

Mandal, Revenue Officer, Visakhapatnam

v.

Senapati Appalanaidu & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE DEEPAK VERMA HON'BLE MR. JUSTICE K.S.  
RADHAKRISHNAN

Civil Appeal No. 2672-2673 Of 2012 (Special Leave Petition (Civil) No.  
36649-36650 Of 2009) | 01-03-2012

1. Delay condoned.

2. Leave granted.

3. Appellant The Mandal, Revenue Officer, Parawada Mandal, Visakhapatnam District, Andhra Pradesh, is aggrieved and dissatisfied by order dated 05.02.2009, passed in Appellant's Review W.A.M.P. No.764 of 2009 in Writ Appeal No.912 of 2007 and another order dated 20.04.2009 in Review W.A.M.P. No.1655 of 2008 in W.A.(SR) No. 85456 of 2008, both passed by Division Bench of the High Court of Judicature of Andhra Pradesh at Hyderabad.

4. Looking to the nature of arguments advanced before us, it is neither necessary nor proper to go into the long and chequered history of the case, which had commenced in the year 1986, on account of proceedings initiated by the Settlement Officer, Visakhapatnam, in regard to Application, filed by Senapati Appalanaidu and Others (for short hereinafter called 'Senapati Group'), against Pakki Rajaram Mohan Roy and Others (for short hereinafter called 'Pakki Group'), under Section 56(1)(C) of the Estate Abolition Act, 1948. In the said proceedings, admittedly, Appellant/State was not a party.

5. On consideration of the submissions, advanced by the aforesaid parties, before the Settlement Officer, Visakhapatnam, he proceeded to reject the claim of the Senapati Group on 29.07.1986, on the ground that they have failed to

prove their case and also rejected their claim for a declaration to them as lawful Ryots. This order rendered in the proceedings before the Settlement Officer, Visakhapatnam, was the subject matter of challenge by Pakki Group, before the District Judge, Visakhapatnam, in T.A. No.12 of 1986, who allowed the said Appeal on 12.09.1990 and quashed the order dated 29.07.1986, passed by Settlement Officer, Visakhapatnam. The operative part of the said order of District Judge, is reproduced hereinbelow :

"In the result, the appeal is allowed by setting aside the order dated 29.07.1986 of the Settlement Officer, Visakhapatnam in S.R.56(1) 3/86/VSP and the appellants - respondents are declared as lawful ryots of the land measuring 20 acres of the land in Patta No.7 of Mantripalem village. In the circumstances of the case, I direct each party to bear its own costs of this Appeal."

6. In the aforesaid proceedings, the Appellant i.e. the State herein was not a party.

7. Pakki Group filed Writ Petition No.7867 of 1991, against the Appellant and others, before learned Single Judge of High Court of Judicature of Andhra Pradesh at Hyderabad. The prayer made in the said Petition was to implement the order dated 12.09.1990, passed by the Tribunal under Section 56(2) of the Andhra Pradesh (Andhra Area) Estates Abolition and Conversion into Ryotwari Act, 1948, in respect of 20 Acres of land in R.S.No.267 of Mantripalem village, Paravada Mandal, Visakhapatnam District.

8. Learned Single Judge, after hearing learned counsel for the parties and after perusal of the record, came to the conclusion that no reliefs can be granted to Pakki Group and dismissed the Writ Petition filed against the Appellant and others.

9. The Appellant/State had not taken any action so far, with regard to the order dated 12.09.1990 in T.A. No.12 of 1986, passed by District Judge, Visakhapatnam, declaring Pakki Group as lawful Ryots of the land. It, after a lapse of about seven years, filed Writ Petition No.18968 of 1998 before learned

Single Judge of the High Court of Judicature of Andhra Pradesh at Hyderabad. The Appellant prayed for issuance of Writ of Certiorari calling for records relating to the judgment in T.A. No.12 of 1986 dated 12.09.1990 on the file of District Judge, Visakhapatnam and for its quashment, on the ground of it being illegal, arbitrary and violative of provisions of the Estate Abolition Act.

10. Learned Single Judge of the High Court came to the conclusion that there could not be any hesitation to hold that Respondent No.5 District Judge, Visakhapatnam, was perfectly justified in holding that Respondents 1 to 4, that is, Pakki Group was rightly declared as lawful Ryots of the property in question. It further held that in the light of established fact that Respondents 1 to 4 are the lawful Ryots of 20 acres of land, the well-considered order dated 12.09.1990 passed by Respondent No.5 District Judge, Visakhapatnam, does not suffer from any legal infirmities and cannot be interfered with. With the result, the Appellant's Writ Petition failed and was dismissed on 10.08.2007.

11. Against the order dated 10.08.2007, passed by learned Single Judge of the High Court, in Writ Petition No.18968 of 1998, Senapati Group filed Writ Appeal registered as W.A.No.912 of 2007, before Division Bench of the High Court. It came to be heard and disposed of on 04.02.2008. The Division Bench of the High Court dismissed the Writ Appeal at the admission stage itself, even though, it considered all aspects of the matter.

12. The matter did not come to an end here. Appellant then filed Writ Appeal registered as W.A.(C) (SR) No.85456 of 2008, along with W.A.1655 of 2008 before Division Bench of the High Court, challenging the order dated 10.08.2007 of the learned Single Judge. It was barred by limitation, thus Appellant filed Application seeking condonation of delay. Same day Appellant filed Review Petition (Review W.A.M.P. No.764 of 2009) seeking Review of the judgment dated 04.02.2008, passed in W.A. 912 of 2007. Two different Division Benches heard the Appellant's Writ Appeal and Review Petition, but one of the learned Judge was common in both the matters. Appellant's Review Petition was dismissed on 05.02.2009 and the Writ Appeal came to be dismissed on 20.04.2009, both by Division Benches.

13. It is, thus, these two orders which are assailed before us by Appellant-State. The Writ Appeal filed by the Appellant in the High Court was barred by 295 days. Application seeking condonation of delay, was filed by the Appellant, duly supported by an Affidavit. However, Division Bench of the High Court was of the opinion that delay has not been explained properly and certain material facts which should have been disclosed in the same, have not been disclosed by the Appellant and therefore, no case for condoning delay arose. Thus, not only the application for condonation of delay was rejected but also the Writ Appeal came to be dismissed. The Review was dismissed on the ground that arguments were sought to be advanced on merits, since merits were already considered, while dismissing the Writ Appeal No.912 of 2007, therefore, there was no question of entertaining the Review filed by Appellant.

14. In the light of the aforesaid two impugned orders, we have heard learned senior counsel appearing for the parties at length and perused the record.

15. Learned Single Judge of the High Court in the first order dated 20.8.1991 in Writ Petition No.7867 of 1991, has discussed the matter with regard to applicability of the provisions of Estate Abolition Act.

16. At the initial stage of hearing, we were of the opinion that it would be desirable to condone the delay so that the matter could be heard afresh on merits in accordance with law. But somehow or the other, learned Senior Counsel, appearing for the parties, thought it fit to advance arguments on merits also. But at the end of hearing of the matter, we thought it fit and proper that it is neither desirable nor proper for us to hear the matter on merits, as full and complete relevant and material records are not available to us. In fact, we sought for many orders and memo of revisions, which had relevant bearing to the issues and the questions projected in the matter, but both parties were unable to produce the same before us.

17. After having heard learned senior counsel for the parties for such a long time, it was not proper for us to call for records as there were no positive signs to show if the records would be at all made available to us.

18. Thus, looking to the matter from all angles, we thought it fit and absolutely appropriate to condone the delay, which, in our considered opinion, cannot be said to be inordinate.

19. Thus, the delay of 295 days in preferring the Writ Appeal by Appellant in the High Court is hereby condoned. As a necessary consequence thereof, the matter is to be remitted to Division Bench of the High Court and the said Writ Appeal No.912 of 2007 is to be restored to its original number. We order accordingly. The said Writ Appeal would be heard and considered by the High Court on merits, in accordance with law.

20. We may further clarify that all questions, projected before us, are left open to be advanced before Division Bench, to be considered and decided on merits.

21. Since the delay has been condoned and Writ Appeal has been directed to be disposed of on merits, in accordance with law, we also think it proper that Review filed by Appellant, should also be restored to its original number and that should also be directed to be heard on merits along with Writ Appeal itself, by Division Bench of the High Court.

22. This, we are saying so because in the Writ Appeal as also in the Review, the basic order dated 10.8.2007 is subject matter of challenge, passed by learned Single of the High Court, in Writ Petition No.18968 of 1998. Since crux of the matter was to examine the correctness, validity and propriety of the aforesaid order, on account of which all parties appeared to be aggrieved. Therefore, we are directing that the Review will also be restored to be heard along with Writ Appeal by Division Bench of the High Court. We order accordingly. If we do not do so then the direction contained in the order of Review may come in the way of parties to advance arguments on all the questions projected before us.

23. With the aforesaid directions, the impugned order dated 05.02.2009 passed in Appellant's Review W.A.M.P. No.764 of 2009 in Writ Appeal No.912 of 2007 and another impugned order dated 20.04.2009 in Review W.A.M.P. No.1655 of 2008 in W.A. (SR) No.85456 of 2008, passed by Division Bench of the High Court, are hereby set aside and quashed. The Division Bench of the

said High Court would hear both the matters simultaneously and dispose of the same on merits, in accordance with law.

24. Parties are directed to appear before the appropriate Division Bench of the High Court of Judicature of Andhra Pradesh at Hyderabad, on 26.04.2012 through their counsel.

25. The Registrar General of the High Court of Judicature of Andhra Pradesh at Hyderabad, is directed to place the matter before the appropriate Division Bench as per the Roster.

26. These Appeals stand disposed of in terms of the above but with no order as to costs.