

(1987) 10 DEL CK 0018

In the Delhi High Court

Case No : Civil Miscellaneous Appeal No. 493 of 1987 and Regular First Appeal No. 258 of 1987

Man Chand etc.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 29-10-1987

Acts Referred:

Citation : (1988) 14 DRJ 117

Hon'ble Judges : Y.K. Sabharwal, J;S.S. Chadha, J

Bench : Division Bench

Advocate : L.C. Chechi and Rekha Sharma, for the Appellant;

Judgement

S.S. Chadha, J.

(1) Delhi Administration required vast areas of land for a public purpose, namely, for planned development of Delhi and issued the preliminary notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) on November 13, 1959. A declaration u/s 6 of the Act with respect to 569 Bighas and 19 bids was of land in Kotla Mahigram Estate was issued on December 28, 1961. The Land Acquisition Collector made his award No. 1374 and offered compensation for the acquired land by assessing its value block wise. He assessed the value for block "A" at the rate of Rs.2,500.00 per bigha, for block "B" at the rate of Rs.1,600.00 per bigha, for block "C" at the rate of Rs.1,000.00 per bigha and for block "D" at the rate of Rs. 800.00 per bigha. The appellants/their predecessors in-interest are aggrieved of the compensation tendered by the Collector and made a reference petition u/s 18 of the Act for determination of the compensation by the Court. The reference petition was entrusted to the Court of Shri F.S. Gill, the then Addl. District Judge, Delhi. He determined the compensation for the acquired land and enhanced it for block "A" at the rate of Rs. 3,500.00 per bigha, for block "B" at the rate of Rs. 2,240.00 per bigha, for block "C" at the rate of Rs. 1,400.00 per bigha and for block "D" at the rate of Rs. 1,120.00 per bigha, in his judgment and decree dated November 27, 1970.

(2) The appellants have filed on April 18, 1987 an appeal against the said judgment and decree dated November 27, 1970 u/s 54 of the Act and have prayed in the present application u/s 5 of the Limitation Act, 1963 read with Section 151 of the CPC for condensation of delay of about seventeen years in filing the appeal.

(3) The Limitation Act, 1963 is a consolidating and amending statute relating to the limitation of suits, appeals and certain specified type of applications to the Court and it is a piece of adjective and procedural law. Section 5 of the Limitation Act provides for the extension of prescribed period of limitation and for admission of the appeal after the prescribed period if the appellant satisfies the Court that he had sufficient cause for not preferring the appeal within such period. The rules of limitation are rules of procedure and the period of limitation is prescribed with a view to force the aggrieved parties to commence their suits or file their appeals within the prescribed period. The effect of the law of limitation is to extinguish, after the prescribed period, the legal remedy and in some cases, also a legal right. Where the time prescribed has once expired, a very valuable right accrues to the successful party and such right ought not to be lightly disturbed. The law " of limitation and prescription may appear to operate harshly and sometimes unjustly, but where such law has been adopted by the State for reasons of policy which justify the rule, it has to be applied with stringency.

(4) The legislature has, however, vested a discretionary power in the Court to be exercised in suitable cases to admit the appeal after the prescribed period, but the existence of sufficient cause is a condition precedent for the exercise of the power for granting extension of time. The Court has to be fully satisfied of the justice of the grounds on which it is sought to obtain the extension of the prescribed period. The appellants allege in the application, rather it is apposite to quote in extenso :- "2. That these applicants/their fathers/assignors could not file the appeal against the above said judgment/decreed for the reasons that they were ignorance of their rights and proper market value of the land. They were illiterate people and did not know the technicalities and procedure of law as well as were not well versed about the prospects of the compensation. They were also hesitant to come to the courts and contests the case further filing appeals. There was no proper advice by their counsel nor they could understand it. 3. That they were poor and also could not afford to pay the court fee and enhancement allowed by the Lower Court was not sufficient to encourage them and file appeal. The poverty, illiteracy and ignorance contributed in not filing their appeal."

(5) These are the circumstances or grounds disclosed for consideration of the Court to come to the conclusion whether the discretion that is conferred on it for extending the time for preferring the appeal should be exercised. in favor of the applicants or not. Section 5 gives a wide discretion to the Court but it is a discretion which is judicial and not arbitrary. It is true that the rules of procedure are meant for advancing and not obstructing the cause of justice. The words

"sufficient cause" should receive a construction so as to advance substantial justice, but gross delay due to negligence, inexcusable carelessness or inaction cannot be condoned. There is a delay of about seventeen long years as against the period of limitation of 90 days prescribed by the Limitation Act. The appellants have not, in our view, been able to make out any cause much less sufficient cause, for the exercise of our discretion in their favor.

(6) The mere non-availability of the funds or poverty of the appellants in filing the appeal, in our opinion, is no ground for extension of time u/s 5. The appellants were granted enhancement of the compensation under the judgment and decree under appeal to an extent of about Rs, 75,000.00 and the Court fee required for appeal is Rs. 10,933.60 which has now been affixed. There are no allegations even as to how and why the enhancement allowed was not sufficient to pay the requisite court fee. Para 3 quoted above does not really amount to an Explanation for the delay.

(7) The alleged illiteracy and not knowing the technicalities and procedure of law by itself is not sufficient cause. The consensus of judicial opinion is that mere ignorance of law, without anything more, will not constitute sufficient cause. Pure and simple ignorance of law by itself cannot be a justification for condensation of delay of about seventeen years. There are as many as 34 appellants and it is hard to believe that none of them knew about the right of appeal u/s 54 of the Act, particularly when about 34,000 acres of land has been acquired under the same notification u/s 4 of the Act in Delhi and thousands of appeals have been filed in this Court, Infact, 569 bighas 19 bighas of the land in Kotia Mahigram Estate has been acquired under award No. 1374 and several appeals have been filed by the villagers from the same revenue estate.

(8) The last submission of Mr. L.C. Chechi is that it would not be fair and just" to deprive the holders of their land without payment of the true market value when the law, in so many terms, declares that they shall be paid such market value and even the time barred appeal should be entertained for that purpose. Reliance is placed on the provisions of Section 28-A of the Act and Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, . It was ruled:- "It must be remembered that this was not a dispute between two private citizens where it would be quite just and legitimate to confine the claimant to the claim made by him and not to award him any higher amount than that claimed though even in such case there may be situations where an amount higher than that claimed can be awarded to the claimant as for instance where an amount is claimed as due at the foot of an account. Here was a claim made by the appellants against the State Government for compensation for acquisition of their land and under the law, the State was bound to pay to the appellants compensation on the basis of the market value of the land acquired and if according to the judgments of the learned single Judge and the Division Bench, the market value of the land acquired was higher than that awarded by the Land Acquisition Collector or the additional District Judge, there is no reason

why the appellants should have been denied the benefit of payment of the market value so determined. To deny this benefit to the appellants would be tantamount to permitting the State Government to acquire the land of the appellants on payment of less than the true market value. There may be cases where, as for instance, under agrarian reform legislation, the holder of land may, legitimately, as a matter of social justice, with a view to eliminating concentration of land in the hands of a few and bringing about its equitable distribution, be deprived of land which is not being personally cultivated by him or which is in excess of the ceiling area with payment of little compensation or not compensation at all, but where land is acquired under the Land Acquisition Act, 1894, it would not be fair and just to deprive the holder of his land without payment of the true market value when the law, in so many terms, declares that he shall be paid such market value. The State Government must do what is fair and just to the citizen and should not, as far as possible except in cases where tax or revenue is received or recovered without protest or where the State Government would otherwise be irretrievably prejudiced, take up a technical plea to defeat the legitimate and just claim of the citizen....."

(9) The intention of the legislature in inserting the new provision after Section 28 of the Act as Section 28A-A which came into force with effect from September 24, 1984 is to give equal compensation to all persons whose lands had been compulsorily acquired by the Government under the same award and same notification u/s 4 of the Act. The purpose is to remove anomalies in the determination of compensation by the Collector and the Court in some cases, that is, to remove inequality in the payment of compensation for the same or similar quality of land to different interested person?. It provides for an additional remedy to all aggrieved persons whose land has been acquired to call upon the Collector to pay compensation at the rate determined by the Court in another case. It would give an opportunity to the Collector to re-determine the amount of compensation awarded by the Court. It gives a further relief to seek re-determination of the compensation by the Court if any one has obtained orders for payment of higher compensation for similar land acquired under the same award. But it does not apply to cases where the applicant has made an application to the Collector u/s 18. In that case he has to pursue his remedies of appeal. The legislature in its wisdom by inserting Section 28-A of the Act ordained the redetermination of the amount of compensation on the basis of the award of the Court, but restricted it to those claimants who have not moved the Court. It is for the legislature to extend or enlarge the scope of Section 28-A and not for us. We can only alert the attention of the legislature.

(10) With these observations, the application is dismissed with no order as to costs.