

(2011) 06 KAR CK 0071

In the Karnataka High Court

Case No : M.F.A. No. 13526 of 2006 (LAC)

A.V. Chandrashekarappa and A.V. Shivashankara (Since deceased by his L.Rs. Smt. A.S. Shantha and Vishwanath Alur, Minor, Guardian Natural, mother Smt. A.S. Shantha) are

APPELLANT

Vs

The Special Land Acquisition Officer, City Improvement Trust Board, Davanagere

RESPONDENT

Date of Decision : 30-06-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 18 (1)

Mysore Court-fees and Suits Valuation Act, 1958 — Section 63

Citation : (2011) 06 KAR CK 0071

Hon'ble Judges : N.K. Patil, J;Arali Nagaraj, J

Bench : Division Bench

Advocate : S.N. Hatti, for the Appellant; A. Niranjan Kumar and Smt. Nalini Venkatesh, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal by the claimants is directed against the common judgment and award dated 18th December 1999, passed in L.A.C. No. 128/1986, by the Additional Civil Judge (Sr. Dn), Davanagere, (hereinafter referred to as "the Reference Court"), on the ground that the compensation awarded by the said Court is inadequate and needs to be enhanced.

2. Along with the appeal, counsel for the Appellants has filed I.A. No. 1/2006, for condoning the delay of 2471 days in filing the appeal. In the said application, it is stated that the land of the Appellants along with other lands were notified and acquired and treating all the lands similar, the Land Acquisition Officer awarded compensation of a sum of 16,709/-per acre. Not being satisfied with the award passed by the Land Acquisition Officer, the Appellants filed an application, seeking reference u/s 18(1) of the Land Acquisition Act, (hereinafter referred to as "the Act"), for enhancement of compensation, before the jurisdictional Reference Court. The Reference Court, in turn, clubbed all the matters and

recorded common evidence and the Appellants were claimants in LAC No. 128/1986, on the file of the learned Civil Judge, Davanagere, in the impugned common judgment and the land bearing Sy. No. 48/1 was jointly owned by the uncle of the Appellants, i.e. the elder brother of his late father and themselves, in which the Appellants were having 1/2 share in the same. The Reference Court, by its judgment dated 18th December 1999, enhanced the market value to 87,000/- per acre along with all statutory benefits. Not being further satisfied with the award passed by the Reference Court, the Appellants wanted to go in for an appeal seeking further enhancement of compensation. Therefore, with the said intention, they entrusted the work of filing an appeal to their uncle, since he was the elderly person and also familiar with the court proceedings. They were under the bona fide impression that their uncle has filed appeals on their behalf also, for enhancement of compensation.

3. When things stood thus, when the Appellants enquired about the result of the appeal with Sri. Prakash, the son of their uncle, they came to know during January 2006 that, their uncle who died in November 2001 had filed the appeal before the High Court only in respect of the extent of his share and not on behalf of the Appellants. Immediately, they contacted the local counsel, Sri. Kuberappa to arrange for the certified copies of the award in LAC No. 128/1986. Thereafter, they came to know that all the lower court records are sent to the High Court, since the appeal was filed against the very same judgment. They waited for the lower court records to come to the High Court. Thereafter, the counsel for the Appellants applied for the certified copy on 11th October 2006 and the same was delivered on 7th December 2006. Immediately thereafter, they came down to Bangalore to file the appeal and the counsel for Appellants filed the appeal on 22nd December 2006, along with the application for condonation of delay in filing the appeal.

4. Further, it is stated in the affidavit that the delay in filing the appeal is due to want of knowledge to take steps to file the appeal, on the bona fide impression that their uncle had already filed the appeal on their behalf also. It is further stated that the Appellants came to know about the appeal filed by their uncle only recently after the death of their uncle and the judgment passed in the said appeal through one of the sons of their deceased uncle. Therefore, it is their case that, the delay in filing the above appeal is not deliberate nor intentional, but the same is due to negligence and for the reasons beyond their control. Hence, if the delay is not condoned, they would be put to great loss and irreparable hardship, and on the other hand, no hardship or inconvenience would be caused to the Respondent beneficiary, if the delay is condoned. Therefore, they have prayed that the delay may be condoned and the appeal may be heard on merits.

5. Learned Counsel appearing for Appellants, Sri. S.N. Hatti, at the outset submits that, this Court, in similar matters, has enhanced the compensation at the rate of 1,74,000/- per acre and therefore, in the instant case also, the said benefit may be extended, as the said judgment and award passed has been

confirmed by the Apex Court. Further, the learned Counsel for Appellants relying upon the judgment of the Hon"ble Apex Court in the case of State of Karnataka Vs. Y. Moideen Kunhi (dead) by Lrs. and Others,), submitted that, applying the ratio of law laid down in the aforesaid decision, where delay of 6500 days has been condoned, this Court may also take a liberal view and condone the delay, for the reason that, whenever the lands are notified and acquired by the acquiring authority for the benefit of the beneficiaries, this Court has consistently taken a liberal view. Therefore, he prays that this Court be pleased to condone the delay and hear the appeal on merits.

6. As against this, learned Counsel appearing for Respondent beneficiary, inter alia, contended and submitted that, the instant application filed for condonation of inordinate delay of 2471 days in filing the appeal is a misconceived one and is liable to be rejected at the threshold itself, for the reason that, in similar matters arising out of the common judgment and award passed by the Reference Court in L.A.C. NO. 125/1986 dated 18th December 1999, the Division Bench of this Court by its judgment and award dated 27th September 2007 in M.F.A. No. 13525/2006, in the case of Alur Sannabasappa (since deed.) by his LRs. v. The Special Land Acquisition Officer City Improvement Trust Board Davanagere, has dismissed the I.A.I/2006 filed for condonation of inordinate delay of 2471 days and consequently, the appeal also.

7. Further, he pointed out that, the Appellants, in fact, have filed execution petition in Execution No. 219/2000 and sought for attachment of the immovable and movable properties to be sold in auction to realize the award amount, since there was delay in depositing the award amount by the beneficiary, the Davangere Urban Development Authority. Immediately after noting the said fact, they have deposited Rs. 9.30,000/- before the Execution Court. In the execution proceedings, the Appellants had engaged the services of the same counsel, who appeared for them before the Reference Court. He had all the knowledge and information and was well aware and acquainted with the facts of the case. When this clinching material is very much available, the Appellants have falsely projected themselves and intentionally suppressed this vital information before this Court, stating that they were unaware of the fact that no appeal is filed on their behalf. Therefore, it is the case of the Respondent beneficiary that the Appellants have not come up before this Court with clean hands, stating the true facts and hence, the application filed by them is liable to be rejected at the threshold and consequently the appeal also, for not satisfactorily explaining the inordinate delay in filing the appeal.

8. After hearing the learned Counsel appearing for both the parties and after perusal of the averments made at paragraphs 3 to 6, it emerges that, indisputably, there is inordinate delay of 2471 days in filing the appeal. The said delay has not been satisfactorily explained, nor sufficient genuine cause is shown, except making bald statements, referred to above. The reasons assigned by the Appellants are make-believe explanation offered only to overcome the

inordinate delay and cannot be accepted nor any credibility can be attached to it, for the reason that, the very same reasons have not been accepted by the Division Bench of this Court in its judgment dated 27th September 2007 in M.F.A. No. 13525/2006 filed by Alur Sannabasappa (since deed.) by his LRs. against the Special Land Acquisition Officer, City Improvement Trust Board, Davanagere, who is none other than the uncle of the Appellants herein. In the said case also, there was delay of 2471 days in filing the appeal. The Appellants have stated that they recently came to know of the non filing of the appeal through the son of their uncle, Sri. Alur Shankarappa. But, the said statement is false since the very same counsel who filed the appeal on behalf of their uncle and argued the matter, has filed the present appeal also on behalf of these Appellants and he has intentionally and deliberately not moved this application for disposal, when the application and the appeal filed by the uncle of the Appellants, arising out of the same judgment and award, have been disposed of.

9. The Division bench of this Court, rightly placing reliance on the decision of the Apex Court, in the case of Mewa Ram (Deceased) by his Lrs. and Others Vs. State of Haryana through The Land Acquisition Collector, Gurgaon, , where there was delay of 1146 days, has observed that the Apex Court came down heavily on the Appellant therein and rejected the condonation of delay application. Further, the Division Bench observed that "Interestingly, it has to be noted that in that very case, the ground now raised by the Appellants, namely that in other cases, this Court has enhanced compensation, and as such, the Appellants are entitled for enhancement, even if the approach is belated, had been taken. The Apex Court rejected this argument holding that there is no provision in the Land Acquisition Act for re-opening the award which has become final and conclusive, including those barred by time, and that cannot be a ground sufficient for condoning the delay.

10. Further, in the Division bench decision of this Court referred above, pertaining to one of the relatives of the Appellants herein, the learned Counsel appearing for Appellants therein, who is also representing the Appellants herein, has relied upon the unreported decision of this Court in the case of Veerappa v. Assistant Commissioner IN M.F.A. NO. 1348/2006, disposed of on 15th February 2007, and contended that, this Court has condoned the delay of 3327 days with a rider to forego interest for the belated period and therefore the delay has to be condoned with the same rider to waive interest. The Division Bench, on considering all the decisions, observed that, "the unreported judgment and the judgment of the learned single judge do not lay down any law so as to consider the same as a precedent binding on this Court and there cannot be any dispute that sufficiency of cause in respect of condonation of delay has to be decided on the merits of each case and since facts vary from case to case, the court is required to consider the cases individually.

11. After analysing the aforesaid judgments of this Court as well as Apex Court, coupled with the facts and circumstances of the case on hand and having regard

to the serious financial repercussion on the public exchequer, we are of the considered view that the Appellants do not deserve any sympathy and inordinate delay is liable to be rejected. Moreover, they have not come before this Court with true facts. They have suppressed the material information and come up at a belated stage. Condoning the inordinate delay without there being any genuine and cogent reasons, would lead to misplaced sympathy, as laid down by the Apex Court and this Court, in hosts of judgments.

12. Further, the Apex Court decision reported in State of Karnataka Vs. Y. Moideen Kunhi (dead) by Lrs. and Others, , relied upon by the counsel for Appellants will not come to his rescue and is of no help to him in this case, for the reason that in the said case, delay has been condoned by imposing exemplary costs of ten lakhs. But, the case on hand does not deserve such interference.

13. Therefore, taking all these aspects into consideration, we are of the considered view that the application, I.A.I/2006. filed by Appellants is liable to be dismissed as misconceived and one without merit. Accordingly, it is dismissed. Consequently, the appeal filed by the Appellants also stands dismissed as devoid of any merit.

Registry is directed to refund the court fees as per the relevant provisions of Section 63 of the Karnataka Court Fees and Suits Valuation Act.