dated 04.11.2010. In the interlocutory application filed by respondent Nos.4 and 5, the appellate authority/Revenue Divisional Officer granted suspension of proceedings dated 04.11.2010 of recording authority. The petitioner filed W.P. No.10302 of 2012 questioning the interim order granted by the 2nd respondent. On 16.02.2016, this Court disposed of the writ petition and the operative portion of the order reads thus:

“The appellant authority has to take into account the question of limitation, which is raised by the petitioner and decide the same.

In view of the same, this writ petition is disposed of directing the 1st respondent to dispose of the appeal filed by the petitioner against the impugned order within three months from the date of receipt of a copy of this order as per law. Status quo granted on 12.04.2012 shall continue till disposal of the appeal.”

The 2nd respondent through the order impugned in the writ petition held that there is no delay in filing the appeal as the order was not communicated to 5th respondent. The appeal is taken on

file and directed to be listed on 07.04.2018 for hearing. Hence, the writ petition.

Sri Vedula Srinivas contends that *prima facie* the reasons recorded by 2nd respondent are completely incorrect or vitiated and the order impugned in the writ petition hence is liable to be set aside. He refers to the order dated 16.02.2016 in W.P.No.10302 of 2012 and contends that this Court directed the 2nd respondent to take into account the question of limitation, which is raised by the petitioner and decide the question. The order impugned in the writ petition does not reflect considering the limitation much less deciding whether the appeal is filed within the period of limitation or not. To illustrate his contention, he submits that respondent Nos. 4 and 5 are required to state when they had the knowledge of order and thereafter explain how the appeal is filed within the time. If the appeal is not filed in time the reasons for the same. In the case on hand, the order is bereft of any of these details and therefore, the finding that the appeal is filed within limitation is erroneous, illegal and warrants interference of this Court under Article 226 of the Constitution of India.

Per contra, Mr.Deshmukh contends that respondents 4 and 5 firstly were not arrayed as parties in File No.D/2655/2007 in which mutation in favour of petitioner was ordered, therefore, knowledge of pendency of mutation proceedings before the 3rd respondent cannot be inferred. According to him, even in cases where one is a party to proceedings, the period of limitation starts from the day of communication of order accepting mutation or refusing to amend

existing entry. He places strong reliance on the order impugned in the writ petition. For convenience, this Court excerpts a portion of impugned order:

“The above said version of the Tahsildar, Shamshabad with regard to issuance of notice in Form-VIII of ROR rules and its publication on the notice board of the Grampanchayat of concerned is un-doubtedly very clear so far as it is issued. But nowhere in the impugned order the Tahsildar has declared to have served the Form-VIII notice on the persons interested in the said lands or whose names are recorded in the pahani before issuing the impugned orders. Non service of notice on the persons interested is against the principle of natural justices. In other words it is a violation of the natural justices with the persons interested much less to the appellant herein. The Tahsildar has passed the order under appeal, under Section 5 (3) of the ROR Act.

The provisions made under Section 5(4) of the Act clearly says that every orders passed under this section i.e. under section 5(3) shall be communicated to the persons concerned. On verification of lower court records I do not find either the service of Form-VIII notice on the appellant whose name is found in the pahani before sanction of mutation, or communication of order passed under section 5(3). Unless the order passed under section 5(3) is communicated and served on the person concerned he may not able to know about it and it will be deemed that such order passed was behind his back without his knowledge.

The provisions made under section 5(5) of the ROR Act are reproduced below:

(5) Against every order of the (Mandal Revenue Officer) either making an amendment in the record of rights or refusing to make such an amendement (an appeal shall lie to the Revenue Divisional Officer or such authority as may be prescribed) within a period of sixty days from the date of communication of the said order

and the decision of the appellate authority thereon shall subject to the provisions of Section, shall be final.

From the above provisions it is evident that the appeal shall lie within a period of (60) days from the date of communication of said order, but in the instant case the lower court record does not reveal to have communicated the order passed by the Tahsildar to the appellant herein. As such the limitation of sixty days prescribed in the said provision does not apply to the appellant herein.

On the point of limitation and condonation of delay, in a similar case the Hon'ble High Court of Hyderabad has recently passed orders on 04.08.2017 in W.P.No.26066/2017 and dismissed it holding that.

“At this stage, it is appropriate to note that power under Article 226 of the Constitution of India Against Quasi-Judicial Authority decision is very limited and court cannot interject the proceedings pending before the Quasi-Judicial Authority or mandate him to deal with the issue pending before him in a particular manner even before a decision is taken. Thus, court is not inclined to grant the relief as sought for. Accordingly, writ petition is dismissed leaving it open to the petitioners to work out their remedies as available in law including the issue of condonation of delay in filing appeal against them”

The above findings Dt.04-08-2017 of the Hon'ble Court in WP. No.26066/2017, are squarely applicable to the present case on the hand. Relying upon the said judgment of the Hon'ble High Court I do not hesitate to reject the request of the respondent No.2 herein to declare the appeal as not maintainable being barred by limitation and the need for filing of condonation of delay petition. Accordingly in the light of the above discussions of facts and records the request of the R-2 herein is rejected in entertaining the appeal with a delay of (514) days as no order was communicated to the appellant as such the delay is condoned.

The case is posted to 07.04.2018 at 11.00 AM for further hearing.”

According to Mr.Deshmukh, the 4th and the 5th respondents had knowledge of the order in the first week of March, 2012, applied for certified copy of it, obtained the certified copy on 15.03.2012 and filed the appeal on 31.03.2012. Therefore, the appeal is well within the time.

The present writ petition is filed challenging the interlocutory order holding that there is no occasion for seeking condonation of delay in filing the appeal. The scope of judicial review against the interlocutory orders need not be referred to, to avoid burdening the order. The following facts would demonstrate whether the 2nd respondent either exceeded his jurisdiction or disobeyed the direction issued by this Court in W.P. No.10302 of 2012. On 04.11.2010, respondent No.4 accepted mutation of entry in favour of writ petitioner for an extent of Ac.7-18gts. in Survey No.7 at Sathamrai Village, Shamshabad Mandal. The 3rd respondent in his order dated 04.11.2010 referred to the persons whose names are to be deleted and the name of writ petitioner is to be accepted. Respondents 4 and 5 claim that they have right and interest in the subject matter of proceedings dated 04.11.2010. The reading of proceedings dated 04.11.2010 discloses which is undisputed that respondents 4 and 5 were not parties and heard by the recording authority. In the appeal filed by respondents 4 and 5 for the purpose of maintainability of appeal and also the period of limitation, respondents 4 and 5 state thus:

“Being aggrieved by the impugned order dated 4.11.2010 passed in Proceeding No.D/2655/2007 (on the file of the Tahsildar, Shamshabad Mandal, Ranga Reddy District), the 1st respondent herein, the appellants being the interested and affected parties came to know about the said order in the **1st week of March,2012 and immediately applied for certified copy of it and obtained the same on 15-3-2012** and the present appeal is preferred within time from the date of knowledge on the following among other grounds.”

(Emphasis added)

Respondent Nos.4 and 5 have adverted to the stand taken by them in memorandum of grounds that the appeal is within 30 days from the date of obtaining the certified copy. For the purpose of examining the limitation, the statement made by respondents 4 and 5 in the memorandum of grounds is very relevant and this aspect of the matter is examined by 2nd respondent. The findings already excerpted would go to show that respondents 4 and 5 did not have knowledge of the proceedings or the proceedings dated 04.11.2010 was communicated to them. Once the appeal filed after obtaining the certified copy, the period of limitation is rightly reckoned and held that there is no necessity for filing application seeking condonation of delay. The above conclusion takes this Court to the next contention raised by Mr.Vedula Srinivas namely, that the impugned order does not conform to the directions issued by this Court in W.P. No10302 of 2012. It is referred once again that this Court while disposing of W.P. No.10302 of 2012, called upon the 2nd respondent to take into account the question of limitation, which is raised by the petitioner and decide the limitation. The observation of this Court cannot and ought not to be understood as

a finding being recorded by this Court while disposing of W.P. No.10302 of 2012 that there is necessity of filing the application for condonation of delay and the question of limitation will have to be appreciated from that perspective. This Court in W.P. No.10302 of 2012 merely directed the 2nd respondent to take into account the question of limitation. This Court is of the view that the 2nd respondent in fact has taken note of question of limitation and further held there is no delay and accordingly the appeal is taken on file for consideration on merits. This Court sees no reason or ground to interfere with the order passed by the 2nd respondent. The writ petition fails and is accordingly dismissed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.



S.V.BHATT, J

Date:21.06.2018
Sp