

Sakuru vs Tanaji on 10 July, 1985

Equivalent citations: 1985 AIR 1278, 1985 SCR SUPL. (2) 109, AIR 1985 SUPREME COURT 1279, 1985 UJ (SC) 894, (1985) 22 ELT 327, 1985 (3) SCC 590, (1985) 2 CURCC 432

Author: V. Balakrishna Eradi

Bench: V. Balakrishna Eradi, Sabyasachi Mukharji

PETITIONER:

SAKURU

Vs.

RESPONDENT:

TANAJI

DATE OF JUDGMENT 10/07/1985

BENCH:

ERADI, V. BALAKRISHNA (J)

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ERADI, V. BALAKRISHNA (J)

MUKHARJI, SABYASACHI (J)

CITATION:

1985 AIR 1278

1985 SCR Supl. (2) 109

1985 SCC (3) 590

1985 SCALE (2) 304

ACT:

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act 1950, Section 90 and 91 Appeal or revision under the Act - Condonation of delay in filing of - Section 5 Limitation Act 1963 - Whether applicable.

HEADNOTE:

The Revenue Divisional Officer declared the Respondent to be the owner of an extent of about 6 acres of land under section 38E of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 on the ground that he was a 'protected tenant'. Though an appeal lay to the Collector against this order under section 90 of the Act, the appellant-land-holder did not file an appeal but preferred a Writ Petition to the High Court which was dismissed by a learned single Judge. The decision of the learned single Judge was confirmed in writ appeal by a Division Bench.

Long thereafter, the appellant preferred an appeal before the District Collector purporting to be one filed against the order of the Revenue Divisional Officer, together with an application for condonation of delay under section 5 of the Limitation Act, 1963. That application and the appeal were opposed by the Respondent but the objections were overruled, the delay was condoned and the appeal was allowed by the Collector.

The Respondent being aggrieved by the aforesaid order preferred a Revision Petition to the High Court under section 91 of the Act. A Single Judge following, the Division Bench ruling in K.Venkaiah and others v. K. Venkateswara Rao & Anr. A.I.R. 1978 A.P. 166 allowed the Revision Petition holding that the Collector had no jurisdiction to condone the delay in filing of the appeal by invoking section 5 of the Limitation Act, 1963.

In the appeal to this Court, the correctness of the view taken in K. Venkaiah and Others v. K.Venkateswara Rao & Another was challenged and it was further contended that subsequent to that decision, the State Legislature had enacted the Andhra

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Pradesh Tenancy Laws (Amendment) Act, 1979 whereby section 93 of the Act had been amended and that the provisions of section 5 of the Limitation Act, 1963 had expressly been made applicable to Appeals and Revision Petitions preferred under sections 90 and 91 of the Act.

Dismissing the Appeal.

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HELD: 1. The view taken by the Division Bench in K.Venkaiah and Others v. K. Venkateswara Rao and Another is correct and sound. Section 93 of the Act did not have the effect of rendering the provisions of section 5 of the Limitation Act, 1963 applicable to the proceedings before the Collector. [114 A-B]

2. On a plain reading of section 93 of the Act it is absolutely clear that its effect is only to render applicable to the proceedings before the Collector, the provisions of the Limitation Act relating to 'computation of the period of limitation'. The provisions relating to computation of the period of limitation are contained in section 12 to 24 included in Part III of the Limitation Act, 1963. Section 5 is not a provision dealing with 'computation of the period of limitation'. It is only after the process of computation is completed and it is found that an appeal or application has been filed after the expiry of the prescribed period that the question of extension of the period under section 5 can arise. [113 G-H]

3. It is well settled that the provisions of the Limitation Act, 1963 apply only to proceedings in "Courts" and not to appeals or applications before bodies other than Courts such as quasi-judicial Tribunals or executive authorities, notwithstanding the fact that such bodies or

authorities may be vested with certain specified powers conferred on Courts under the Codes of Civil or Criminal Procedure. However, the relevant special statute may contain an express provision conferring on the appellate authority, the power to extend the prescribed period of limitation on sufficient cause being shown by laying down that the provisions of section 5 of the Limitation Act, 1963 shall be applicable to such proceedings. [113 A-C]

4. The provisions of section 93 as it stood prior to its amendment by Act 2 of 1979 were free from any ambiguity and called for no clarification. The Legislature has also not given any indication of any intention to clarify but on the other hand what has been done by it is to amend the section with only prospective effect. The amended provisions of section 93 are of no

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assistance to the appellant. This case is governed by the section as it was originally enacted. [114 D-E]

K.Venkaiah and others v. K.Venkateswara Rao and Another, A.I.R. 1978 A.P. 166, approved.

Town Municipal Council, Athani v. Presiding Officer, Labour Court, Hubli and Ors. [1970] 1 S.C.R. 51, Nityananda M.Joshi and Ors. v. Life Insurance Corporation of India and Ors. [1970] 1 S.C.R. 396 and Sushila Devi v. Ramanandan Prasad and Ors. [1976] 2 S.C.R. 845, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1852 of 1979.

From the Judgment and Order dated 12.4.1978 of the Andhra Pradesh High Court in Civil Revision Petition No. 3289 of 1977.

T.S. Krishnamurthi Iyer, K. Ram Kumar and Mrs. J. Ramachandran for the Appellant.

S. Markandeya for the Respondent.

The Judgment of the Court was delivered by BALAKRISHNA ERADI, J. In this appeal filed by special leave granted by this Court against the judgment dated April 12, 1978 of a learned Single Judge of the High Court of Andhra Pradesh, the sole question arising for decision is whether the provisions of section 5 of the Limitation Act, 1963 can be invoked for condoning the delay in the filing of an appeal before the Collector under section 90 of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 - Act 21 of 1950 (hereinafter called 'the Act').

The facts which have led up to the present controversy may now be briefly set out. The Revenue Divisional Officer, Adilabad declared the respondent- Tanaji to be the owner of an extent of 6 acres, 39 guntas comprised in Survey Nos. 289 and 290 of Hasnapur village under section 38-E of the Act

on the ground that he (the respondent) was a "protected tenant". Though an appeal lay to the Collector under section 90 of the Act against the said order passed by the Revenue Divisional Officer the appellant land holder did not prefer an appeal but, instead, filed a Writ Petition - W.P.No. 2064 of 1976 before the High Court of Andhra Pradesh challenging the legality and correctness of the order passed by the Revenue Divisional Officer. That Writ Petition was dismissed by a learned Single Judge of the High Court on July 1, 1976. Writ Appeal No.385 of 1976 filed against the decision of the learned Single Judge was subsequently dismissed by a Division Bench of the High Court on December 6, 1976. Long thereafter, on August 22, 1978, the appellant preferred an appeal before the District Collector purporting to be one filed against the order dated January 22, 1975 passed by the Revenue Divisional Officer together with an application for condonation of delay under section 5 of the Limitation Act. That application and the appeal were opposed by the respondent herein. But his objections were overruled, the delay was condoned and the appeal was allowed by the Collector on October 24, 1977. The respondent - Tanaji thereupon moved the High Court by filing a revision petition under section 91 of the Act. By the judgment impugned in this appeal, the learned Single Judge of the High Court allowed that revision petition holding that the Collector had no jurisdiction to condone the delay in the filing of the appeal by invoking section 5 of the Limitation Act following an earlier ruling of a Division Bench of the same High Court reported in *K.Venkaiah & Ors. v. K.Venkateswara Rao & Anr.* A.I.R. 1978 A.P. 166. In that decision the Division Bench of the High Court had taken the view that the Limitation Act applies only to proceedings before a Civil or Criminal Court and since the Collector before whom an appeal is filed under section 90 of the Act is not a Civil or Criminal Court, the provisions of the Limitation Act, 1963 have no application to the proceedings before him unless there is express provision in the special enactment whereunder the Collector is exercising appellate jurisdiction, making any particular section of the Limitation Act specifically applicable to such proceedings. It was further held by the Division Bench that section 93 of the Act, as it then stood, made applicable to proceedings before the Collector only those provisions of the Limitation Act which related to the 'computation of the period of limitation' and since section 5 did not fall within the group of sections (sections 12 to 24 of the Limitation Act) dealing with computation of the period of limitation, the provisions of section 5 were not applicable to the proceedings before the Collector. The learned counsel for the appellant has canvassed before us the correctness of the view so taken by the Division Bench in *Venkaiah's* case.

After hearing both sides we have unhesitatingly come to the conclusion that there is no substance in this appeal and that the view taken by the Division Bench in *Venkaiah's* case is perfectly correct and sound. It is well settled by the decisions of this Court in *Town Municipal Council, Athani v. Presiding Officer, Labour Court, Hubli & Ors.* [1970] 1 S.C.R. 51, *Nityananda M. Joshi & Ors. v. Life Insurance Corporation of India & Ors.* [1970] 1 S.C.R. 396 and *Sushila Devi v. Ramanandan Prasad and Ors.* [1976] 2 S.C.R. 845 that the provisions of the Limitation Act, 1963 apply only to proceedings in "Courts" and not to appeals or applications before bodies other than Courts such as quasi-judicial Tribunals or executive authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on Courts under the Codes of Civil or Criminal Procedure. The Collector before whom the appeal was preferred by the appellant herein under section 90 of the Act not being a Court, the Limitation Act, as such, had no applicability to the proceedings before him. But even in such a situation the relevant special statute may contain an express provision conferring on the appellate authority, such as the Collector, the power to extend

the prescribed period of limitation on sufficient cause being shown by laying down that the provisions of section 5 of the Limitation Act shall be applicable to such proceedings. Hence it becomes necessary to examine whether the Act contains any such provision entitling the Collector to invoke the provisions of section 5 of the Limitation Act for condonation of the delay in the filing of the appeal. The only provision relied on by the appellant in this connection is section 93 of the Act which, as it stood at the relevant time, was in the following terms:-

"93. Limitation - Every appeal and every application for revision under this Act shall be filed within sixty days from the date of the order against which the appeal or application is filed and the provisions of the Indian Limitation Act, 1908 shall apply for the purpose of the computation of the said period."

On a plain reading of the section it is absolutely clear that its effect is only to render applicable to the proceedings before the Collector, the provisions of the Limitation Act relating to 'computation of the period of limitation. The provisions relating to computation of the period of limitation are contained in sections 12 to 24 included in Part III of the Limitation Act, 1963. Section 5 is not a provision dealing with computation of the period of limitation. It is only after the process of computation is completed and it is found that an appeal or application has been filed after the expiry of the prescribed period that the question of extension of the period under section 5 can arise. We are, therefore, in complete agreement with the view expressed by the Division Bench of the High Court in Venkaiah's case that section 93 of the Act did not have the effect of rendering the provision of section 5 of the Limitation Act, 1963 applicable to the proceedings before the Collector.

Our attention was drawn to the fact that subsequent to the decision of the High Court, the State Legislature has enacted the Andhra Pradesh Tenancy Laws (Amendment) Act, 1979 - Act 2 of 1979, whereby section 93 of the Act has been amended and the provisions of section 5 of the Limitation Act, 1963 have now been expressly made applicable to appeals and revisions preferred under sections 90 and 91 of the Act. We see no force in the contention advanced on behalf of the appellant that the said amendment is clarificatory in nature. The provisions of section 93 as they stood prior to this amendment were free from any ambiguity and called for no clarification. The Legislature has also not given any indication of any intention to clarify but, on the other hand, what has been done by it is to amend the section with only prospective effect. The amended provisions of section 93 are, therefore, of no assistance to the appellant in this case which is governed by the Section as it was originally enacted.

The conclusion that emerges from the foregoing discussion is that this appeal is devoid of merits and has only to be dismissed. We accordingly dismiss this appeal but in the circumstances without any order as to costs.

N.V.K.

Appeal dismissed.