

CMP.No.13941/2020 in STA.SR.No.109316/2018

**T.RAJA, J.
and
G.CHANDRASEKHARAN, J.**

(Order of the Court was made by T.RAJA, J.)

The present Civil Miscellaneous Petition has been filed seeking to condone the huge and unexplained delay of 520 days in re-presenting the STA.SR.No.109316/2018.

2.Mr.John Zachariah, learned Counsel appearing for the petitioner would submit that after the Government of Tamilnadu Promulgated Gudalur Jenmom Estates (Abolition and Conversion into Ryotwari) Act, 1969, was notified and came into force w.e.f. 27.11.1974 stating that the persons who are in cultivation for three years prior to the date of coming into force of the Act are to be considered for the grant of patta, immediately thereafter, applications seeking issuance of patta were made. But no order was passed on the said applications. In the meanwhile, W.P.No.4386/1974 etc. batch were filed and thereafter, several other Civil Appeal Nos.367 to 375/1977 etc. batch were filed by various plantation companies who are all lessees of plantations against the order and judgment passed by this Court dated

23.09.1976 in W.P.Nos.4386/1974. Finally, the matters were taken up to the Supreme Court. The Hon'ble Supreme Court also disposed of the appeals by an order dated 18.08.1999 giving liberty to the lessees and the persons similar to that of the lessees to approach the competent authority seeking issuance of patta. Accordingly, again fresh applications were given for grant of patta. They are even now pending before the Settlement Officer, Gudalur Janmam Lands, Gudalur, Gudalur Bazaar Post, The Nilgiris, the 2nd respondent herein.

3. Arguing further, learned Counsel for the petitioner would submit that without even following the due process of law, the 1st respondent Government has started taking coercive steps to take over the lands of the cultivators. Therefore, Gudalur and Pandalur Farmers Association approached this Court by filing W.P.No.22501/2007 and this Court was pleased to pass an order directing the affected persons to file application before the Settlement Officer, the 2nd respondent herein with a further direction to consider the said application within a period of six weeks time. Accordingly, applications were also filed before the 2nd Respondent Settlement Officer. But, without considering the same and also the order

passed by this Court in W.P.No.22501/2007 dated 16.08.2007, the applications were dismissed on the ground of limitation. Aggrieved thereby, a Statutory Appeal was filed by the petitioner herein before the 1st respondent within time in CMA. No.68/2011 and the 1st respondent has also dismissed the said appeal on 21.12.2018. As against the said order, further appeal should have been filed within 90 days. But after filing the appeal within prescribed period of limitation, indicating certain defects to be cured, the appeal papers were returned on 12.10.2018 and the same has to be re-presented after curing the defects on or before 22.10.2018. However, since the issue regarding the lands falling within the ambit of Section 17 of Gudalur Jenmam Estates (Abolition and Conversion into Ryotwari) Act, 1969 is being agitated by the Association in which the petitioner is also one of the members in W.P.(C) No.202/1995 pending before the Apex Court, it was felt that the orders passed by the Apex Court would have a direct bearing on any appeal that may be filed before this Court, therefore, the petitioner did not take any steps to cure the defects and bring the matter for hearing before this Court. In the meanwhile, 520 days in re-presenting the appeal has occurred.

4. Learned Counsel for the appellant has also filed an additional

affidavit dated 25.01.2021 explaining the reasons for delay. In this regard, it is relevant to extract paragraph 8 of the said affidavit here under:

"8. I humbly submit that I was then informed by the Association to collect the affidavit, print the same on green bond paper, sign it and hand it back to the Association and that as there were more than 250 appeals, it was not possible for the Association to depute a person to my residence in order to collect the signature on the affidavit. However, in the ensuing covid situation resulting in a national lock down with effect from 22nd March, 2020 onwards, I was unable to collect the affidavit on time and/or to ensure that it reaches my counsel in the High Court on time, despite my earnestness in the matter."

Learned Counsel for the petitioner would also submit that due to the delay in representation of the appeal, the legal rights being enjoyed by the petitioner and others cannot be non-suited. When this was brought to the notice of an earlier Division Bench by placing on record various orders passed by this Court as found in Page Nos.186 to 228 of the typed set, stating that even when there was a delay of 809 days in representation of the appeal in CMP.11138/2020 in STA.SR.No.44402/2018, considering the settled legal position that no litigant could be put to prejudice due to the

error or mistake committed by the Counsels, the said delay was condoned subject to the payment of Rs.2,000/- to the Chief Justice Relief Fund, High Court, Madras, within a period of two weeks. Similarly in CMP.No.10357/2020, when there was a delay of 1111 days in representation of the appeal, this Court again imposing a cost of Rs.2,000/- payable to the credit of the Chief Justice Relief Fund within two weeks time, condoned the delay by its order dated 07.10.2020. Again in yet another order passed in CMP.No.10322/2020 condoning the delay of 669 days in re-representation of the appeal, in its order dated 01.10.2020 allowed the said application. Again in CMP.No.10157/2020 condoning the delay of 763 days in re-presenting the appeal subject to the payment of cost of Rs.2,000/- payable to the Chief Justice Relief Fund in its order dated 01.10.2020, allowed the application. Therefore, in the present case, the delay of 520 days in re-presenting the appeal before this Court may be condoned, it is pleaded. Learned Counsel would also submit that if this Court feels that with any terms, the delay may be condoned, the petitioner would also abide by the same.

5. Heard Mr.R.Udhayakumar, learned Special Government Pleader

i/c. (C.S.) appearing for the respondents 1 to 4.

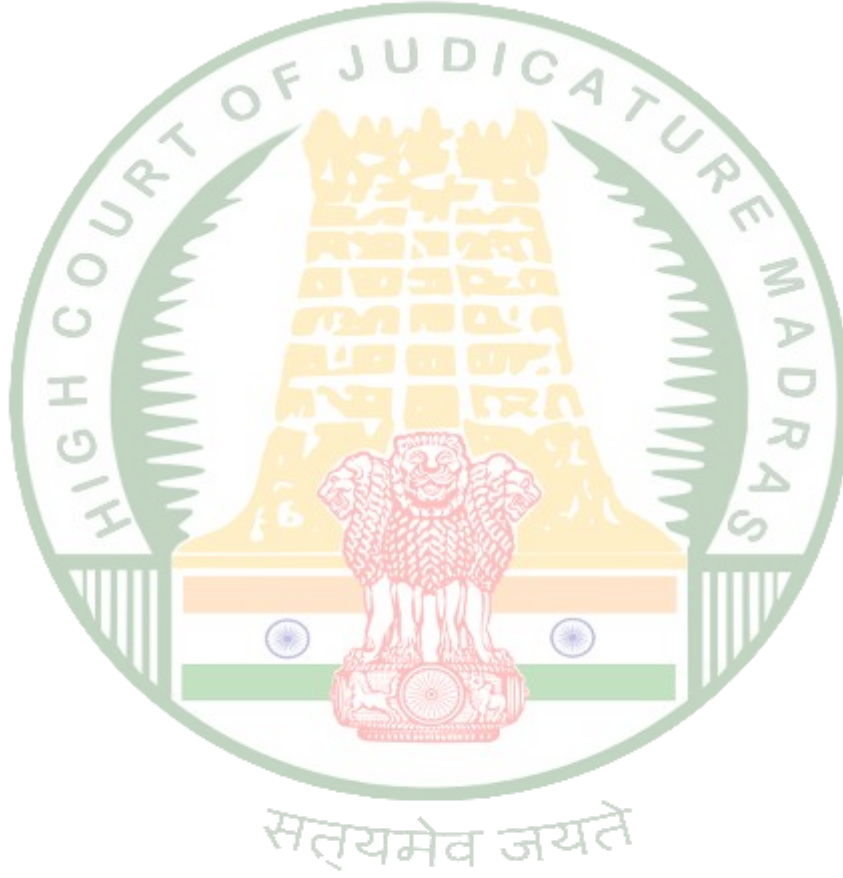
6. The Hon'ble Apex Court in **Rafiq and others vs. Munshilal and Others** reported in (1981) 2 SCC 788 has held that due to the inaction, deliberate omission or misdemeanor of the counsel, parties should not be put to suffer. In yet another decision in **Hetram Kashinath Shende vs. Sangeetha** reported in MANU/MH/1713/2012, the Bombay High Court (Nagpur Bench) has held that the innocent litigant should not suffer for the mistake either deliberate or intentional on the part of the advocate. Similarly in the present case also, we have seen the delay of representation of the appeal papers by the Counsel and since there is a delay of 520 days in re-presentation of the appeal papers, we also feel that the innocent petitioner cannot be put to suffer. Hence the delay of 520 days in re-presentation of the appeal in STA.SR.No.109316/2018 is condoned on condition that a cost of Rs.2,000/- (Rupees Two Thousand Only) to be payable by the petitioner to the Chief Justice Relief Fund, within a period of two weeks from today.

7. The Civil Miscellaneous Petition is allowed accordingly.

(T.R.J.,) (G.C.S.J.,)

04.02.2021

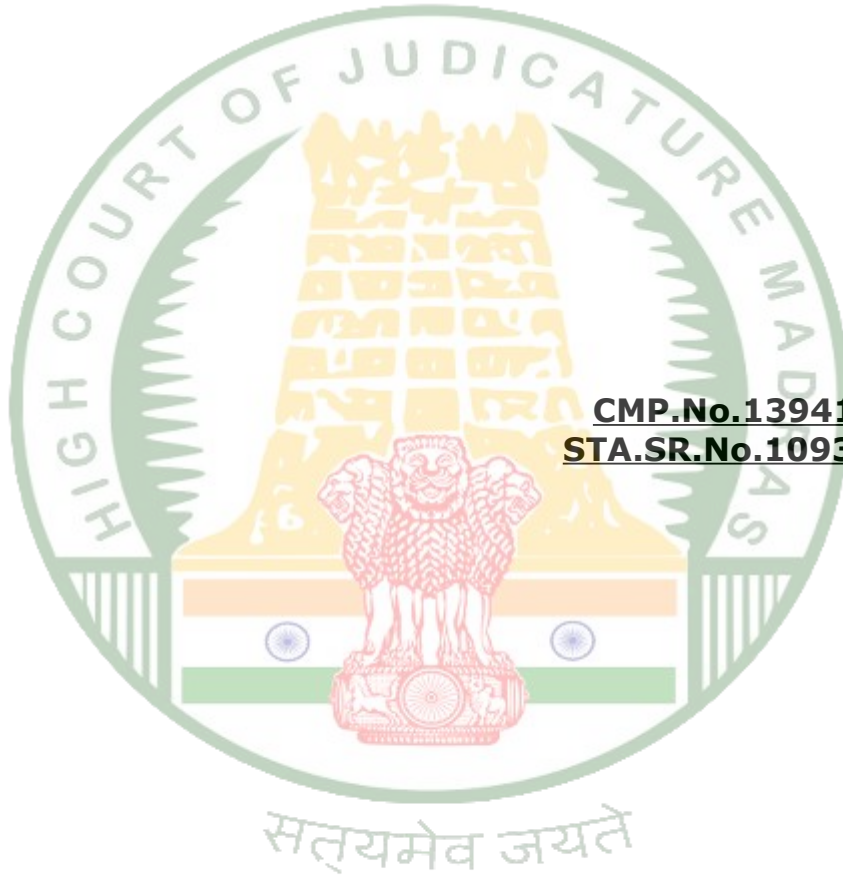
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