
(1989) 06 KL CK 0033

In the High Court Of Kerala

Case No : C.M.P. No. 1066/89 in L.A.A. No. 5/89, C.M.P. No. 1070/89 in L.A.A. No. 6/89, C.M.P. No. 1074/89 in L.A.A. No. 7/89 and C.M.P. No. 1004/89 in L.A.A. No. 8/89

Kerala State Housing Board

APPELLANT

Vs

T.P. Soumini and Others

RESPONDENT

Date of Decision : 15-06-1989

Acts Referred:

Kerala Land Acquisition Act, 1961 — Section 159, 18(1), 20, 50(2)
Kerala State Housing Board Act, 1971 — Section 71
Limitation Act, 1963 — Section 12(2)

Citation : (1989) 06 KL CK 0033

Hon'ble Judges : Ramakrishnan, J; Balakrishna Menon, J

Bench : Division Bench

Advocate : N. Nandakumara Menon, for the Appellant; Thomas Antony, for 1st Respondent, A. Shahul Hameed, Government Pleader for 2nd Respondent and K. Ramakumar, for 3rd Respondent, for the Respondent

Judgement

Balakrishna Menon, J.—These petitions are by the Kerala State Housing Board to condone the delay in filing the respective Land Acquisition Appeals. The petitions are supported by affidavits filed by the Administrative Officer of the Housing Board. According to the petitions, there is a delay of nine days in filing L.A.A. Nos. 5 and 6 of 1989, and there is a delay of 58 days in filing L.A.A. Nos. 7 and 8 of 1989. The delay is explained in the respective affidavits as due to administrative reasons. There is also delay on the part of the Government Pleader to receive the certified copies of the judgment and decree and to transmit the same to the office of the Housing Board.

2. Learned Counsel for the Respondents points out that the certified copies of judgment and decree filed along with the respective memorandums of appeals were obtained by the Government Pleader who had appeared before the court below on behalf of the Special Tahsildar (L.A.), Kerala State Housing Board, Kozhikode, the only Respondent in the land acquisition reference. The Housing

Board is not even a party to the reference and the appeals are accompanied by separate petitions for leave to appeal. Learned Counsel therefore submits that the Appellant Board is not entitled to exclude the time taken for obtaining the certified copies of judgment and decree of the court below u/s 12(2) of the Limitation Act for the reason that the copies were not obtained by the Appellant but by the Government Pleader who was appearing in the court below on behalf of the Special. Tahsildar (L.A.), Kerala State Housing Board. The Respondents rely on the decision in *Oommen v. Mar Baselius Mar Thoma Mathews* 1984 KLT 553 support of the above proposition. In that case, an appeal was filed before this Court accompanied by a printed copy of the common judgment obtained by a different party in a connected suit. *Paripoornan, J.*, following the decisions of the Privy Council in *Pramatha Math Roy v. Lee* 49 Ind App 307 and in *J.N. Surty v. T.S. Chettyar* 55 Ind App 151 and also the decision of a Full Bench of the Allahabad High Court in *State v. Harishankar* 1071 All. L.J. 1205 held that the Appellant is not entitled to exclusion of time taken by some other party in obtaining a copy of the judgment u/s 12(2) of the Limitation Act. Learned Counsel for the Appellant challenges the correctness of the decision and submits that the Appellant is entitled to exclusion of time taken for obtaining the certified copy of the judgment and decree filed along with the memorandum of appeal no matter whoever had applied for the same. In support of this proposition, counsel for the Appellant relies on the decisions in *Aynuddeen v. Pyari Bi* AIR 1920 Mad 159, *Majidan v. Dalmir Khan* AIR 1951 P&h 388, *Union of India (UOI) Vs. Ibrahim Gulaba Tobacco Merchant and Others*, , *Purshattam Narayan Vs. Sugan Chand Pannalal and Others*, , *Panjam V. Thirumala Reddi Vs. C.K. Anavema Reddi and Others*, , *Joseph v. Mathai* 1955 T.R. 1087 (F.B.) and *B. Marasoji v. The Special Deputy Collector, Land Acquisition (General) Hyderabad and Anr.* ILR 1976 A.P. 1079

3. The Kerala State Housing Board is an instrumentality of the State and it functions in the public interest. The preamble to the Kerala State Housing Board Act, 1971 states that the Act is "to provide for the organised direction and planning in the preparation and execution of housing and improvement schemes and for the establishment of a State Housing Board in the State of Kerala". Section 71 of the Act enacts that land required by the Board for any of its purposes may be acquired under the provisions of the Kerala Land Acquisition Act, 1961. As per Section 159 of the Act the Board is deemed to be a local authority for the purposes of the Kerala Land Acquisition Act, 1961. Section 50(2) of the Kerala Land Acquisition Act provides that a local authority or a company for which land is acquired under the provisions of the Act may in any proceedings before the Collector or the Court appear and adduce evidence for the purpose of the determination of the amount of compensation. Even though the local authority or the company is not entitled to demand a reference u/s 20 of the Land Acquisition Act, the local authority or company is entitled to maintain an appeal against the enhancement of compensation awarded by the reference court. The Supreme Court in *Himalaya Tiles and Marble (P) Ltd. Vs. Francis Victor*

Coutinho (dead) by LR"s., states at page 228:

14. Thus, the preponderance of judicial opinion seems to favour the view that the definition of "person interested" must be liberally construed so as to include a body, local authority, or a company for whose benefit the land is acquired and who is bound under an agreement to pay the compensation. In our opinion, this view accords with the principles of equity, justice and good conscience. How can it be said that a person for whose benefit, the land is acquired and who is to pay the compensation is not a person interested even though its stake may be extremely vital? For instance, the land acquisition proceedings may be held to be invalid and thus a person concerned is completely deprived of the benefit which is proposed to be given to him. Similarly, if such a person is not heard by the Collector or a court, he may have to pay a very heavy compensation which, in case he is allowed to appear before a court, he could have satisfied it that the compensation was for too heavy having regard to the nature and extent of the land. We are, therefore, unable to agree with the view taken by the Orissa High Court or even by the Calcutta High Court that a company, local authority, or a person for whose benefit the land is acquired is not an interested person. We are satisfied that such a person is vitally interested both in the title to the property as also in the compensation to be paid therefore because both these factors concern its future course of action and if decided against him, seriously prejudice his rights. Moreover, in view of the decision of this Court referred to above, we hold that the Appellant was undoubtedly a person interested as contemplated by Section 18(1) of the Act. The High Court, therefore, committed an error in throwing out the appeal of the Appellant on the ground that it had no locus to file an appeal before the Bench.

4. Following the above decision a Division Bench of this Court in Kerala State Electricity Board v. Cyriac Stephen 1981 KLT 804 has held that the Kerala State Electricity Board on whose behalf an acquisition was made is entitled to maintain an appeal with the leave of the court against the enhancement of compensation awarded by the reference court. The leave of the appellate Court was however, found necessary for the reason that the Appellant was not eo nomine a party to the reference.

5. In these present cases also the Housing Board was not eo nomine a party to the references u/s 20 of the Kerala Land Acquisition Act. The only Respondent in the references is the Special Tahsildar (L.A.), Kerala State Housing Board, Kozhikode who is the "Collector" for the purpose of the acquisition under the Act. The acquisition itself is for and on behalf of the Housing Board and the Board is to pay the compensation determined for the land acquired. There is also a statutory provision u/s 71 of the Kerala State Housing Board Act providing for the acquisition of land on behalf of the Board. The Board, as earlier stated is an instrumentality of the State. The Special Tahsildar for Land Acquisition who was the only Respondent in the reference should therefore be held as representing the Board and its interest in the proceedings before the court below. In these

present cases, it is unnecessary to decide the correctness of the decision of Paripoornan, J. in *Oommen v. Moran Mar Baselius Mar Thoma Mathews* 1984 KLT 553 The learned Judge states at page 559:

In cases, where it could be established that the certified copies were duly applied for as authorised by the Appellant or by some other person acting on behalf of the Appellant, as an agent, expressly or impliedly or as authorised by law, it could be contended that though the Appellant was not *eo nomine* a person who applied for the certified copy, he should get the benefit as enjoined by Section 12(2) of the Act.

The learned Judge refers to the following passage in the decision of the Allahabad High Court in *State v. Hari Shankar* 1971 ALJ 1205 at page 1209 as correctly laying down the law:

In our judgment on a true and correct interpretation of section 12(2) of the Act the time requisite for obtaining a copy of the judgment, decree or order appealed against is the time beyond the Appellant's control occupied by the Copying Department after an application for certified copies has been duly made by or for the benefit of the Appellant and not the time spent in obtaining it by a party who cannot even be said to have been impliedly acting on his behalf.

Since we find that the Special Thasildar for land acquisition the only Respondent in the reference cases before the lower Court was representing the interest of the Housing Board and was acting on its behalf, we hold that the Appellant Board is entitled to exclude the time taken for obtaining the certified copies of the judgment and decree appealed against and produced along with the respective memorandums of appeals u/s 12(2) of the Limitation Act.

6. The delay in filing these appeals as explained in the affidavits filed by the Administrative Officer of the Housing Board is due to the delay on the part of the Government Pleader in forwarding the certified copies of the judgment and decree to the Board's office and also due to administrative reasons. We see no reason to disbelieve the explanation offered by the Administrative Officer of the Board. The Supreme Court in *G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore*, states at page 900:

However, the expression "sufficient cause" in Section 5 must receive a liberal construction, so as to advance substantial justice and generally delays in preferring 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 the delay.

It is further observed at the same page:

In litigation to which Government is a party there is yet *Anr.* aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected; but what, in the ultimate analysis, suffers is public interest.

These observations were made in the context of considering the delay in filing a Land Acquisition Appeal by the Government, and it was held that those who bear responsibility of the Government are entitled to a little play at the joints for the reason that Governmental decisions are proverbially slow encumbered, as they are, by a considerable. degree of procedural red-tape in the process of their making.

For the aforesaid reasons, we allow these petitions and condone the delay in filing these appeals.