

(2011) 07 GUJ CK 0028
In the Gujarat High Court

Case No : Civil Application - for Condonation of Delay No. 488 of 2011 in First Appeal (Stamp Number) No. 3831 of 2010 to Civil Application - for Condonation of Delay No. 492 of 2011 in First Appeal (Stamp Number) No's. 3835 and 3831 to 3835 of 2010 and Civil Appl

General Manager	Vs	APPELLANT
Dinesh Ramshankar Trivedi and Another		RESPONDENT

Date of Decision : 14-07-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 34, 4, 4(1), 48
Limitation Act, 1963 — Section 5

Citation : (2011) 07 GUJ CK 0028

Hon'ble Judges : R.M. Chhaya, J; Jayant Patel, J

Bench : Division Bench

Advocate : Ajay R. Mehta, for the Appellant; Pranav G. Desai, for R1 and Moxa Thakkar, AGP for R2, for the Respondent

Final Decision : Dismissed

Judgement

Jayant Patel, J.—The main Civil Applications No. 488 to 492 of 2011 are for condonation of delay of 1548 days in preferring the appeals against the judgment and award dated 17.4.2006 passed by the Reference Court in the concerned Land Reference Cases, which are impugned in the concerned First Appeals.

2. We have heard Mr. Ajay Mehta, learned Counsel for the applicant on the aspects of condonation of delay at length. We may also record that in order to see that the merits of the matter may not be frustrated just on the aspects of delay, we have also heard the learned Counsel for the applicant - Appellant on the merits of First Appeals. We have heard Mr. A.J. Patel and Mr. Pranav Desai, learned Counsel for the private Respondent/original claimant and Ms. Thakkar, learned AGP for Respondent No. 2 - Special Land Acquisition Officer, who is supporting Respondent.

3. It is hardly required to be recorded that the delay is a long delay of 1548 days, roughly about more than four years from the date on the judgment and award was passed by the Reference Court. We may refer to the recent decision of the Apex Court in the case of *Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation and Another*, reported at (2010) 5 SCC 459 and more particularly the observations made at paragraphs 14, 15, and 16, which read as under:

14. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.

15. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate - *Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others*, , *N. Balakrishnan Vs. M. Krishnamurthy*, and *Vedabai @ Vijayanatabai Baburao Pateil Vs. Shantaram Baburao Patil and Others*,

16. In dealing with the applications for condonation of delay filed on behalf of the State and its agencies/instrumentalities this Court has, while emphasizing that same yardstick should be applied for deciding the applications for condonation of delay filed by private individuals and the State, observed that certain amount of latitude is not impermissible in the latter case because the State represents collective cause of the community and the decisions are taken by the officers/agencies at a slow pace and encumbered process of pushing the files from table to table consumes considerable time causing delay - *G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore*, , *State of Haryana Vs. Chandra Mani and others*, , *State of U. P. and others Vs. Harish Chandra and others*, , *State of Bihar Vs. Ratan Lal Sahu and Others*, , *State of Nagaland Vs. Lipok AO and Others*, , and *State (NCT of Delhi) v. Ahmed Jaan* (2008) 14 SCC 582

4. The aforesaid shows that the principles for considering the application for condonation of delay is that Court would undertake liberal approach in condonation of delay for a short duration and a strict approach where the delay is inordinate delay, of course, with the general rule of no hard and fast rule can

be applied and each case may be examined on facts.

5. If the facts are to be considered, the delay on the face of it is inordinate of 1548 days. Therefore, the principles of strict approach would apply for considering as to whether sufficient cause is made out or not. The averments made in the application for condonation of delay and more particularly at paragraph 6 of the application goes to show that after the judgment was received, a conscious decision was taken by the Legal Department of the Appellant not to prefer appeal in the year 2006. Not only that, but the said opinion of the Legal Department was scrutinized and the competent authority namely; EDO-AM had approved the opinion of the Legal Department not to prefer appeal. Not only that but it is coupled with the circumstances that thereafter the payment as per the understanding in calculation by the Appellant was deposited and it appears from the subsequent conduct that ONGC - applicant herein considered as the judgment and award complied with. However, when the claimants issued notice calling upon the applicant - ONGC to comply with the judgment and award fully and thereby to pay the difference of the amount of interest, it appears that the applicant ONGC traced the file and re-examined the matter i.e. approximately after more than 700 days from the award and thereafter at the level of Chief (Services), the decision was taken to prefer appeal and thereafter there was opinion to prefer review application and subsequently, as the review was found not fit, the present appeals have been preferred. The tenor of the application is to pass over the burden of delay upon the Respondent - claimant, as if it was obligatory for the Respondent - claimant to insist for compliance of the judgment and award, without considering that the judgment and award is to be complied with by the judgment debtor or the acquiring body - Appellant herein. The judgment and award of the Reference Court and more particularly the operative portion for awarding compensation of interest from the date of taking over possession was not only self-explanatory, but was as clear as daylight. Merely because there was error or mistake in interpreting the effect or the consequence of the judgment and award at the level of ONGC - Appellant herein, which is aided by the legal experts, cannot be said as a justifiable ground not to prefer appeal well in time or within the period of limitation. On the contrary, having understood the judgment at one point of time, the decision was taken not to prefer the appeal and to comply with the judgment and award. Under these circumstances, we find that not only the aspect of sufficient cause having not been satisfactorily demonstrated before this Court, but the additional aspect appears to be that the basis or the ground shown for the so-called delay is a mistake or error in not construing or understanding the effect of the Judgment, which cannot be accepted, when the applicant - Appellant is aided by legal experts. Further, the burden for insisting the compliance as sought to be shifted upon the Respondent - claimant can hardly be termed as a sufficient explanation for the delay in preferring the appeal by the applicant, who was legally required to comply with the judgment and award. Further, the aforesaid aspect is required to be considered with the

affidavit-in-reply filed for opposing the condonation of delay by the Respondent - claimant.

6. In view of the aforesaid, we find that if the principles as referred to by the Apex Court in the above referred decision in the case of Oriental Aroma Chemical Industries Limited (supra) are applied, it cannot be said that it would be a case to exercise the discretion for condonation of delay for such a long period of 1548 days. Hence, the delay does not deserve to be condoned.

7. Apart from the above, even on merits, there is no case to be considered for the reasons as stated herein after.

8. The learned Counsel, in order to support the contention raised in the appeal mainly relied upon the decision of the Apex Court in the case of R.L. Jain v. DDI and Ors, reported in (2004) 4 SCC 79 and contended that there is no power to award interest with the Reference Court u/s 28 or u/s 34 of the Land Acquisition Act from the date of possession, if the Notification u/s 4 of the Act is of a later date. He submitted that as per the Scheme of the Act read with the aforesaid decision of the Apex Court, the interest should be awarded by the Reference Court not for the period prior to the Notification u/s 4 of the Act and, therefore, the award passed by the Reference Court for the interest from the date of possession or from the date of the Notification u/s 4 of the Act, whichever is earlier is contrary to the statute and there is a strong case on merits. He conceded that the rest of the award is already complied with, with no grievance therein.

9. We may record in the very decision of the Apex Court in the case of R.L. Jain (supra), at paragraph 18, it has been observed by the Apex Court as under:

18. In a case where the land owner is dispossessed prior to the issuance of preliminary notification u/s 4(1) of the Act the government merely takes possession of the land but the title thereof continues to vest with the land owner. It is fully open for the land owner to recover the possession of his land by taking appropriate legal proceedings. He is therefore only entitled to get rent or damages for use and occupation for the period the government retains possession of the property. Where possession is taken prior to the issuance of the preliminary notification, in our opinion, it will be just and equitable that the Collector may also determine the rent or damages for use of the property to which the land owner is entitled while determining the compensation amount payable to the land owner for the acquisition of the property. The provision of Section 48 of the Act lend support to such a course of action. For delayed payment of such amount appropriate interest at prevailing bank rate maybe awarded. (Emphasis supplied)

10. The aforesaid makes it clear that in a case where the possession is taken over prior to the preliminary Notification u/s 4 of the Act, it has been held by the Apex Court that it will be just and equitable that the Collector may also determine the rent or damages for the use of the property to which the land

owner is entitled, while determining the compensation amount payable to the land owner for the acquisition of the property and it has been further observed that for the delayed payment of such amount, appropriate interest at the prevailing bank rate may be awarded.

11. If the facts of the case is examined further in light of the award passed by the Land Acquisition Officer, which has been made available by the learned Counsel for the applicant - Appellant during the course of hearing, following aspects are apparent:

(a) The Land Acquisition Officer has recorded in the award u/s 11 that the possession has been taken over from 1.4.1992.

(b) In the claim made by the land owner, they had demanded interest at the rate of 15% from the date on which the possession is taken over.

(c) The Land Acquisition Officer in the award at paragraph 9(5) has found that as the possession is already taken over from the date on which the possession is taken over until the award is declared, either the rent or the interest shall be payable.

(d) In spite of the specific finding for admissibility of the rent or the interest for the period after the possession, but prior to the award, in the Schedule D no such amount is quantified by way of compensation or otherwise.

(e) In the said Schedule, there is also nil amount shown as paid prior to the award.

12. The aforesaid shows that in spite of the demand made for the payment of interest by way of compensation from the date on which the possession was taken over and in spite of the finding recorded by the Land Acquisition Officer that the rent or the interest would be payable, he has not awarded any compensation or interest in the award, which was within his power as per the above referred decision of the Apex Court in the case of R.L. Jain (supra). If there is a failure on the part of the Land Acquisition Officer to award compensation for such period and the dispute is raised by the claimant u/s 18 of the Act, it was well within the power of the Reference Court to award interest by way of compensatory measure from the date on which the possession was taken over. Under these circumstances, it cannot be said that the award of the Reference Court so far as it relates to granting interest from the date of taking over of the possession or the Notification u/s 4 of the Act, whichever is earlier is contrary to the statutory provisions and the decision of the Apex Court as sought to be canvassed, on the contrary makes the award as permissible in law.

13. Mr. Mehta, learned Counsel for the applicant - Appellant additionally contended that the rental compensation was already paid from 1992 till the Notification u/s 4 of the Act and the same was required to be given set off by the Reference Court in any case, which has not been given and, therefore also, it may be a case to be considered in the appeal on merits.

14. We may record that Mr. Mehta has not been able to show any pleading or any record showing that such a defence may be by way of objection or otherwise was raised before the Reference Court that the acquiring body has already paid rental compensation from the date of taking over of the possession until the Notification u/s 4 of the Act or otherwise. No set off of any type was ever pleaded, nor contended. Not only that, but the learned Counsel is also not in a position to show any statement made in the memo of the appeal or in judgment and award or even in the application for condonation of delay to support the said application to show that the rental compensation was already paid for such period and the set off as was required to be given but not given. Under these circumstances, a defence, which has at all not been taken on facts, would hardly make the award of the Reference Court vulnerable as sought to be canvassed.

15. In view of the aforesaid, we find that even on merits, there is no substance. Under these circumstances, we find that no useful purpose would be served in taking too lenient approach on the aspects of such a long delay of 1548 days and thereafter to consider the appeal after condonation of delay.

16. In view of the aforesaid, we find that the application for condonation of delay does not deserve to be granted. Hence, dismissed.

17. In view of the order passed in the application for condonation of delay, the concerned First Appeal (St.) Nos. 3831 to 3835 of 2010 as well as the interim applications made therein being Civil Application (St.) Nos. 16741 to 16745 of 2010 shall also stand dismissed.