

IN THE HIGH COURT OF KARNATAKA CIRCUIT BENCH
AT DHARWAD

DATED THIS THE 16TH DAY OF FEBRUARY 2009

PRESENT

THE HON'BLE MR. JUSTICE N.K. PATIL

AND

THE HON'BLE MR. JUSTICE ARALI NAGARAJ

/s/ * WRIT APPEAL NO. 5016/2008

BETWEEN

SRI NAGAPPA
S/O SHARABANNA
DEAD BY HIS LR:

/s/ * inserted vide
chamber order
dated 27/02/2012.

AMERESHAPPA
AGED ABOUT 48 YRS,
R/A GUDADUR VILLAGE,
TQ GANGAVATHI
DISTRICT: KOPPAL

.. APPELLANT

(By Sri GODE NAGARAJA SIRIGERI, ADV.)

AND

1. THE STATE OF KARNATAKA
BY ITS SECRETARY TO GOVT
LAND REFORMS DEPARTMENT,
M S BUILDING, BANGALORE
2. THE LAND TRIBUNAL
GANGAVATHI BY ITS CHAIRMAN
GANGAVATHI

3. ERAPPA
S/O BASAPPA SINCE DEAD
BY HIS LR.

LINGAMMA
W/O LATE SHIVABASAPPA ANGADI
AGED 52 YRS,
R/O GUDADUR VILLAGE,
TQ GANGAVATHI
KOPPAL DISTRICT.

RESPONDENTS

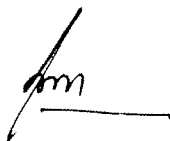
(By Sri C.S. PATIL, AGA FOR R1 & R2
Sri A.C. Purad, S.P. Hudedagaddi, Adv. for R3)

The Writ Appeal filed under Section 4 of the Karnataka High Court Act, praying to set aside the order dated 7.11.2007 passed in Writ Petition No.38057/2002.

This Writ Appeal coming on for Admission this day, N.K. Patil, J. delivered the following:

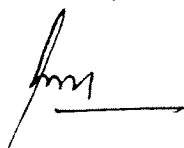
J U D G M E N T

The appellant being aggrieved by the order dated 7.11.2007 passed in Writ Petition No.38057/2002 by the learned Single Judge, presented the instant memorandum of Writ Appeal along with IA No.1/2008 for condonation of delay of 246 days in filing the appeal.

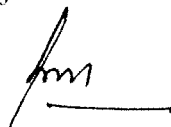


2. We have heard Sri Gode Nagaraj, learned counsel appearing for the appellant on IA No.1/2008 along with the main matter.

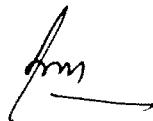
3. On careful perusal of the statement made in IA No.1/2008 dated 7.8.2008, it reveals that the appellant was suffering from enteric fever from 13.12.2007 to 11.2.2008. Due to illness, he could not contact his counsel to verify the stage of the case. Thereafter, he has suffered from jaundice from 12.2.2008 to 31.7.2008, for which period also he was under complete bed rest and he was taking regular treatment. After recovery from illness he contacted his counsel but, by which time, the appellant was intimated to file the appeal challenging the order passed by the learned Single Judge of this Court. Accordingly, the petitioner has engaged the services of the counsel and filed this appeal. During this process there is delay and the said delay is not deliberate and for the bonafide reasons. Therefore, he prayed that this appeal should not be disposed off on technical grounds and the application may be allowed and the matter may be heard on merits after condoning the delay of 246 days.



4. After hearing the learned counsel appearing for the appellant and after careful perusal of the statement made in the application dated 7.8.2008, it is manifest on the face of the statement made in para (1) of the said application that it does not inspire the confidence of this Court to condone the delay of 246 days. The said delay has not been properly explained nor assigned any cogent, convincing reasons except stating that he was suffering from enteric fever from 13.12.2007 to 11.2.2008. Due to illness, he could not contact his counsel to verify the stage of the case. Thereafter, he has suffered from jaundice from 12.2.2008 to 31.7.2008. Due to ill health, he could not contact his counsel to assail the correctness of the order passed by the learned Single Judge of this Court dismissing the petition filed by the petitioner. It is the duty cast upon the appellant to explain each days delay satisfactorily for condoning the delay. Therefore, we do not find any justification or good ground to entertain the explanation sought for in the application for condonation of delay. Hence, the application filed by the appellant is liable to be rejected as misconceived one.



5. Further, in the interest of justice, we have heard the learned counsel appearing for the appellant at considerable length of time. After careful evaluation of the entire material available on record and the order passed by the Land Tribunal, Gangavathi, as referred above, we do not find any error of law or illegality as such committed in dismissing the petition filed by the petitioner. This Court, after evaluation of the relevant material on record, has specifically recorded a finding that it would not be for the petitioner to seek for correction of any supposed errors on the basis that the same had been filled up by the Village Accountant and not by the father of the petitioner and thereby trying to pin the error on the Village Accountant. Therefore, the Tribunal cannot be said to be error in rejecting the application of the father of the petitioner in Form No.7 filed for registration of Occupancy rights in respect of the land bearing Survey No.39/B measuring 3 acres 30 guntas situated at Gudur Village, Gangavathi Taluk, Koppal District, presumed by the petitioner on the admitted position that the father of the



petitioner/appellant was claiming as a successor of respondent No.3. Therefore, the learned Single Judge of this Court found no infirmity as such made out in the order passed. The said reasoning is given after critical evaluation of the entire material available on record. Therefore, interference of this Court is uncalled for nor we do not find any merit to consider the case of the appellant.

6. Further, it emerges from the material available on record that the deceased father of the petitioner has filed Form No.7 for registration of occupancy rights, wherein he has declared that he is owning 13 acres 24 guntas of land and he is cultivating the same as tenant to substantiate the claim for registration of occupancy rights. He placed reliance on the entry found in the Record of Rights for the agricultural year 1973-74 produced at Annexure-G. After careful perusal of the entries found in column No.12(2), there is no entry as such recorded in column No.12(3), the nature of cultivation cultivated by the deceased Nagappa, father of the appellant. Further, he has produced the Record of rights pertaining to the years 1998-99 and 1999-2000, wherein the name of the



petitioner is shown in column No.12(2) and the mode of cultivation is shown as self cultivation and the petitioner has failed to make out a case for registration of occupancy rights and sought for correction of the same as it is being filled up by the Village Accountant. This has been rightly considered and appreciated by the learned Single Judge and rejected the claim of the petitioner.

7. Accordingly, we do not find any justification or good ground to interfere with the instant appeal on merits also.

In the light of the facts and circumstances as stated above, this appeal is dismissed on the ground of delay and laches and also on merits. Ordered accordingly.

**Sd/-
JUDGE**

**Sd/-
JUDGE**