

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.29628 OF 2015

ORDER:

This writ petition is filed to declare the action of the 2nd respondent-Joint Collector, Hyderabad District, dismissing the condone delay petition in case no.B2/25/2015, dated 19-08-2015 as being illegal and violative of principles of natural justice and consequently to set aside the same in the interest of justice.

2. The petitioner claims to be the absolute owner and possessor of land admeasuring Ac.3-04 guntas bearing municipal H.nos.12-2-565/A/1 to 16, 12-2-565/B/1 to 16 & 12-2-565/C/1 to 14 in Sy.Nos.82, 83, 84 & 124 situated at Mandulaguda, Guddimalkapur, Asfinagar mandal, Hyderabad, for short, the subject property, under an agreement of sale dated 28-06-1991 entered into with one Begari Rajeshwar. That originally one Quamarunnisa Begum (since deceased)-respondent no.29, being the pattedar of the subject property

and other lands appointed one Mir Najmuddin Khan as her registered GPA holder vide document No.766/1981, dated 25-09-1981 in respect of the subject property and other properties and the said GPA holder alienated the subject property to the vendor of the petitioner, Begari Rajeshwar under a registered document dated 15-10-1985.

3. It is also stated that one Mohd. Omar was the Inamdar of the subject property has leased out the subject property to the petitioner's vendor's father Begari Venkaiah whose name is also recorded as a tenant in the revenue records. The said Mohd. Omar having transferred the leasehold right in favour of Begari Venkaiah (petitioner's vendor's father) as such he became the protected tenant over the subject property. That Begari Rajeshwar, vendor of the petitioner intended to alienate the subject property in favour of one Ashok Jaiswal-respondent no.34 and Bansilal-respondent no.35 under an agreement of sale dated 11-06-1985 for a total sale

consideration of Rs.1 lac per acre. That thereafter the said Ashok Jaiswal-respondent no.34 and another paid only a sum of Rs.50,000/-, but failed to pay the balance sale consideration as agreed and thus the said agreement of sale dated 11-06-1985 stood cancelled. That subsequently Begari Rajeshwar had alienated the subject Property in favour of the petitioner under a notarized agreement of sale, dated 28-06-1991 by receiving the entire sale consideration. That the said vendor Begari Rajeshwar had also appointed the petitioner as his lawful attorney under a registered General Power of Attorney, dated 29-07-1991 bearing document no. 736/1991/Book-IV. Pursuant to execution of the agreement of sale, dated 28-06-1991 and the registered GPA, dated 29-07-1991, the said Begari Rajeshwar had also delivered the peaceful possession of subject property to the petitioner.

4. It is also his case that that in the year 1992, one M. Sanjeeva Reddy (R-4) and others claiming to be legal heirs of late M. Ramnarsimha Reddy filed an application under Section 32 of the Tenancy Act, 1950, seeking restoration of the subject property claiming themselves as protected tenants over it. That the petitioner sought to implead in the said proceedings before the 3rd respondent-Tahsildar, Asifnagar mandal, Hyderabad District. But the said implead petition filed by the petitioner was dismissed by order dated 08-02-2013. That due to his neurological sickness he could not prefer revision against the said dismissal of his implead petition by the 3rd respondent-Tahsildar. That in addition to his mental sickness, the petitioner also went into depression due to the sudden death of his elder son *viz.*, Praveen on 07-07-2012 and after recuperating from the mental sickness, he came to

know on 25-09-2014 that the 3rd respondent-Tahsildar had allowed the application filed under Section 32 of the Tenancy Act, 1950, by the 4th respondent and others vide orders dated 12-02-2014 in Proceeding no.D/1710/1992 by granting the relief of recovery of possession of the subject property to them. That since the petitioner could not file revision against the dismissal of his implead petition by the 3rd respondent-Tahsildar, the petitioner approached the 2nd respondent by way of a third party appeal seeking to i) grant leave to file third party appeal; ii) to condone the delay; and iii) to set aside the order dated 12-02-2014 passed by the 3rd respondent. By the impugned order dated 19-08-2015, the petition filed by the petitioner to condone the delay in filing third party appeal was dismissed by the 2nd respondent. Hence, this writ petition.

5. Heard the learned counsel for the petitioner and the learned Assistant Government Pleader for Revenue for respondents 1 to 3 and learned counsel appearing for other respondents.

6. It is the contention of the petitioner's counsel that the 4th respondent and others were never the protected tenants over the subject property and their ancestors have created and fabricated the revenue records taking undue advantage of their employment as Patwari and this discrepancy was noticed by the then Joint Collector in its order dated 31-08-1966 in File No.B/1351/1964, but the 3rd respondent had completely ignored the orders of the superior authority passed in the year 1966 and passed orders dated 12-02-2014 without considering the matter objectively. It is also stated that the petitioner is in possession of the subject property from the year 1984 and

also cultivated various crops and thereafter due to urbanization and expansion of Hyderabad, he made the subject property into plots by obtaining HUDA lay out vide Lr.No.6861/PDIV/HUDA/1984 and, therefore, provision of the Tenancy Act, 1950, are inapplicable to the subject property which had lost the status of agricultural lands.

7. It is to be seen that the contesting parties are claiming to be owners of the subject property in their own ways. The petitioner filed an application on 07-04-2012 seeking to implead in the proceedings before the 3rd respondent on the basis of a notarized agreement of sale and also as a GPA holder of Begari Rajeshwar, the said implead petition was dismissed on the ground that the petitioner has no *locus standi* as the principal i.e. Begari Rajeshwar expired long back and he cannot represent a dead person. Admittedly, the petitioner could not

prosecute further proceedings against the dismissal of the implead petition and that order became final. Thereafter, as noted above, the petitioner sought to file third party appeal with delay.

8. It is to be seen that this writ petition is concerned with the correctness or otherwise of the order refusing to condone the delay in filing the appeal by the petitioner by the 2nd respondent and not the merits of the claims over the subject property by the **contesting** parties. Petitioner's counsel relied on the decision of the Supreme Court in

SARDAR AMARJIT SINGH KALRA vs. PRAMOD GUPTA,¹

and canvassed that the laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose an adjudication on merits of substantial rights of citizen

¹ (2003) 3 SCC 272

under personal, property and other laws and procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. The ratio laid down in ***M/S.DEHRI ROHTAS LIGHT RAILWAY COMPANY LIMITED vs.***

DISTRICT BOARD, BHOJPUR² is also pressed into service wherein it was observed that the rule which says that the Court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion and each case must depend upon its own facts. To the same effect is the law laid down in ***STATE OF BIHAR vs. KAMESHWAR***

PRASAD SINGH³ wherein it was observed that the power to condone the delay in approaching the Court has been conferred upon the Courts to enable them to do

² (1992) 2 SCC 598)

³ (2000) 9 SCC 94

substantial justice to the parties by disposing of matters on merits.

9. In this case the medical documents filed by the petitioner to condone the delay between the period from 12-02-2014 to 24-10-2014 does not pertain to the said period of the year 2014 and it is found that the petitioner altered the dates in the medical records and has produced the photo copies of the original documents and not the originals itself. In such view of the matter, even if the documents filed by the petitioner are taken to be true, those documents pertain to the years 2012 to 2013 and the medical reason mentioned therein is not neurological sickness, but something else. The main theme of condoning the delay is based on “sufficient cause” being shown by the petitioner justify the delay. In this case the theme itself is not supported by any material worth

inspiring the confidence to take a view in favour of the petitioner so as to see if by not condoning the delay a meritorious matter being thrown out at the very threshold and cause of justice being defeated. But no such justification exists in this case. Even if matter is examined from the point of predicament of depression, as stated by the petitioner, on account of death of his son, the petitioner actively attended other proceedings before the authorities. There is also record to the effect that the petitioner has been booked for illegal money laundering and other offences and a case in Cr.No.121 of 2015 of PS Tappachabutra, Hyderabad was registered, during the period the petitioner claims to have been in shock and depression.

10. The petitioner is aware of the appeal proceedings more so, he suffered an order as the implead petition filed

by him was dismissed. The petitioner was not diligent in prosecuting his rights. There is no dispute and there cannot be any dispute with the propositions relied on by the learned counsel for the petitioner in the decisions referred to above, but the ratio laid down therein is not applicable to the case of the petitioner as he himself is not diligent in prosecuting his own cause having aware of the appeal proceedings being carried on against the orders of the 3rd respondent by the third parties. A perusal of the order goes to show that the 2nd respondent considered material placed before him and found that there was no proper explanation to condone the delay and the order being a discretionary order, in the absence compelling reasons, based on the material, to take a different view, this Court is not inclined to set aside the same in exercise of judicial review under Article 226 of the Constitution.

11. In the circumstances, there are no merits in the writ petition and the writ petition is accordingly dismissed.

There shall no order as to costs. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

Dated: 31-12-2018
NRG

A.RAJASHEKER REDDY,J



HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.29628 OF 2015



Date: 31.12.2018

NRG

