

State of A.P. and Another Vs. Sayanna and Another

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Court : Andhra Pradesh

Decided On : Jun-09-2000

Reported in : 2000(4)ALD215; 2000(4)ALT38

Judge : P. Venkatarama Reddi and ;V. Eswaraiah, JJ.

Acts : [Limitation Act, 1963](#) - Sections 5; [Constitution of India](#) - Articles 14 and 226; Land Encroachment Act; [Motor Vehicles Act, 1988](#) - Sections 173(1)

Appeal No. : CMP No. 10324 of 1995

Appellant : State of A.P. and Another

Respondent : Sayanna and Another

Advocate for Def. : Mr. K. Mahipathi Rao, Adv.

Advocate for Pet/Ap. : Adv.-General, Adv.

Judgement :

ORDER

P. Venkatarama Reddi, J

1. Noticing certain seemingly conflicting observations in the Division Bench decisions of this Court as regards the yardstick to be applied and approach to be adopted while dealing with the petition filed by the State for condonation of delay in preferring an appeal, a learned single Judge of this Court--B.S. Raikole, J., has

referred this CMP to a Division Bench. The CMP has been filed by the State of Andhra Pradesh represented by the District Collector, Mahabubnagar for condonation of delay of 3654 days in filing the second appeal against the judgment of the first appellate Court rendered on 5-2-1985. This case furnishes a typical example of not merely inaction of bureaucratic machinery, but also apathy and casualness towards Court litigation in which fairly valuable land is involved. The explanation for this inordinately long delay is sought to be given in an equally casual manner with vague averments, leaving many unexplained gaps. The long delay by itself may not be a ground to refuse the condonation of delay. But the reasons for the delay should be satisfactorily explained so as to make out a sufficient cause under Section 5 of the Limitation Act. That is utterly lacking in the present case. There may be apparently irreconcilable dicta in some of the cases of this Court to which the learned single Judge has referred. But, the petitioner-State cannot seek precedential support from any of the cases to justify the delay. Even adopting a liberal and realistic standard which is expected to be adopted by the Court, it is difficult to hold that the petitioner has made out a case for condonation of delay of about ten years in preferring the second appeal. We may incidentally mention that the second appeal is sought to be preferred with a petition to permit production of additional documentary evidence in the form of revenue records.

2. The area of conflict which was noticed by the learned single Judge is best explained in his own words which we quote:

'From the tenor of the judgment of the earlier judgment of the Division Bench reported in : 1991(1)ALT496 (1st cited supra), it is clear that whenever the State is the litigant, the Courts are bound to take into consideration the factors like red-tapism in Government, delays in correspondence, habitual indifference of the Government officials or Government Pleaders, collusion or negligence of the Government officials or fraud, damage to the public interest or public funds or interest of the State, institutional or bureaucratic procedures etc., and the need to render substantial justice on merits. But, the latter decision reported in 1995 (3) ALD 43 (supra), lays down contrary proposition to the effect that the Government as a litigant has to be treated on par with that of other private litigants. The other factors like, officers took their own time in corresponding with each other etc.,

cannot be accepted. While considering the cause shown.'

3. Irrespective of the fact whether any contradictory proposition has been laid down in the latter case, as already observed, the facts of the instant case as brought out in the affidavit filed by the MRO do not merit condonation of delay even after giving a wider latitude to the State on account of peculiar features permeating the State machinery. It is not merely a case of each day's delay remaining unexplained, but a case of long spells of delay of months and years going unexplained.

4. It is with this preface, we proceed to delve into the details. The respondents herein filed OS No.160 of 1981 in the Court of the District Munsif at Mahabubnagar seeking declaration of title and grant of perpetual injunction restraining the defendants - State of A.P. represented by the District Collector and the Tahsildar, Mahabubnagar from interfering with the peaceful possession of the plaintiffs over the suit schedule land. The suit schedule land is Ac.5.08 guntas situate in S. No.89 of Mahabubnagar town. The plaintiffs claimed to have been cultivating the land for more than 30 years after reclaiming the land. They claimed that they were landless poor persons and therefore entitled for assignment, but, no action was taken by the defendants despite the representations given to them. They claimed to have perfected title by adverse possession. Oral and documentary evidence was adduced by the plaintiffs. But, no evidence was adduced by the defendants though repeated adjournments were granted on the request of the defendants' Counsel. Only after the judgment was reserved, an application was filed to reopen the case to examine the Tahsildar, but the same was rejected by the trial Court. On appreciation of the oral and documentary evidence, the trial Court decreed the suit on 23-12-1982. Against this judgment, an appeal - AS No.34 of 1983 was preferred by the State to the District Court. Even at the appellate stage, no steps were taken to file the relevant documents as additional evidence as commented by the appellate Court, The Appellate Court felt that it was not a fit case for remanding the matter to the lower Court, more so for the reason that adequate opportunity was given by the trial Court. The appellate Court continued the finding that the plaintiffs established open and peaceful possession for more than the statutory period before filing the suit and therefore

perfected their title by adverse possession. The judgment of the appellate Court was pronounced on 5-2-1985. What happened thereafter for ten years is what we are concerned with.

5. A catalogue of events - almost all of which relate to interdepartmental correspondence and interaction at leisurely pace, are narrated in the affidavit filed in support of the condone delay petition. In the para preceding the catalogue of events, the deponent places blame on the Government Pleader who conducted the case and who according to the deponent failed to produce the record before the Court. In the next sentence, he states that laxity on the part of the Government officials is being enquired into for the non-production of record and suitable disciplinary action is being initiated against the concerned officials. This averment is as vague as possible apart from being contradictory. Was the record handed over to the Government Pleader to be filed in the Court? Was there any intimation from the Government Pleader about the commencement of the trial and the need for adducing evidence? If so, what was the response from the Government officials concerned? None of these details are mentioned in the affidavit. On the other hand, it is the case of the respondents that there was no response despite repeated letters addressed by the Government Advocate to the defendant-officials. Though it is stated in the affidavit that disciplinary action was being initiated against the concerned officials, even at the time of hearing of this petition four years later, nothing is stated by the learned Advocate-General as to whether responsibility was fixed on the Government servants concerned and what action was taken. Be that as it may, the non-production of record, that is to say, non-adducing the evidence could only be relevant at the trial and appellate stages. But, after the appeal was disposed of, why the Second Appeal was not preferred within the time or at least within a reasonable time? For this, the explanation is sought to be built up on the catalogue of events extracted below and with a cryptic statement at the end that the delay took place "due to the reasons mentioned above and the connivance if any on the part of the officials who were dealing with the case at that time (which?) is being enquired into.'

6. Let us see the chronology of events adverted to in the affidavit:

'Judgment of the learned Additional District Judge, Mahabubnagar in AS No.34 of 1983 -5-2-1985 1983 -5-2-1985 .

Date of petition of Sri Sankuruiah (one of the plaintiffs) forwarded by the Collector, Mahabubnagar with endorsement to take necessary action for implementation of decree in RORas per Rules- 24-1-1986.

Letter of the MRO, Mahabubnagar addressed to the Collector, Mahabubnagar District requesting to clarify with regard to the implementation of the decree in AS No.34 of 1983-3-11-1986.

Letter of the MRO addressed to the Collector, Mahabubnagar District Requesting for early communication of clarification- 10-2-1987.

Letter of the MRO once again requesting the Collector, Mahabubnagar District to give early communication of clarification -26-8-1987.

Letter of the Collector, Mahabubnagar to give specific remarks stating the reasons why the Government's interest in Government lands could not be safeguarded- 16-9-1987.

Letter of the Collector, Mahabubnagar to send the records along with remarks -15-10-1987.

Letter of the Collector instructing the MRO to file condone delay petition in OS No.160 of 1981 before the Hon'ble High Court of A.P. -- 10-12-1987.

Letter of the MRO requesting the Government Pleader, Mahabubnagar to send order copy in AS No.34 of 1983 for preferring Appeal to the High Court of A.P.-4-1-1988.

Letter of the Collector to send remarks -19-2-1988.

Letter of the G.P. enclosing the certified copies of judgment and decree in OS No. 160 of 1981 24-3-1988.

Letter of the MRO requesting the G.P. in High Court of A.P. to file condone delay petition while enclosing order copies in OS No. 160 of 1981 and AS No.34 of 1983 29-3-1988.

Letter requesting the G.P. (C.T. Panchayat Raj Department) in High Court of A.P. to return the records - 25-4-1988.

Opinion of the G.P. in High Court -13-4-1988.

Letter requesting the Collector, Mahabubnagar to accord permission for implementation of the decree in ROR -16-5-1988.

Letter of the Collector, addressed to the G.P. in High Court requesting him to prefer appeal with condone delay petition-30-5-1988.

Letter of the Collector to take steps for preparation of the grounds of appeal-3-10-1988.

Letter of the MRO addressed to the Collector regarding preparation of grounds of appeal - 14-10-1988.

Date of survey of work done by the Mandal Surveyor as directed by the MRO- 15-10-1988.

Letter of the Collector addressed to the G.P., Mahabubnagar to defend the case in AS No.34 of 1983- 19-10-1988.

Letter addressed to G.P. Mahabubnagar requesting to file counter affidavit in AS No.34 of 1983 while ending parawise remarks-23-10-1988.

Letter addressed to the Collector to give necessary instructions to evict the petitioner from the suit land in accordance with the provisions of the LE Act -2-11-1988.

Date of Eviction Notice issued by the MRO-26-11-1988.

Explanation of the Encroacher to the Eviction Notice-28-11-1988.

Letter of the Collector requesting the Government Pleader in High Court to file appeal along with condonation petition- 13-12-1988.

Records handed over in G.P. Office for the purpose of filing appeal - 15-12-1988.

Eviction notice under Section 6 of Madras Act II of 1905 dated 21-12-1988-21-12-1988.

Eviction notice served on - 22-12-1988.

Stay of eviction notice issued by the Hon'ble High Court of A.P. in WPMP No.24499 of 1988 in WP 19067 of 1988-23-12-1988.

Counter affidavit furnished by the Department to the Collector- 4-1-1989.

Letter of the Collector addressed to the GP's Office enclosing parawise remarks for drafting the counter-affidavit-9-1-1989.

Order dated 7-2-1991 in WP No.19067 of 1988 of the Hon'ble High Court of A.P. quashing the Eviction Notice -7-2-1991.

Order copy received by the Department -8-3-1991.

Letter requesting the G.P. to return the records handed over in WP No.19067 of 1988- 11-6-1991.

Opinion of the G.P. to file Second Appeal against AS No.34 of 1983 - 10-7-1991.

Letter of the Collector requesting to prefer Second Appeal addressed to the G.P. - 29-8-1991.

Letter requesting the G.P. to return the records-9-9-1991.

Letter addressed to the G.P. to return the records-5-10-1991.

Letter of the Collector addressed to the G.P., Mahabubnagar requesting to offer his opinion with regard to filing of Second Appeal-30-11-1991.

Letter of the Collector instructing the MRO to contact the G.P. in High Court personally to appraise the facts of the case and file 2nd appeal - 22-1-1992.

Letter of the MRO requesting the Collector to return the records - 6-2-1992.

Letters of the MRO once again requesting to return the records - 6-2-1992, 7-9-1992, 21-12-1992, 20-1-1993, 22-3-1993, 15-2-1993 and 20-7-1993.

UO Note of the Collector requesting the MRO and the G.P., Mahabubnagar for discussions regarding filing of 2nd appeal -28-8-1993.

Utter of the MRO requesting the G.P. to obtain certified copies of the judgment (in Mahabubnagar Courts) - 30-8-1993.

G.P. Mahabubnagar furnished the C.C. -10-9-1993.

G.P., Mahabubnagar was requested to offer his opinion with regard to filing of 2nd appeal-24-9-1993.

G.P., Mahabubnagar opined that 2nd appeal can be preferred - 5-10-1993.

MRO requested (he Collector to accord permission for preferring 2nd appeal before the High Court of A.P. -28-10-1993.

Collector accorded permission to the MRO for preferring 2nd appeal - 8-11-1993.

G.P. (Assignments), High Court of A.P., Hyderabad was requested to offer his opinion with regard to filing of 2nd appeal-24-11-1993.

G.P. (Assignments), High Court of A.P., Hyderabad was once again requested to offer his opinion - 2-12-1993.

G.P. (Revenue) advised the Department not to prefer 2nd appeal and further observed to take serious action against the erring officials - 22-12-1993.

Letter addressed to the Collector on the basis of the opinion furnished by the G.P.- 24-12-1993.

Collector requested the Advocate General to entrust the matter to a Special Government Pleader -21-2-1994.

Date of receipt of Arrest Warrant in EP No.24 of 1994 in OS No.264 of 1988 dated 5-4-1994 issued by the District Court, Mahabubnagar - 6-4-1994.

G.P., Mahabubnagar was requested to defend the EP No.24 of 1994 - 6-4-1994.

RDO Mahabubnagar instructed the MRO to furnish staff particulars - 10-4-1994.

Collector, M'Nagar instructed the MRO to furnish staff particulars - 10-6-1994.

Staff particulars were furnished by the MRO to the Collector - 24-6-1994.

Government permitted the Collector to prefer 2nd appeal - 29-7-1994.

Collector communicated the proceedings of the Government dated 29-7-1994 -13-8-1994.

MRO received the copy - 18-8-1994.

G.P. for Civil Supplies requested the Collector requested the Collector to depute the MRO along with records for preparation of 2nd appeal - 9-8-1994.

Copy of the letter dated 9-8-1994 received by the MRO-6-9-1994.

Records were handed over to G.P., Revenue, High Court- 7-9-1994.

Collector instructed the REX) to meet the G.P. at High Court for the purpose of preparation of 2nd appeal grounds and condone delay petition - 20-1-1995.

RDO Mahabubnagar instructed the MRO to meet the G.P. along with records -4-2-1995.

Records were handed over in the G.P. Office- 14-2-1995.

Letter requesting the G.P., Mahabubnagar to furnish copies of documents in OS No.160 of 1981 and AS No.34 of 1993 -20-2-1995.

Copy application was filed by the G.P., Mahabubnagar-21-2-1995.

Copy application was returned - 22-2-1995.

Factum of return of the copy application was communicated to the RDO-24-2-1995.

Opinion of the G.P. for Arbitration in High Court to consult the Advocate

General with regard to filing of 2nd appeal-23-2-1995.

G.P., Mahabubnagar was once again requested to defend in EP No.24 of 1994 .
17-4-1995.

G.P., Mahabubnagar intimated to the Department that EP is posted for hearing on
4-5-1995- 16-4-1995.

Collector, M'Nagar requested the G.P. at Mahabubnagar to recall the Arrest
Warrants-4-5-1995.

Collector instructed the RDO to meet the Advocate General with regard to filing of
2nd appeal-4-5-1995.

RDO & MRO met the Advocate General with records with regard to preparation of
grounds of 2nd appeal - 5-5-1995.

G.P., Mahabubnagar was requested to obtain certified copies of certain
documents in OS No.264 of 1988 - 9-5-1995.

Copy application was made in the District Munsif Court, Mahabubnagar -12-5-
1995.

Documents were furnished by the District Munsif Court, Mahabubnagar/G.P.,
Mahabubnagar- 22-5-1995.

Records were handed over to the Office of the Advocate General - 24-5-1995.

CRP against EP No.24 of 1994 in OS No.264 of 1988 was filed before the Hon'ble High Court of AP - 7-6-1995.

CRP admitted and interim stay was granted by the Hon'ble High Court of A.P. on-14-6-1995.

Letter of the Advocate General intimating the MRO, Mahabubnagar that 2nd appeal will be filed in the High Court of AP on 12-6-1994.

Second Appeal was filed on 13-6-1995.'

7. During the interregnum between the date of pronouncement of the judgment in the first appeal and preferring this second appeal on 19-6-1995, there were two more proceedings which could have alerted the petitioners to expedite the steps for preferring the second- appeal. To complete the narration, it is necessary to refer to them. As the petitioners-defendants did not make requisite entries in the revenue records in conformity with the judgment and decree in OS No.160 of 1981, the respondents herein had to file another suit - OS No.264 of 1988 praying for a decree to direct the petitioners to correct the revenue records by mutating the plaintiffs' names as pattedars, owners and possessors. While the said suit was pending, the MRO issued a notice on 2-12-1988 under the A.P. Land Encroachment Act. This was questioned in WP No.19067 of 1988. A learned single Judge of this Court quashed the eviction notice on the ground that in the face of the decree granted by a competent civil Court, the writ petitioners cannot be considered to be encroachers. The writ petition was thus allowed on 7-2-1991 with an observation that it was open to the Government to prefer an appeal against the judgment of the appellate Court, if they were so advised. Thereafter, the suit OS No.264 of 1988 was decreed on 27-4-1993 which obligated the petitioners - defendants to make necessary entries in the revenue records showing the plaintiffs as the owners and possessors of the land in question. As the defendants in the suit - OS No.264 of 1988 (petitioners herein) did not implement the decree of the civil Court, the respondents herein filed EP No.24 of 1994 for the arrest of the District Collector. This order which at last activated the petitioners to prefer the second appeal that too after considerable time gap. The order of arrest was stayed in CRP No. 1895 of 1995 and thereafter the second appeal was filed.

8. Another fact which is pertinent to notice is that certified copies of the judgments and decrees of the appellate Court and the trial Court were applied for and obtained only in August/September, 1993.

9. With these facts and account of events, can it be said by any reasonable standard that there were good and substantial reason for not preferring the second appeal for a period often long years? Unequivocally, we are of the view that the answer is plainly in the negative.

10. An analysis of the chronological events furnished by the petitioners would reveal the following glaring and striking features and explained gaps. Firstly, there is no explanation why no action was taken after the judgment was pronounced on 5-2-1985 to obtain the certified copies and to contest the judgment. According to the chronology, it was only when the petition was filed on 24-1-1986 by the decree-holders seeking implementation of the judgment, that the correspondence between the Collector and the Mandal Revenue Officer started. After the said petition, it took nearly two years for the Collector to instruct the MRO to question the decree by filing an appeal in the High Court with condone delay petition. Thereafter only, certified copies of the judgment were obtained in AS No.34 of 1983 (vide Serial No. 18 of chronology). Till then why certified copies were not applied for? Was it the fault of the Government Pleader and why the Government Pleader was not requested in the year 1986 itself to obtain the certified copies? These queries remain unexplained. It may be mentioned here that the certified copy of the judgment and decree enclosed with the Memo of second appeal is the one obtained in September, 1993. What happened to the earlier certified copy is not known. Be that as it may, after obtaining the certified copy of the judgment and the opinion of the Government Pleader in April, 1988 and taking a decision at the level of the Collector (who was party to the suit and the appeal) to file an appeal with a petition for condonation of delay, why the appeal was not filed, has not been stated. After a gap of five months i.e., in October, 1988, the Collector started addressing letters to the MRO and the Government Pleader to file an appeal with condone delay petition. Records were said to have been handed over to the Government Pleader for filing appeal on 15-12-1988. Then, why the second appeal was not preferred? There is no explanation whatsoever. However, we

notice that a totally unwarranted step of initiating proceedings under the Land Encroachment Act was taken in November/December, 1988 which led to the filing of the writ petition. As already stated, the said writ petition was allowed and the eviction notice was quashed. This was on 7-2-1991. During the pendency of the writ petition, the petitioners herein did not move their little finger to file the second appeal with condone delay petition. The decision already taken to file the appeal remained in cold storage for which there is no explanation. The writ petition was disposed of with an observation that the respondents (petitioners herein) were at liberty to file an appeal to the High Court. Four months after the judgment copy was received, the Government Pleader was requested to furnish his opinion for the second time. The Government Pleader in the High Court gave his opinion that second appeal could be filed. Notwithstanding that, the opinion of the Government Pleader, Mahabubnagar was sought for by the Collector four months later i.e., on 30-11-1991. On 22-1-1992, the District Collector instructed the MRO to contact the Government Pleader in the High Court and file the second appeal. The MRO went on reminding the Collector to return the records though he could have obtained the records personally instead of sending routine communications for nearly one and half year in an already delayed matter. This correspondence went on without any response from the Collector's Office. Thereafter, peculiarly on 28-8-1993, the Collector sent a note to the MRO to have personal discussion in the company of the Government Pleader, Mahabubnagar in regard to filing of second appeal. Then, the MRO requested the Government Pleader to obtain certified copies of the judgment and copies were obtained in September, 1993. The Government Pleader, Mahabubnagar again expressed the opinion that second appeal could be preferred. On 24-11-1993, the Government Pleader in the High Court was once again requested to offer the opinion as regards filing of Second Appeal (though such opinion was given on two earlier occasions. Two months after such opinion was given by the Government Pleader, High Court, the Collector requested the Advocate-General to entrust the matter to Special Government Pleader for the purpose of filing the second appeal. In the meanwhile, OS No.264 of 1988 filed by the respondents herein for directing mutation of the entries in the revenue records was decreed on 27-4-1993. No appeal was preferred against that judgment. The decree holders in OS No.264 of 1988 (respondents) filed HP No.24 of 1994 for

execution of the decree in OS No.264 of 1988 by way of arrest of the defendant-Collector. The arrest warrant was received on 6-4-1994. It appears that at that stage, the Government was approached to permit the Collector to prefer the Second Appeal. The reasons for taking such permission even though the District Collector himself could have taken steps to file the appeal are not forthcoming. Be that as it may, the Government permitted the Collector to prefer the Second Appeal on 29-7-1994. Even after this date, routine correspondence went on between the Collector and the MRO and the Government Pleaders in the High Court and at Mahabubnagar. At last, the records were handed over to the Advocate-General on 24-5-1995. The Second Appeal was filed on 13-6-1995. In the meanwhile, CRP No. 1895 of 1995 was filed against the order of arrest passed in EP No.24 of 1994 and the arrest warrant was stayed in the CRP.

11. What emerges from a conspectus of the facts and events narrated above is a picture of unexplained inaction, indifference, callous and casual approach. Giving due allowance and latitude to the bureaucratic delays inherent in the system of Government functioning and even adopting a liberal and pragmatic approach to the concept of 'sufficient cause' as emphasized in certain decided cases, we are unable to conclude that there were good and substantial reasons for delaying the preferment of appeal by ten years. There is a limit to the liberality and the latitude that could be shown to the State while dealing with condone delay applications. The maxim *interest reipublicae ut sit finis litium* which is the foundation of law of limitation is based on considerations of public policy and should not be diluted to a point of illusion and the rules of limitation cannot be rendered otiose and inconsequential on the plank of public interest which the learned Advocate General exhorted us to give primacy. Logically, the argument of the learned Advocate General leads to this: whenever the state files an appeal in relation to an item of property or monetary decree, public interest would suffer if the delay is not condoned and whatever may be the length of delay and irrespective of the lack of cogent explanation, the delay should be condoned. We cannot countenance such approach. The State is not excepted from the provisions of the Limitation Act. Let us take the example of the present case. The decree was granted on the footing that the plaintiffs (respondents herein) perfected their title by adverse possession. The law allows the prescription of title by adverse possession even in relation to

Government property. The deprivation of public property will in one sense affect the public interest. Does it mean that no decree can be granted against the Government on account of perfection of title by adverse possession. No decision of the Supreme Court has gone to the extent of holding that the condone delay petitions filed by the State ought to be condoned irrespective of the length of delay because non-condonation would be detrimental to public interest. That public interest is involved is a relevant consideration to be kept in mind, but that is not the whole content and text of doctrine of 'sufficient cause'.

12. Reverting back to the facts of the present case, first of all, it must be noted that there is no explanation at all for not taking any steps during the period of limitation because that is the primary requisite to be satisfied as held by the Supreme Court in *Ajit Singh v. State of Gujarat*, : 1981 CriLJ293 , wherein it was observed:

'Now, it is true that a party is entitled to wait until the last day of limitation for filing an appeal. But, when it allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. There may be event or circumstances subsequent to the expiry of limitation which may further delay the filing of the appeal. But that the limitation has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of limitation. In the present case, there was no such cause, and the High Court erred in condoning the delay.'

13. In the affidavit filed in support of the condone delay petition, the so-called explanation for belated filing of the appeal starts from 10-12-1987 when the Collector instructed the MRO to file an appeal with condone delay petition. Those instructions were given pursuant to the petition filed by the decree holder on 24-1-1986 i.e., nearly one year after the judgment of the appellate Court was pronounced. The petitioners shall be presumed to be aware of the judgment of the appellate Court as they were represented by their Counsel. There is not even an averment that they were not aware of the judgment till the petition was sent by the decree-holder. Even after they became aware of the judgment, it took nearly two

years to take a decision to file the appeal. But, even that was not pursued and no appeal was preferred despite the periodical decisions taken to prefer the appeal with condone delay petition. Thus, even at the very threshold, there is lack of explanation for not preferring the appeal. The requirement stated in Ajit Singh's case (supra), is thus not satisfied.

14. Let us go to the last phase in the chronology. Even after the Government instructed the Collector to prefer the Second Appeal on 29-7-1994, it took 11 months thereafter to prefer the Second Appeal. Nothing but routine correspondence between the officials and the Government Pleader/ Advocate-General and handing over and taking back the records are pleaded for the delay. Thus, these aspects which mark the first and final phases of a decade of time span are too glaring to merit the acceptance of the so called explanation for the delay. In fact, there is really no explanation which could even touch the periphery of 'sufficient cause'. Even by taking most liberal view in favour of the petitioners and bearing in mind the dicta laid down by the Supreme Court in regard to the approach to be adopted vis-a-vis the condone delay application filed by the State or its agents, we are not in a position to condone this enormous and inordinate delay though we are conscious of the principle that 'length of delay is no matter, acceptability of the explanation is the only criterion.'

15. A hint of collusion or connivance has been given in the affidavit sworn to by the MRO, but it remains as a hint or a sweeping generalisation and nothing more. In para 4, it is averred that 'connivance if any on the part of the officials who were dealing with the case, which is being enquired into'. Thus, there is not even a definite or specific averment that there was in fact fraud or collusion on the part of the particular officials. If fraud is made out at least plausibly and with preponderance of probabilities, the Court might be inclined to condone even the long delay taking the clue from the decisions of the Supreme Court in Ramegowda v. Special LAO, Bangalore and Balakrishnani's case. As pointed out by this Court in MD, APSRTC, 1995 (3) ALD 43 (DB), it is not necessary that fraud on the part of the Government officials or Pleaders has to be proved to the hilt by the State. Fraud which includes collusion can be reasonably inferred from the circumstances, the preponderance of probabilities, the findings in a departmental enquiry and the

like, while dealing with a petition under Section 5 of Limitation Act. But we do not have before us even a definite and specific allegation of collusion. The deponent says that connivance if any is being enquired into. The affidavit was filed in the year 1995. Even five years later, we do not have any definite information as to whether responsibility has been fixed on any official or officials. Indisputably, number of Officials have changed during the span of one decade that has gone by. There was inaction and indifference and easualness in approach at every stage and at all points of time. It is difficult to say that almost all the Officers who have been dealing with the case at various stages were prompted by oblique motives. Lack of vigilance or diligence is one thing and fraudulent design is another thing. It is difficult for us to draw a reasonable inference one way or the other, especially in the absence of definite averments and the long length of time. We should only guess and surmise to draw an inference of fraud. But, that is not permissible in law. [f we have to do that, we will be elevating the petitioners to the position of a favoured litigant.

16. In view of the reference made by the learned single Judge to the Division Bench, there is need to analyse and clarify the principles/guidelines laid down by the Supreme Court in order to impart certain amount of clarity to this branch of law. We therefore deem it expedient to summarise and explain the dicta laid down by the Supreme Court in various cases.

(1) The expression 'sufficient cause' in Section 5 must receive a liberal construction so as to advance substantial justice (vide observations in Ramegowda v. Special. LAO, Bangalore, : [1988]3SCR198 , Collector, Land Acquisition, Anantnag v. Katiji, : (1987)ILLJ500SC and Balakrishnan v. Krishnaswami, : 2008(228)ELT162(SC) .

(2) 'Sufficient cause' should be adjudged on considerations of pragmatism and justice oriented approach rather than technical insistence of explaining every day's delay (vide observations in Collector (LA.), Anantnag v. Katiji and State of Haryana v, Chandra Mani, : 2002(143)ELT249(SC) .)

3(a) Generally, delays in preferring the appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona

fides is imputable to the party seeking condonation of delay (vide observations in Ramegowda'.(case).

(b) In every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor, (vide observations in Balakrishnan v. Krishnamurthy, : 2008(228)ELT162(SC) .)

(4) The length of delay is no matter. The acceptability of the explanation is the only criterion. Some times, even short delay may not be condoned for want of acceptable explanation whereas in certain other cases, the delay of very long range can be condoned if the explanation is satisfactory (per Thomas, J., in Balakrishnan v. Krishnamurthy).

(5) Limitation cannot be extended merely on equitable grounds, (vide observations in P.K. Ramachandran v. State of Kerala and Anr., : 1997ECR785(SC))

17. What is the approach that should guide the Court where the State or its instrumentality seeks condonation of delay in preferring the appeal? We are directly concerned with this question in the present case. Some of the general remarks or observations made by the Supreme Court in this area has given rise to certain amount of difficulty in reconciling one proposition with the other. But we may perhaps attempt to explain and clarify them so as to avoid unnecessary controversies in future.

(a) The fact that it is the State which is seeking condonation and not a private party is altogether irrelevant. The doctrine of equality before law demands that all litigants including the State are accorded same treatment and the law is administered in an even handed manner. (vide observations in Co/lector, Ananfnag v. Katiji, reiterated in State of Haryana v. Ciumdramani, (supra).)

(b) Though the law of limitation is the same for a private citizen and the Government, it would be unfair and unrealistic to put the Government and private

parties on the same footing in all respects. Certain amount of latitude to the Government is not impermissible, (vide observations in Ramegowda 's case)

(c) Insistence upon explaining every day's delay is not a correct approach, (vide observations in Special Tahgildar, LA., Kerala v. K.V. Ayisunima, AIR 1998 SC 2750 and in Chandra Mani's case (supra).)

18. A difference in approach between a belated appeal filed by the State and private party is high-lighted by Venkatachaliah, J., (as he then was) speaking for Supreme Court in Rome Gowda's case in the following words:

'The decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals.

The law of limitation is, no doubt, the same for a private citizen as for Governmental authorities. Government, like any other litigant must take responsibility for the acts or omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it.

Therefore, in assessing what, in a particular case, constitutes 'sufficient cause' for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, those factors which are peculiar to and characteristic of the functioning of the Government. Governmental decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural redtape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have 'a little play at the joints'. Due recognition of these limitations on Governmental functioning - of course, within a reasonable limit - is necessary if the judicial approach is not rendered unrealistic. It would, perhaps, be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters. Implicit in the very nature of Governmental functioning is procedural delay incidental to the decision making process.

19. More or less the same idea was expressed in Collector, Ammtanag case (supra). It was observed therein by Thakker, .1.

'lixperience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note making, file pushing, and passing on the buck ethos, delay on its part is less difficult to understand though more difficult to approve.'

20. The propositions in (a) and (b) supra need to be explained as it would appear at first blush that they are irreconcilable. To our understanding, what the Supreme Court meant to emphasise was this: The State just as a private party is not relieved of the obligation to satisfy the Court of the existence of 'sufficient cause' in preferring the appeal belatedly. The expression 'sufficient cause' being a word sufficiently elastic and flexible, the approaches of the Court while considering the question of sufficiency of the cause shown could differ, depending upon the accepted position in which the litigant is placed. When the State or its agent is the applicant, the concept of 'sufficient cause' should be viewed, having due regard to the practical realities of Governmental functioning and peculiar handicaps afflicting the system. Strict insistence on the traditional principle of explaining every day's delay is not warranted. A wider latitude in the matter of exercise of discretion to condone the delay keeping in view the said peculiar features is therefore called for, otherwise, if those peculiar characteristics and features are eschewed from consideration and the Court proceeds to apply the same yardstick, it would amount to adopting a pedantic or mechanical approach and that would lead to miscarriage of justice. It would then be a case of not adopting the classification where there is a need for one - a facet of Article 14. Uniformity in approach in dissimilar situations would amount to application of law in an uneven manner. The spirit and philosophy underlying Section 5 of the Limitation Act would then be defeated. The public interest may irretrievably suffer. The Court has to properly balance the considerations of public interest on the one hand and public policy that lies at the root of the law of limitation on the other. But, we would like to add that there is a limit to which the Court can go. It must be remembered that the difference in approach does not mean that any explanation given by the official of

the State should be glibly swallowed and the Court should stretch a point to bring the explanation within the ambit of 'sufficient cause' at any cost. The factors and causes contributing to the delay should bear reasonable nexus to the concept of 'sufficient cause' and should pass the test of reasonableness and genuineness. Where the delay is too long just as in the present case, cogent and convincing reasons are expected from the petitioner-State, because the burden to satisfactorily explain the delay would then be heavier. The Governmental authorities cannot shrug off the responsibility by merely pleading endless and long winding correspondence and Office notes. There must be some end to the correspondence and interaction and decision making. The process cannot go on as in the instant case for ten years unless of course, there is a reasonable ground to believe that there was fraud or collusion on the part of Government Officials and the private party. Incidentally, at this juncture, we may point out that the statement in Chandra Mani's case in paragraph 10 that the Supreme Court condoned the delay of 11 years in filing Special Leave Petition in *War/it v. Gangolribai*, is not factually correct. We do not find any case parallel to the present case where a delay of as much as 10 years was condoned on a petition filed by the State.

21. On the facts narrated in the affidavit, the explanation does not come anywhere near the 'sufficient cause', as already explained by us supra. It is a case of gross negligence or culpable inaction which falls within the exceptions enunciated in *Rtunegowda 'S' case*.

22. Thomas, J., observed in *Balah-islma v. Krishnamurthy* (supra), that if the explanation does not smack of mala fides or is not put forth as a part of dilatory strategy, the Court must show utmost consideration to the suitor. Even applying this guideline which is not materially different from the test laid down in *Ramcgowda's case* (supra), we do not think that the condoned delay petition in the instant case deserves acceptance. In one sense, lack of due care and attention would amount to want of bona fides. Moreover, even after giving due allowance and consideration to the procedural delays and official red tapism, we are unable to find any special circumstances to justify the condonation of long delay of ten years in the instant case, especially after the decision was taken more than once to file appeal. On the aspect of dilatory tactics, there is one unexplained and inexplicable

factor. Having suffered decree and having taken a decision to file the Second Appeal, why the petitioners resorted to Land Encroachment Act to evict the respondent notwithstanding the decree in their favour while at the same time deferring the preferment of contemplated appeal? This conduct on the part of the petitioners would come very close to dilatory tactics.

23. Coming to the decisions of this Court to which the learned single Judge referred, we find no conflict between the decisions in *Government of A.P. v. Sathaiah*, : 1991(1)ALT496 and in *Managing Director, APSRTC v. Leeltivathi*, 1995 (3) ALD 43 (DB), excepting that in one case, the delay was condoned and in the other, it was not. In the first case, *Jagannadiah Rao. J.*, :pc;-king for the Division Bench summarised the views of the Supreme Court in *Collector, Anantnag's case* (supra) and *Ramegowda's case* (supra), in the following words;

'The above decisions of the Supreme Court clearly lay down that while the State cannot be treated differently from any other litigant, the Court is 'bound' to take into consideration the following factors: (i) red-tapism in Government, (ii) delays in correspondence, (iii) habitual indifference of Government officials or Government Pleaders as distinct from the usual diligence of ordinary litigants or lawyers for private parties; (iv) collusion or negligence by Government officials or Government Pleaders or fraud, (v) damage to public interest or to public funds or interests of the State, (vi) institutional or bureaucratic procedures as well as delays arising thereon, and (vii) need to render substantial justice on merits.'

24. Bearing the above factors in view and taking into account the facts such as missing of relevant file, delay in Government Pleader's office, continuity in action in taking steps to file the appeal, the Bench condoned the delay of about two and half years in filing the appeal. We re-affirm the view taken in this decision which is well in conformity with the principles laid down by the Supreme Court in the two decisions in *Katiji's case* (supra) and *Ramegowda's case* (supra), which were in fact reiterated in the later decision of the Supreme Court also.

25. In *Managing Director, APSRTC*, the Division Bench referred to various decisions of the Supreme Court including the two decisions of *Collector, Anantnag* and *Ratnegowda*, and held that on facts of that case, the petitioner

could not make out that lie was 'prevented by sufficient cause' from preferring the appeal within the prescribed period of 90 days. Parvatha Rao, J., speaking for the Division Bench stressed on the expression 'prevented' in the second proviso to Section 173(1) of [Motor Vehicles Act, 1988](#) and noted the difference in language between Section 5 of the Limitation Act and the said proviso. The Division Bench also stressed on the observations in Ramegowda's case (supra) which are set out at page 23 above. The ultimate ratio in Managing Director, APSRTC rests on the said expression used in the second proviso to Section 173(1).

26. In Government of A.P. v. Balaiah, 1984 (2) APLJ 149, a Division Bench consisting of Punnayya and Ramachandra Raju, JJ., took the view that interdepartmental correspondence or consultations or administrative reasons will not constitute 'sufficient cause' for condonation of delay. The learned Judges relied on the earlier decisions of this Court in The Special Deputy Collector, Land Acquisition (Industries) Hyderabad v. Nawab Turab Yar Jung and Ors., : AIR 1973 AP43 , etc., for this proposition. The proposition so laid down in broad and unqualified terms is not sustainable in the light of what has been laid down in later decisions of the Supreme Court starting from 1987.

27. In fact, there is an earlier judgment of a Division Bench of this Court consisting of P.A. Choudary and Jagaimadha Rao, JJ., in Tahsildar v. Suresh Babu, 1986 (2) ALT 419, in which the view was taken that it is not 'wholly irrelevant' to take into account the administrative procedures and delays occurring in Government department for obtaining sanction for filing the appeal and for getting requisite funds. The learned Judges of the Division Bench relied on the decisions of the Supreme Court in State of U.P. v, Bahadur Singh, : 1983ECR1556D(SC) and State of West Bengal v. Administrator Howrah Municipality, : [1972]2SCR874a . As far as first case is concerned, that was not a case in which the question was considered from the stand point of Section 5 of Limitation Act. That was a case in which the High Court rejected the writ petition in limine on the ground of delay extending beyond three months. The Supreme Court while pointing out that there is no limitation as such under Article 226 and made certain remarks regarding the normal delay involved in taking a decision to question the order passed in land ceiling cases. However, the view taken in Suresh Babu 's case (supra), gains its

efficacy from the later decisions of the Supreme Court in Collector, Anantanug, etc. The observations contra in earlier decisions of this Court do not represent the correct legal position.

28. In Sathaiah's case, no doubt, the learned Judges did not refer to the previous decisions in Balaiah 's case (supra) etc. But the Bench gave effect to the principles laid down by the Supreme Court and therefore, would have felt it unnecessary to refer to the cases of long past.

29. Lastly, we may refer to the decision of the Supreme Court in P.K. Ramachandran v. State of Kerala, : 1997ECR785(SC) . The Supreme Court held that the High Court was not justified in condoning the delay and therefore set aside the cryptic order passed by the High Court. The Supreme Court observed that no explanation, much less a reasonable or satisfactory, one had been offered by the respondent-State for filing an appeal with a delay of 565 days. It is in this context, the Supreme Court speaking through yenkatawami, J., observed:

'Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when (he statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds.'

30. We do not understand this decision as laying down a proposition at variance with the other decisions referred to supra. 'The fact that the Limitation Act should be applied with all its rigour irrespective of individual hardship does not mean that the liberality in approach in considering the criterion of sufficient cause, is out of place and rigid standards of insisting on explanation for each and every day's delay should be applied. In our understanding, the thrust in the above decision was on the absence of reasonable or satisfactory explanation. The explanation was vague and slip shod and it naturally merited rejection. It was in that context, the Supreme Court made the above observations. To the extent Their Lordships have observed that the delay cannot be condoned merely on equitable grounds notwithstanding the absence of reasonable and convincing explanation, does not go counter to the view expressed by the Supreme Court in various other recent decisions to which we have made reference. This case is illustrative of the principle that the explanation given should not be a mere pretence or a formality. It

should be clear, credible and reasonably convincing.

31. Before we close the case, we would like to refer to the fact that we called for information regarding the physical features of the land and actual vacant land remaining other than the constructed area, so as to get a clear idea of the case. As an interim measure, we directed that the respondents or their transferees shall not alienate or raise any further structures over the disputed land. After inspection, the Joint Collector filed an affidavit to the effect that the extent of vacant land remaining Ac.3.38 guntas, which includes cart track, dilapidated (closed) well and channels of Pedda 'Cheruvu' (non-functional tank). It is further stated that cart track was formed due to 'passage of time'. The extent of land covered by cart track and channels in dis-use is reported as Ac.1.0/ guntas. The area covered by dilapidated irrigation well is reported to be Ac. 1.00. An extent of 0.21 guntas (about half acre) is said to be the vacant land covered by 'babul' trees. There is a burial ground over an extent of Ac.0,27 guntas. An extent of 0.09 guntas is covered by a temple. An extent of 0.06 1/2 guntas with tiled roofed house is in the occupation of one of the respondents and there is also an electrical transformer (herein. Ac.0.7 1/2guntas, is reported to be in the occupation of encroachers who constructed residential houses. It is further reported that the respondents have plotted out the vacant area of Ac.1.10 guntas in 1993.

32. In the course of hearing, we suggested that the Government may with a view to avoid risk explore the possibility of settlement with the decree holders so that the land in effective occupation of the respondents and a substantial portion of the plotted out land may be allowed to be retained by the respondents leaving the rest. The learned Advocate-General sought the adjournment taking clue from this suggestion. At last, it was reported that the Government was not willing to give up the claim to any portion of the land and the learned Advocate-General invited a decision on merits.

33. As we find no good grounds to condone the delay for the reasons stated above, the CMP No.10324 of 1995 is hereby dismissed.