

HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE S.V.BHATT

WRIT APPEAL No.283 OF 2017

JUDGMENT: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

Heard learned counsel for the parties.

Writ petitioner is the appellant. The appellant is a Society registered under the A.P. Cooperative Societies Act, 1964 with Regn. No. C-725. At the instance of appellant Society, an extent of Acs. 02-38 Cts in Sy.No.145/1A of Ramanayyapet Village, Kakinada was acquired under the Land Acquisition Act, 1894. The acquisition was the subject matter of Section 18 reference and also another suit in O.S.No.1470 of 2004 on the file of the I-Additional Junior Civil Judge, Kakinada. In the present litigation, we are not required to state these details. Circular No.9/1985-86 dated 15.04.1986 was issued calling upon members to pay an amount of Rs.15,000/- for 300 sq. yards between 16.04.1986 and 30.04.1986 for finalization of allotment of plots in favour of members of the Society.

The controversy arose on account of a view taken at subsequent point of time that by allotment of individual plots, the appellant Society would not be in a position to accommodate the aspirations of possessing a plot by all the members of appellant Society. A few of the non-members have also paid the amount. Keeping in view the overall interest of all the members, the appellant amended by-law No.41 (b) (iv) to sell or lease, otherwise deal with plots, houses, flats or apartments to the members

and others on such terms as managing committee made determination. Upon registering the amendment, the amendment has come into force vide Rc.No.6946/87C dated 25.05.1989. Respondents 2 to 39 herein questioning the said amendment filed A.R.C.No.186/2005-2006 before the 1st respondent. The 1st respondent vide order A.R.C.No.186/2005-2006 dated 19.10.2006, after considering the case of respective parties, held as follows:

“The Deputy Registrar of Cooperative Societies, Kakinada has examined the averments of the petitioners/members of the society, the Management of the society, advocate for the petitioners, advocate for the Managing of the society, in the light of registered byelaws of the society, provisions of the Andhra Pradesh Cooperative Societies Act, 1964, the Andhra Pradesh Cooperative Societies Rules, 1964 and ordered as follows.

The Management of the society is directed to get the layout of the site/land approved by the competent authority and divide the same into plots and action should be taken to allot the sites to the members who have made deposit in response to the circular issued by the then Management of the society on 15.4.1986 between the period from 16.4.1986 to 30.4.1986 and whose deposits are still pending with the society as on date, duly observing the provisions of the byelaws of the society.

While allotting the plots/sites to the members, preference should be given to the members, who have had their deposits basing on the basis of admission number i.e., the date of admission”.

The appellant, in the month of January, 2009, filed appeal challenging the order of 1st respondent dated 19.10.2006 before the A.P. Cooperative Tribunal at Visakhapatnam. The appeal was filed with a delay of 767 days. The Cooperative Tribunal on 24.08.2009 dismissed M.P.No.3 of 2009. The appellant filed W.P.No.19553 of

2009 and the writ petition was dismissed by the order impugned in the appeal.

Learned counsel appearing for the appellant contends that the Cooperative Tribunal, keeping in view the peculiar facts and circumstances of this case, ought to have condoned the delay of 767 days in filing appeal against order in A.R.C.No.186/2005-2006. The gist of the affidavit is not considered by the Tribunal for condoning the delay. As a ground is made to assail the order of Tribunal, for better appreciation, the gist of affidavit is stated thus.

On the approach of Society for allotment of residential plots to its members, the Revenue Divisional Officer, Kakinada vide Award No.1/1987 dated 10.04.1987 allotted land. Later, the Managing Committee of the Society issued notice to its members to pay an amount of Rs.15,000/- per 300 sq. yards from 16.04.1986 to 30.04.1986. On 25.05.1989, the then Managing Committee amended the byelaws of the Society by converting the house sites into flats and subsequently got approved the apartments plan by the Director of Town and Country Planning, Hyderabad. Aggrieved, the deposit holders filed A.R.C.No.186/2005-2006 before the 1st respondent. Later, the order in ARC was passed on 19.10.2006 directing the Society to allot plots to the members who have deposited the amounts for the above period and whose deposits are still pending with the Society. The Society further stated that when it was trying to challenge the impugned order, the respondents approached the Registrar to suspend the Managing Committee under Section 34 of the Act and show cause notice was

issued on 19.11.2007. Pending the above proceedings, some of the deposit holders filed W.P.No.26436 of 2007, which was disposed of on 20.10.2008 with a direction to the Society not to proceed with the construction of flats. Subsequently, the Society filed appeal challenging ARC orders before the Tribunal on 16.12.2008, but the same was returned with an endorsement to file appeal along with delay petition. Hence, there occurred a delay of 767 days in filing the appeal against ARC orders.

Likewise, the reply of respondents 2 to 39 against condonation of delay is that the order was passed after enquiry and examination. The present Managing Committee is aware of the proceedings and they have come up with condone delay petition with a view to dragging the litigation. It is further stated that four present Managing Committee members were also in the previous Managing Committee and the President of the Society filed counter in ARC and not the present in-charge of the Society, as stated in the affidavit. The Society has knowledge of the facts of the case and they intentionally failed to file appeal before the Tribunal and delay of more than two years is unreasonable. Filing of W.P.No.26436 of 2007 is not a hurdle for the Society to approach the Tribunal. The cause stated in the affidavit is unreasonable and prayed for dismissing the condone delay petition.

The Tribunal considered the stand of rival parties and held as follows:

“For considering the delay the petitioner has to establish that he was prevented by sufficient cause and has acted in good faith. For proving this twin mandatory requirements of good faith and sufficient cause the

petitioner society failed to forward any valid explanation. Either filing of writ petition by some of the respondents or returning the earlier appeal filed by this Tribunal as it is barred by limitation or having strong case and the society may suffer great loss cannot be sufficient ground for condonation of delay. In the absence of existence of sufficient cause, which is condition precedent for exercising discretion for condonation of delay, the delay in preferring appeal cannot be condoned. Having failed to place any sort of material the petitioner cannot expect a lenient view and indulgence of this court”.

The order dated 24.08.2009 in M.P.No.3 of 2009 was assailed in W.P.No.19553 of 2009. The learned Single Judge examined the finding of fact recorded by the Tribunal and opined that the reasoning given by the Tribunal is tenable in the facts and circumstances of the case and no ground is made out for condoning the delay, and thereafter hear the appeal on merits.

We have perused the affidavit filed by the appellant before the Cooperative Tribunal and in order to exercise jurisdiction under Clause 15 of Letters Patent, the appellant has to *prima facie* show that the discretion is arbitrarily exercised and relevant circumstances are ignored by the Tribunal, which, if had been considered, the outcome of the application is changed. Though an attempt is made to show that affidavit explaining delay is filed and sufficient cause shown is not considered or delay is condoned, we are of the view that the length of the affidavit is not the deciding factor but sufficient cause for not filing the appeal for as many as 767 days is important in the exercise of discretion. Prompt and timely adjudication of remedies ought to be insisted upon by the Court, particularly in cases of this nature.

After perusing the record and taking note of the findings, though are brief, we are satisfied that no ground is made out for interfering with the orders under appeal or re-examine the issue of condoning the delay by independently exercising the jurisdiction of this Court.

For the above reasons, the appeal fails and is, accordingly, dismissed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V.BHATT, J

22nd November, 2018

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