

ORISSA HIGH COURT : C U T T A C K

O.J.C. NO.9218 OF 1999

*In the matter of an application under Articles 226 & 227
of the Constitution of India.*

Bhojaraj Sandha & anr.

: *Petitioners*

-Versus-

Karu Sandha & ors.

: *Opp.Parties*

For Petitioners

:

Mr.A.P.Bose

For O.Ps.1 to 7

:

None

For O.Ps.8 to 10

:

Mr.S.Mishra, ASC

CORAM :

JUSTICE BISWANATH RATH

Date of Hearing & Judgment : 10.10.2022

1. For the sufficiency of notice on majority of the Opposite Parties already appearing, there is substantial representation on their behalf.
2. The Writ Application involves the following prayer :-

“In the facts and circumstances of the case it is therefore most humbly prayed that this Hon’ble Court be graciously pleased to admit the writ application, call for the records from Court below, issue rule nisi calling upon the Opp.Parties to show cause as to why the prayers made here under shall not be allowed and upon insufficient cause/no cause make the said rule absolute, issue writ/writs in the nature of ;

- (i) Certiorari quashing the impugned order under Annexure-1 remanding the matter to the Court of Opp.Party No.8 for fresh adjudication ;
- (ii) Mandamus directing the Opp.Parties not to give effect to the direction contained under Annexure-1 for fresh disposal of the matter by Opp.Party No.8;

AND

- (iii) Pass such other order/orders as may be deemed just and proper..”

3. Factual background involved both the private parties remained engaged in Village Police Abolition Case No.763 of 1965-66. This proceeding appears to have been disposed of by the Tahasildar, Bargarh being the Original Authority by his order dated 19.1.1974 thereby directing part of the property involved therein in favour of the Petitioners therein and rest part in favour of the private Opposite Parties therein. It be stated here, the private Opposite Parties therein being the Petitioners preferred V.P.A. Appeal No.8/93, which again appears to be disposed of on the limited aspect by his order dated 24.4.1998 though it has been inadvertently typed out in Paragraph-4 claiming to be passed on 24.5.1998. For the submission of the photocopy, the actual date of disposal remains to be 24.4.1998. It is being aggrieved by condonation of 19 years delay, in preferring the Appeal, the Petitioners being aggrieved by delay condonation preferred V.P.A. Revision Case No.2 of 1998, vide Annexure-1, which appears to be disposed of in the engagement of both

sides finally though holding the order dated 24.4.1998 in the Appeal remained inappropriate, however, straightway remanded the matter to the Tahasildar for providing opportunity to the Parties to file further application for fresh consideration, vide Annexure-1.

4. It is taking this Court by the learned counsel for the Petitioners to the undisputed fact that V.P.A. Appeal No.8/93 was filed in 1993 challenging the order in VPA Case No.763/65-66 dated 19.1.1974 and there involved almost nineteen years of delay, taking this Court at this stage to the provision of Section 8 of the Offices of Village Police (Abolition) Act, 1964 (in short, "the Act"), learned counsel for the Petitioners contended for clear stipulation in framing time stipulation to file appeal under this provision within thirty days from the date of order and for there being no scope for condonation of delay, further taking this Court to the provision in the Limitation Act and reading through the same, Mr. Bose learned counsel for the Petitioners contended, there is no application of Limitation Act to such cases for clear prohibition under Section 8 of the said Act. It is at this stage, taking this Court to the observations of the Revisional Authority under Annexure-1 and the bottom of Paragraph-7.3, learned counsel for the Petitioners further contended, once the Revisional Authority has come to hold the order dated 24.4.1998 passed in VPA Appeal No.8/93 as inappropriate, the

Member, Board of Revenue should have stopped itself by simply allowing the Revision and taking out the order passed by the Appellate Authority impugned therein.

5. Learned Additional Standing Counsel appearing for O.Ps.8 to 10 however taking this Court to the final part direction in the revisional order contended that for there is scope for both the Parties involved in getting an ultimate outcome in the original proceeding, there is no prejudice to either of the Parties in passing the impugned order. There is, however, no denial to the observation of the Member, Board of Revenue coming to hold the order dated 24.4.1998 inappropriate. There is also no quarrel amongst the Counsel of different Parties participating in the hearing on the clear provision at Section 8 of the Act.

6. Considering the rival contentions of the Parties, this Court finds, undisputed fact remains to be the original proceeding, vide VPA Case No.763/65-66 came to be disposed of on 19.1.1974. The further admitted fact borne from the pleadings as well as through the document to be VPA Appeal No.8/1993 was filed in 1993. This court, therefore, finds, there is definite delay of nineteen years in filing such Appeal. For both the Parties participated in the hearing process relied on the Section 8 of the Act, this Court takes into account the provision, which reads as follows :-

“8. Appeal and revision and bar of jurisdiction of Civil Courts-

(1) Save as otherwise expressly provided in this Act any person aggrieved by any order passed under this Act or the rules made thereunder by any officer below the rank of a Collector, may prefer an appeal within thirty days from the date of the order before the Collector.

(-) Any person aggrieved by any order passed by the Collector under this Act or the rules made thereunder may, within thirty days from the date of the order, file an application for revision before the Board of Revenue, who may, after calling for the records and giving the parties an opportunity of being heard, pass such orders confirming, modifying or reversing the order in question according as the Board deems proper.

(3) Subject to the provisions of the preceding sub-sections all orders passed under this Act shall be final.

(4) No Civil Court shall have jurisdiction to entertain any suit or proceeding so far as it relates to any matter which any officer or other competent authority is empowered by or under this Act to decide.”

Reading Sub-Section (2) of Section 8 of the Act, this Court has no doubt that there is clear prescription of filing of Appeal of this nature within thirty days from the date of the order and the provision at Section 8 of the Act even reading as a whole has no prescription for consideration on condonation of delay. Under no circumstance, nineteen years delay can be construed to be reasonable period of delay, particularly, when Party preferring Appeal is already a contestant in the original proceeding. In the circumstance, this Court finds, there is illegal consideration on the limitation aspect in entertaining VPA Appeal No.8/93. It is at this stage, this Court takes into account the observation of the Revisional Authority

that the Revision being preferred by the Petitioners and in reading the impugned order under Annexure-1, this Court finds, the Member, Board of Revenue, Orissa, Cuttack has the following clear view :-

“I still hold my view and consider the order dated 24.4.98 of ADM in VPA (Appeal) Case No.8/93 inappropriate.”

7. Coming to the second limb of argument, this Court observes, once the Revisional Authority has come to hold the condonation of delay by the Appellate Authority becomes illegal and inappropriate, the Member, Board of Revenue should have stalled the proceeding by simply allowing the Revision. In the circumstance, this court finds, the further observations from Paragraph-7.4 onwards in the impugned order are illegal and without competency.

8. This Court, therefore, while confirming the revisional order up to the end of Paragraph-7.3, sets aside the order, vide Paragraphs-7.4, 7.5 & 7.8 of the impugned order. Ultimately the Writ Application succeeds thereby holding the condonation of delay passed by the Appellate Authority by its order dated 24.4.1998 in VPA Appeal No.8/93 becomes illegal. For the observation of this Court holding condonation of such huge delay becomes illegal and contrary to the prescribed proceeding, this Court declares, the Appeal should also automatically fail for being

grossly barred by limitation and in restoration of the order of Original Authority, vide Annexure-1. No Costs.

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(Biswanath Rath, J.)

Orissa High Court, Cuttack.
The 10th October, 2022/M.K.Rout, A.R.-cum-Sr.Secy.

