

HIGH COURT FOR THE STATE OF TELANGANA
THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY

WRIT APPEAL No.843 of 2019

Date: 15.11.2019

BETWEEN

T. Venkatapathi and others.

... APPELLANTS

AND

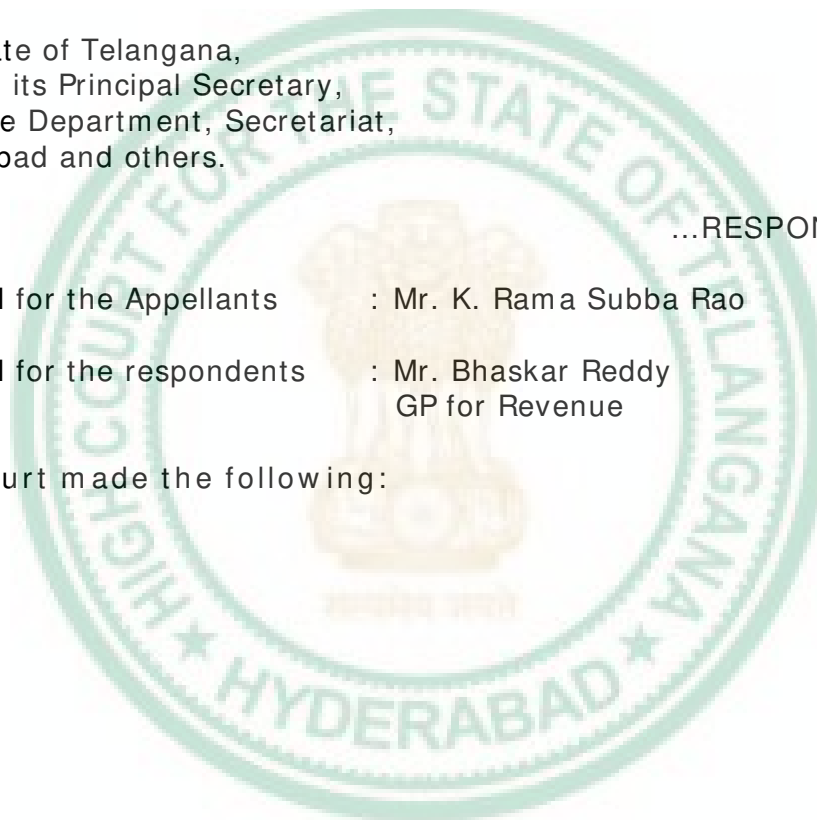
The State of Telangana,
Rep. by its Principal Secretary,
Revenue Department, Secretariat,
Hyderabad and others.

...RESPONDENTS

Counsel for the Appellants : Mr. K. Rama Subba Rao

Counsel for the respondents : Mr. Bhaskar Reddy
GP for Revenue

The Court made the following:



JUDGMENT: { Per the Hon'ble the Chief Justice Sri Justice Raghvendra Singh Chauhan}

The appellants have challenged the legality of the order dated 24.09.2019, passed by a learned Single Judge of this Court, in WP.No.20834 of 2019, whereby the learned Single Judge has dismissed the writ petition, *inter alia*, on the ground of delay and laches.

2. Briefly, the facts of the case are that one Smt. Ananthamma was the Inamdar in respect of the land in Sy.Nos.136/1, 136/2, 137/1, 137/2, 138 and 139 to the extent of Ac.1.19 guntas, Ac.0.21 guntas, Ac.2.29 guntas, Ac.1.14 guntas, Ac.1.38 guntas and Ac.0.09 guntas totally admeasuring Ac.8.10 guntas situated at Boppa Pally village of Telkapally Mandal. One Sri Narasimhaiah was the protected tenant of the above lands. Being the protected tenant, Mr. Narasimhaiah has given the said lands to T. Venkataiah, the father of appellants 1, 2 and 5. Therefore, T. Venkataiah was in actual cultivation of the above lands, as a non-protected tenant, as per Khasra Pahani for the year 1954-55. Although the father of the appellants 1, 2 and 5 was the actual tenant, his brothers, namely, Mr. Ramulu, Mr. Bakkaiah and Mr. Pullaiah, were also assisting him in cultivating the said lands. Since all of them have got equal shares over the said lands, Mr. Ramulu appears to have purchased the 1/3 share of his brother, Mr. Venkataiah, through an unregistered sale deed in the year 1970. Mr. Ramulu also appears to have purchased the share of Mr. Bakkaiah through another unregistered sale deed dated 23.02.1974. Subsequently, Mr. Ramulu got his name recorded in the revenue records. Thereafter, he filed an application on 29.11.1987 for grant of Occupancy Rights Certificate before the third respondent. By order

dated 31.01.1989, the third respondent granted ORC in favour of Mr. Ramulu.

Since Mr. Venkataiah, the father of the appellants 1, 2 and 5, was aggrieved by the grant of ORC in favour of his brother, he filed an appeal before the Joint Collector, Mahabubnagar – respondent No.2. By order dated 22.02.1990, the respondent No.2 remitted the matter back for denovo enquiry. After initiating and completing the denovo enquiry, by order dated 09.06.2001, the respondent No.3 once again granted the ORC in favour of Mr. Ramulu.

Since Mr. Venkataiah was still aggrieved by the order dated 09.06.2001, he again file an appeal before the respondent No.2. But by order dated 02.09.2008, the respondent No.2 dismissed the said appeal, *inter alia*, on the ground that Mr. Ramulu had purchased the said land from Mr. Venkataiah and Mr. Bakkaiah to the extent of their shares on 23.04.1994 through unregistered sale deed, and Mr. Ramulu was in possession of the above said lands. Moreover, the second respondent concluded that as per the Inam Abolition Act, 1955, the person who has been recorded as an occupant as on 01.11.1973, such person is eligible for grant of ORC. Since Mr. Ramulu was in possession of the said lands since 1966-67, he was certainly entitled to have the ORC issued in his favour.

3. The appellants 1, 2 and 5 further claim that Mr. Venkataiah, their father, was unwell, and was unable to move out from 2008 onwards till his death on 23.02.2012. Therefore, it was not within the knowledge of the appellants that, in fact, their appeal had been dismissed by the respondent No.2. However, as appellant No.5

happens to be a practicing lawyer, he tried his level best to find out the details with regard to the case. Therefore, it is only in 2018 that they realized that the appeal had been dismissed by order dated 02.09.2008. Hence, they filed the writ petition before the learned Single Judge. However, by order dated 24.09.2019, the learned Single Judge has dismissed the writ petition as aforementioned. Hence, this appeal before this Court.

4. Mr. K. Rama Subba Rao, the learned counsel for the appellants, has vehemently pleaded that from 2008 till 2012, the father of the appellants 1, 2 and 5 was, indeed, ill, and the family was unaware of the fact that there was any litigation pending between their father and his brother. Moreover, the appellant No.5 was registered as a lawyer only in the year 2016. Therefore, there was no delay and laches committed on the part of the appellants. Lastly, placing reliance on *STATE OF MADHYA PRADESH v. SYED QAMARALI*¹, the learned counsel has pleaded that since the order dated 02.09.2008 was void *ab initio*, the very question of limitation would not even arise. After all, no limitation period has been prescribed for filing of a writ petition. Hence, the learned Single Judge is unjustified in dismissing the writ petition on the ground of delay and laches.

5. On the other hand, the learned Government Pleader for the respondents submits that considering the fact that the entire family was embroiled in litigation with regard to the land belonging to the family, it is highly unbelievable that the members of the family, namely, the appellants would be unaware of the fact that a litigation was pending between their father and their uncle. Secondly, since the appellant No.5 is a practicing lawyer, it is unbelievable that from 2016

¹ 1967 SLR 228

till 2018, he has not tried to find out exactly what happened to the litigation in which his family was involved in. Lastly, even if no limitation period has been prescribed, the litigant is expected to be vigilant about his rights. Therefore, a litigant is required to file a writ petition within a reasonable time. However, the appellants have filed the writ petition after inordinate delay of eleven years. Therefore, according to the learned counsel, the learned Single Judge was certainly justified in dismissing the writ petition on the ground of delay and laches.

6. Heard the learned counsel for the parties. Perused the impugned order.

7. Although it is true that no limitation period has been prescribed for filing of a writ petition, but nonetheless a writ petition has to be filed within a reasonable time. The writ petition cannot be filed after lapse of a decade. Moreover, a litigant is required to give cogent and convincing reasons for the delay in filing of the writ petition. Considering the fact that the father of the appellants 1, 2 and 5 and their uncle were fighting over a parcel of land, which both of them claimed to belong to them, it is highly unlikely that the members of the family would be unaware of the pendency of the litigation. After all, the very land is the source of their livelihood. Hence, the explanation, being given by the appellants that from 2102 till 2018 they are unaware of the fact that the litigation was initiated, and an appeal had been filed by their father, is unbelievable.

8. The explanation is further aggravated by the fact that the appellant No.5 happens to be a practicing lawyer. Thus, even during his study, for LLB, he would be aware that his family is involved in

litigation. However, after being registered as a lawyer in the year 2016, till 2018, the appellants have not tried to find out exactly what happened to the litigation, which was instituted at the instance of their father. It is only after an inordinate delay of eleven years, that the appellants have approached the writ Court. Therefore, the learned Single Judge is legally justified in dismissing the writ petition on the ground of delay and laches.

9. Although the learned counsel has relied on the case in SYED QAMARALI's case (supra), the said judgment is distinguished on the factual matrix itself. In the said case, Syed Qamarali had been claiming and even challenging the recovery of the amount. In the said case, the Inspector General of Police, Central Provinces had dismissed Syed Qamarali by order dated 22.12.1945. Immediately he had filed a departmental appeal. However, the departmental appeal was dismissed on 09.04.1947. An appeal was filed by Syed Qamarali on 08.12.1952 on the basis that the order of dismissal was contrary to Para 241 of the Central Provinces and Berar Police Regulations and thus it was void. Hence, he claimed that he was entitled to recover Rs.4,724.5 ps. on account of his pay and dearness allowance as Sub-Inspector of Police for the three years immediately preceding the date of institution of the suit. It is in these factual circumstances that the Supreme Court had concluded that immediately after the dismissal order, Syed Qamarali had been pursuing his legal remedies. Therefore, it cannot be said that there was inordinate delay and laches.

10. However, in the present case, after the order was passed by the respondent on 02.09.2008, the appellants did not pursue any legal remedy. Therefore, the case of SYED QAMARALI (supra) is clearly

distinguishable from the present case. Hence, the case of SYED QAMARALI (supra) does not rush to the rescue of the appellants.

For the reasons stated above, this Court does not find any merit in the writ appeal and it is, hereby, dismissed. As a sequel, miscellaneous petitions, pending if any, shall stand dismissed. There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, CJ

A. ABHISHEK REDDY, J

November 15, 2019
DSK

