
(2012) 03 GAU CK 0120
In the Gauhati High Court
Case No : Misc. Case No. 2959 of 2008

North Eastern Frontier Railway	Vs	APPELLANT
Kirendra Rabha		RESPONDENT

Date of Decision : 20-03-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 54
Limitation Act, 1963 — Section 2, 5

Citation : (2012) 3 GLD 387 : (2012) 2 GLT 1028

Hon'ble Judges : Arup Kumar Goswami, J

Bench : Single Bench

Advocate : U. Chakraborty, for the Appellant; H. Das, for the Respondent

Judgement

A.K. Goswami, J.—Heard Mrs. U. Chakraborty, learned counsel for the applicant/petitioner. Also heard Mr. H Das, learned counsel appearing for the respondent. By this application u/s 5 of the Limitation Act, 1963, the petitioner prays for condonation of delay, which according to the petitioner, is of 448 days in filing the connected appeal u/s 54 of the Land Acquisition Act, 1894.

2. The respondent had filed an affidavit contending that no case has been made out by the petitioner for grant of condonation of delay.

3. On 12.09.11, when this matter was taken up, this Court directed the learned counsel for the applicant/petitioner to file an Additional Affidavit giving full details as to how the applicant/appellant moved to file the appeal after receipt of the notice from the Collector. The said Additional Affidavit was directed to be filed with full details within a period of 4 (four) weeks. The said Additional Affidavit was not filed.

4. The appeal has been preferred against the Judgment and Award dated 22.06.2004, passed by the District Judge, Goalpara, Assam, in Misc. L.A. Case No. 6/2000.

5. The Collector, Goalpara, had acquired land measuring 2 bighas 4 kathas 0

lecha belonging to the respondent for the purpose of construction of Broad Gauge (BG) railway line from Jogighopa to Guwahati in connection with LA Case No. 34/1987-88. The possession of the land was taken over on 06.02.1991 and the Collector had given an award of Rs. 20,000/- per bigha.

6. A Reference application was filed by the respondent u/s 18 of the Land Acquisition Act, 1894, and the same was registered as Misc. L. A. Case No. 6/2000.

7. The District Judge, Goalpara, Assam, passed a common judgment in Misc. L.A. Case Nos. 2/2000 to 9/2000, arising out of the Land Acquisition Case No. 34/1987-88.

8. In the application, it is stated that the petitioner was not made a party in the Reference case and therefore, the petitioner was not aware of the proceeding and only when the Deputy Commissioner, Goalpara, by letter No. 13.08.04 intimated the Deputy Chief Engineer (Construction), NF Railway, regarding the judgment and award dated 22.06.2004 of the learned District Judge, Goalpara, the authorities of the Railway came to know about the said judgment and award. The stated stand of the petitioner is that the aforesaid communication dated 13.08.2004 was received by the Deputy Chief Engineer (Construction), NF Railway on 23.08.2004.

9. The instant appeal along with this condonation application came to be filed on 16.05.2008 and therefore, the statement that the appeal is barred by only 448 days is, ex-facie, not correct. From the date of knowledge from 23.08.2004, the appeal is barred by about 1362 days.

10. It is also relevant to note at this stage that by the impugned judgment and award of the learned District Judge, Goalpara, the value of the land has been increased to Rs. 40,000/- per bigha from earlier Rs. 20,000/- per bigha.

11. It appears that 50% of the awarded amount amounting to Rs. 5,27,355/- passed in 17 numbers of Reference cases being Misc. Case (Ret) Nos. 2/2000 to 9/2000 and 44/ 92 to 52/92 had been deposited on 13.09.2005 and part of the amount deposited was also towards amount awarded in favour of the respondent.

12. More than 2 (two) years after receipt of notice from the Collector, Goalpara, a letter dated 13.09.2006 was issued by the Executive Engineer/CONII, NF Railway to one Railway advocate requesting him to obtain certified copies of the judgment and decree of the aforesaid Misc. Cases and on receipt of the same by the learned counsel on 08.11.2006, were furnished to the competent authority on 15.11.2006.

13. Thereafter, a decision was taken by the competent authority to prefer appeals and a letter dated 15.02.2007 was issued to the learned counsel with a request to file appeals against the aforesaid judgment and award.

14. The learned counsel furnished requirement of advalorem Court fee and the

cost in connection with filing of 17 numbers of appeals on 10/04/2007. After 8 (eight) months, the amount was paid to the learned counsel on 18.12.2007. Thereafter, some modifications were effected in the draft of the appeal and finally, the appeal was filed along with the condonation petition on 16.05.2008.

15. Mrs. U. Chakraborty, learned counsel for the petitioner submits that the petitioner has been able to show and demonstrate sufficient cause for condoning the delay that has been occasioned in preferring the appeal.

16. She has contended that the decision taken by the petitioner is a collective and institutional decision and therefore, it is only inevitable that some delay is bound to take place.

17. The learned counsel places reliance on the judgment of the Apex Court rendered in the cases of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , State of Manipur and Others Vs. Khumanlambam Nilaroton Singh, , State of Nagaland Vs. Lipok AO and Others, .

18. Mr. H. Das, learned counsel for the respondent submits that in the instant case, delay has not been properly and satisfactorily explained and even though this Court had granted an opportunity to the petitioner to file an additional affidavit to indicate in detail how the petitioner had processed the file relating to filing of the appeal, such affidavit was not filed although 6 (Six) months had lapsed from the date of passing of the said order. The learned counsel submits that the events depicted in the condonation application would indicate the casual manner in which the matter was dealt with. According to him, for long 2 (two) years, the authorities were not even contemplating to prefer an appeal and it is only with the issuance of the letter dated 13.09.2006, a step was taken towards filing of the appeal.

19. Even after the certified copies were made available by the Counsel, the authorities had taken nearly one and half year in preferring the appeal before this Court and thus the petitioner has miserably failed to show sufficient cause for condonation of delay in preferring the appeal, he submits.

20. The learned counsel has placed reliance on the judgment of the Apex Court in D. Gopinathan Pillai Vs. State of Kerala and Another, .

21. Before we proceed further, it would be appropriate to consider the cases cited by the parties in support of their contentions.

22. In the Collector, Land Acquisition (Supra), the Apex Court noted that the expression "sufficient cause" employed by the legislator is elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice. The Apex Court also noted that on account of an impersonal machinery and the inherited bureaucratic methodology imbued with note-making, file-pushing and passing-on-the buck ethos, delay on the part of the State is less difficult to understand, though more difficult to approve.

23. In the aforesaid case, the High Court of Jammu & Kashmir had dismissed an application for condonation of delay of 4 (four) days in preferring the appeal and the Apex Court had recorded a finding that there was sufficient cause for condoning the delay in the institution of the appeal.

24. The State of Nagaland (Supra) centered around on an order of the High Court refusing condonation of delay of 57 days in filing an appeal against acquittal of the accused person. The Apex Court laid down that a pragmatic approach has to be adopted and when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred.

25. In the State of Manipur (Supra) there was a delay of 554 days in filing a writ appeal. The learned Division Bench of this Court took note of exceptional circumstances arising from prolonged strike, cease work etc, and considered that the explanation of delay was satisfactory and therefore, the Court invoked discretionary power for the interest of justice to condone the delay of 554 days.

26. In D. Gopinathan Pillai, (Supra), the Apex Court pointed out that it is a well-considered principle of law that the delay cannot be condoned without assigning any reasonable, satisfactory, sufficient and proper reason.

27. The term sufficient cause has not been defined u/s 2 of the Limitation Act, 1963. It means and is construed as a cause beyond control of the party seeking indulgence for extension of period of limitation. No hard and fast rule can be laid down as to what constitutes sufficient cause. Whether sufficient cause is shown or not depends upon the facts of the individual case.

28. There can be no two opinions that sufficient cause should receive a liberal construction so as to advance substantial justice when no negligence and inaction is imputable to a party. While considering an application u/s 5 of the Limitation Act, 1963, it is relevant to bear in mind two important considerations. One consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties and this legal right which has accrued to the decree-holder by lapse of time should not be lightly disturbed. The other consideration which cannot be ignored is that if sufficient cause is shown for excusing the delay, discretion has been bestowed on the Court to condone the delay and admit the appeal.

29. This discretion has been conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. Thus, proof of sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the Court. Though no special indulgence can be showed to the Government, which in similar circumstances is not shown to an individual, one has to take a pragmatic and practical view of the working of the Government without being overly indulgent to the pace in which the Government works. Therefore, certain amount of latitude may not be impermissible.

30. Adverting to the facts of this case, what is striking is that the petitioner projected a case that there was delay of 448 days in preferring the appeal, which was filed on 16.05.2008.

which has turned out to be barred by about 1362 days.

31. Although in the letter dated 13.09.05, by which a cheque of Rs. 5,27,355/- was deposited to the Deputy Commissioner, Goalpara, for filing appeals before the Gauhati High Court, no materials have been placed on record on what date the decision was taken to prefer an appeal.

32. In paragraph 10 of the application, the petitioner averred that there was no requirement to make payment of 50% of the enhanced decretal amount, but the said amount was deposited as a good gesture. In paragraph 15 of the application, it has been stated that on receipt of the certified copies of the impugned judgments and decrees, the competent authority of N.F. Railway, being aggrieved, decided to challenge the impugned judgment and decree by filing appeals.

33. Letter dated 13.09.2006, on the other hand, indicates that the certified copy of decree and judgment was sought to be obtained for filing appeals. No clear stand is discern-able from the application. From 13.09.2006 also, delay is much more than 448 days. If, as indicated in the letter dated 13.09.2005, an appeal was sought to be filed, there is no explanation as to why it took one more year to issue a letter to the Advocate on 13.09.2006 for obtaining certified copies necessary for preferring appeal.

34. An opportunity was granted to the petitioner to file an additional affidavit to clarify as to in what manner the authority proceeded to process the file for filing appeals after receipt of the notice from the Collector. However, that opportunity was also not availed of by the petitioner.

35. Considering the matter in its entirety, I am constrained to hold that the petitioner failed to show sufficient cause for condonation of delay in preferring this appeal.

36. In view of the above, the application for condonation of delay is rejected. Misc. Case stands disposed of.