

(2008) 11 SC CK 0027

In the Supreme Court Of India

Case No : Civil Appeal No"s. 6414-6417 of 2008 (Arising out of SLP (C) No"s. 21011-21014 of 2007)

Pundlik Jalam Patil (D) by Lrs.

APPELLANT

Vs

Exe. Eng. Jalgaon Medium Project and Another

RESPONDENT

Date of Decision : 03-11-2008

Acts Referred:

Constitution of India, 1950 — Article 136
Limitation Act, 1963 — Section 18, 5

Citation : (2008) 6 ALLMR 954 : (2009) 5 ALT 1 : (2008) 6 ALT 38 : (2008) AWC 4015 Supp : (2008) 6 BomCR 513 : (2009) 1 CLR 123 : (2008) 5 CTC 663 : (2009) 5 KCCR 3328 : (2009) 2 MLJ 1047 : (2009) 1 PLJR 76 : (2009) 153 PLR 128 : (2009) 106 RD 650 : (2008) 13 SCALE

Hon'ble Judges : S. H. Kapadia, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : Soli J. Sorabjee, Raghuvir Patil, Gautam Godara and Gopal Balwant Sathe, for the Appellant; V.A. Mohta Sudhanshu S. Choudhari, Naresh Kumar, Mahesh Deshmukh, Sanjay V. Kharade and Asha G. Nair, for the Respondent

Final Decision : Allowed

Judgement

B. Sudershan Reddy, J.—Leave granted.

2. These appeals, by Special Leave, are directed against the common judgment and order dated 22/23.08.2007 of the High Court of Bombay, Bench at Aurangabad allowing the applications filed by the first respondent u/s 5 of the Limitation Act, 1963 (hereinafter referred to as 'the said Act') to condone the delay of 1724 days in filing appeals against the award passed by the Civil Judge, Senior Division, Jalgaon in land acquisition cases. The High Court accepted the explanation offered by the respondent No. 1 herein for the apparent inordinate delay in filing the appeals against the award of the Reference Court.

3. Brief facts needed for disposal of these appeals are as under:

4. The lands belonging to the appellants were acquired at the instance of the

respondent for a public purpose under the draft Notification published in Maharashtra Government Gazette on 06.03.1997. The Special Land Acquisition Officer, Upper Tapi Project (Hatnur), Jalgaon passed the award dated 31.3.1999. The appellant sought for reference of the said award u/s 18 of the Act seeking enhancement of the compensation. The learned Civil Judge, Senior Division, Jalgaon disposed of the references vide award/judgment dated 9.3.2000 enhancing the compensation over and above the amount fixed in the award passed by the Special Land Acquisition Officer. Be it noted, not only the Special Land Acquisition Officer but the first respondent herein was also impleaded as a party respondent in the land acquisition reference case. The Executive Engineer, Medium Project Division, Jalgaon filed appearance through its counsel but did not lead any evidence though a written statement opposing the claim of enhancement was filed in the Reference Court. On 24.03.2000 the Government Pleader, Jalgaon submitted report and expressed his opinion that it is a fit case for filing the appeal on the grounds stated in the report itself. The Law and Judiciary Department took decision on 13.4.2000 to "acquiesce in the decision" of the Reference Court and communicated the same to all the concerned including the first respondent herein who is the beneficiary of the acquisition.

5. It is required to notice that neither the Special Land Acquisition Officer nor the beneficiary of the acquisition raised little finger and objected to the decision taken in the matter. The Special Land Acquisition Officer after about one year vide its letter dated 31.5.2001 addressed the Principal Secretary to Law & Judiciary Department, Government of Maharashtra for reviewing the decision taken regarding acquiesce in the decision of Reference Court in the matter. The government reiterated its decision and expressed its view that under the rules the Joint Secretary Law & Judiciary Department was competent to take appropriate decision in the matter on behalf of the Government and found no reason to review the decision so taken by its Joint Secretary. The Government accordingly informed not only the Special Land Acquisition Officer but also the first respondent that more than one year had elapsed and there were no grounds for condoning the delay in filing the appeals.

6. The beneficiary of the acquisition who is contesting the appeals before us did not take any steps whatsoever after receiving the said communication until 25.2.2005 on which date the appeals were preferred along with the applications to condone the delay of 1724 days except indulging in some correspondence long after expiry of limitation. It is required to notice that the beneficiary of the acquisition made arrangements for the deposit of the decretal amount to be deposited by the Special Land Acquisition Officer in the Reference Court in May, 2001 itself. Some further amounts towards interest etc. were of course not deposited. The appellant executed the decree and realised the entire money deposited into the court.

7. The High Court having considered the applications filed u/s 5 of Limitation Act condoned the inordinate delay of 1724 days in filing the appeals. Hence these

appeals by special leave.

8. Shri Soli J. Sorabjee, learned senior counsel appearing on behalf of the appellant submitted that the approach adopted by the High Court in deciding the applications is totally erroneous and cannot be sustained. The jurisdiction vested in the courts to consider whether any sufficient cause has been shown to condone delay is no doubt discretionary but the discretion must be exercised judicially and not in any arbitrary manner. It was further contended that the averments made in the applications filed by the respondent herein seeking condonation of delay in preferring the appeal is full of patently false averments. On this ground alone the applications ought to have been dismissed. There is no explanation whatsoever forthcoming as to why respondent being beneficiary could not have preferred the appeals if it was aggrieved by the award passed by the Reference Court.

9. Shri V.A. Mohta, learned senior counsel appearing on behalf of the beneficiary of the acquisition submitted that the High Court in its discretion condoned the delay in filing the appeal and even if it is an erroneous one this Court should not interfere in exercise of its jurisdiction under Article 136 of the Constitution of India. It was submitted that the Reference Court granted exorbitant amount towards compensation thereby adversely affecting the public revenue and the said circumstance itself requires consideration of appeals on merits. The learned senior counsel submitted that the High Court rightly intervened in order to protect public interest. It was also submitted that there were no mala fides on part of the beneficiary of acquisition in not preferring the appeal within the period of limitation.

10. We have given our anxious consideration to the rival submissions made during the course of hearing of these appeals.

11. Whether the respondent made incorrect statement in the application seeking condonation of delay?

There is no dispute whatsoever that the respondent being the beneficiary of the acquisition has been duly impleaded as a party respondent in the reference cases as is required in law. It not only appeared in the matter through a properly instructed Counsel but also filed its written statement opposing the claim for enhancement of compensation but did not choose to lead any evidence whatsoever. In the application filed in the High Court the plea taken by the respondent is as under:

The applicant submits that, although the applicant being Acquiring Body, was arrayed as opponent in the said reference, the opponent No. 4 herein (Original Opponent No. 1) S.L.A.O. or his subordinate contested the said reference by filing written statement. Therefore, this applicant was unaware about the stand taken by S.L.A.O. as well as the impugned judgment and award.

This averment in the application on the face of it is totally incorrect. The Law &

Judiciary Department as early as on 13.4.2000 i.e. to say within the period of 15 days from the date of the award of the Reference Court communicated its decision to acquiesce in the decision of the Reference Court and communicated the same to all the concerned including the beneficiary of the acquisition. It is not the case that the Executive Engineer did not receive the said communication. Having received the said communication the respondent did not act in the matter and initiated any steps for filing the appeals if it was really aggrieved by the decision of the Reference Court. There is no doubt whatsoever in our mind that the respondent made totally incorrect statement in the application filed in the High Court. We express our reservation as to the manner in which a public authority conducted itself in its anxiety to somehow get the relief from the court. In our considered opinion incorrect statement made in the application seeking condonation of delay itself is sufficient to reject the application without any further inquiry as to whether the averments made in the application reveal sufficient cause to condone the delay. That a party taking a false stand to get rid of the bar of limitation should not be encouraged to get any premium on the falsehood on his part by condoning delay. [See: (1993)1SCC 572]]

12. Whether the High Court properly exercised its discretion?

The High Court in its order having noticed the relevant fact in categorical terms held that there was no substance in the plea that it was unaware about the judgment and award passed by the Reference Court since it was a party before the Reference Court and contested the matter. The High Court also found that the decision of the Joint Secretary to acquiesce was communicated to the beneficiary of the acquisition and therefore, its plea about the unawareness of the award and decision taken by the Government cannot be accepted. The High Court in its order emphatically rejected the ground raised by the respondent in that regard. In such view of the matter can it be said that the High Court properly exercised its jurisdiction? It is true that the power to condone the delay rests with the court in which the application was filed beyond time and decide whether there is sufficient cause for condoning the delay and ordinarily the superior court may not interfere with such discretion even if some error is to be found in the discretion so exercised by the court but where there is no sufficient cause for condoning the delay but the delay was condoned, it is a case of discretion not being exercised judicially and the order becomes vulnerable and susceptible for its correction by the superior court. The High Court having found that the respondent in its application made incorrect submission that it had no knowledge of the award passed by the Reference Court ought to have refused to exercise its discretion. The High Court exercised its discretion on wrong principles. In that view of the matter we cannot sustain the exercise of discretion in the manner done by the High Court.

13. Whether the respondent had satisfied the court that it had sufficient cause for not preferring the appeals within the prescribed time?

Section 5 of the Limitation Act provides for extension of prescribed period of

limitation in certain cases and confers jurisdiction upon the court to admit any application or any appeal after the prescribed period if it is satisfied that the appellant or applicant had sufficient cause for not preferring such appeal or application within the prescribed period.

14. In the present case the Reference Court passed the award u/s 18 of the Act on 09.03.2000. On 13.04.2000 itself the Government took decision not to prefer any appeal against the decree and award passed by the Reference Court and accordingly communicated its decision to all the concerned including the respondent. The Government vide its order dated 21.05.2001 refused to review its decision and accordingly informed the same to the respondent beneficiary of acquisition. The respondent beneficiary in its application seeking condonation of delay refers to the letter dated 19.11.2003 issued by the Secretary, Irrigation Department, directing it to obtain legal advice from an advocate to initiate appropriate proceedings. The respondent instead of acting in the matter once again had chosen to address S.L.A.O. vide letter dated 06.02.2004 with a request to challenge the impugned judgment and award of the Reference Court. The same request was made by repeating reminders upto 12.07.2004. On 18.05.2004, the respondent beneficiary addressed a letter to the Collector requesting him to direct the Land Acquisition Officer to prefer an appeal. This correspondence continued up to 21.06.2004. Thereafter, the application along with the appeal seeking condonation of delay was filed on 25th February, 2005.

The applicant having set the machinery in motion cannot abandon it to resume it after number of years because the authority with whom it had entered into correspondence did not heed to its request to file appeals. The question is : Can the respondent/applicant in this case take advantage of its negligence, after lapse of number of years, of the decision of Government? It knew the exact grounds on which appeals could have been preferred. The law will presume that it knew of its right to file appeal against the award. Everybody is presumed to know law. It was its duty to prefer appeals before the court for consideration which it did not. There is no explanation forthcoming in this regard. The evidence on record suggest neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and `do not slumber over their rights."

The question for consideration is whether the averments disclosed any sufficient cause to condone the inordinate delay of 1724 days in filing the appeals.

15. In Arjit Singh Thakur Singh and anr. vs. State of Gujarat [(1981) 1 SCC 495] this court observed :

It is true that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before limitation expired it was not possible to file

the appeal within time. No event or circumstance arising after the expiry of limitation can constitute sufficient cause.

(Emphasis supplied)

This judgment squarely applies to the facts in hand.

16. The respondent beneficiary of the acquisition did not initiate any steps whatsoever before expiry of limitation and no circumstances are placed before the court that steps were taken to file appeals but it was not possible to file the appeals within time.

17. Shri Mohta, learned senior counsel relying on the decision of this court in *N. Balakrishnan vs. M. Krishnamurthy* [(1998) 7 SCC 123] submitted that length of delay is no matter, acceptability of explanation is the only criterion. It was submitted that if the explanation offered does not smack of mala fides or it is not put forth as part of dilatory tactics the court must show utmost consideration to the suitor. The very said decision upon which reliance has been placed holds that the law of limitation fixes a life span for every legal remedy for the redress of the legal injury suffered. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of Limitation is thus founded on public policy. The decision does not lay down that a lethargic litigant can leisurely choose his own time in preferring appeal or application as the case may be. On the other hand, in the said judgment it is said that court should not forget the opposite party altogether. It is observed:

It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

18. In *Ramlal and others vs. Rewa Coalfields Ltd.* [AIR 1962 SC 361] this court held that: "in construing Section 5 of the Limitation Act, it is relevant to bear in mind two important considerations. The first consideration is that the expiration of period of limitation prescribed for making an appeal gives rise to 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 light heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause of excusing delay is shown discretion is given to the court to condone the delay and admit the appeal. `It is further necessary to emphasis that even if the sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by Section 5. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage the diligence of the party of its bona fides may fall for consideration." On the facts and in the circumstances, we are of the opinion that the respondent beneficiary

was not diligent in availing the remedy of appeal. The averments made in the application seeking condonation of delay in filing appeals do not show any acceptable cause much less sufficient cause to exercise courts' discretion in its favour.

19. Learned senior counsel for the respondent also placed reliance upon the decision of this court in *Union of India vs. Sube Ram and others* [(1997) 9 SCC 69]. This court condoned delay of 3379 days in preferring the appeals by Special Leave. The said decision is mostly confined to the facts of that case and does not lay down any law as such requiring us to make any further analysis of the judgment.

20. Submissions based on public interest and involvement of public money:

The learned Counsel for the respondent relied upon the decision of this court in *Union of India vs. Balbir Singh and ors.* [2000 (10)SCC 611] in support of his submission that the courts should be liberal in condoning the delay particularly whenever public interest and public money is involved. All that the said decision states is that in the circumstances of the case the court was inclined to condone the delay, particularly, "because it is in the public interest as public money is involved." The facts are not evident from the judgment and as to what were those public interest parameters that were taken into consideration to condone the delay in filing appeals.

21. Basically the laws of Limitation are founded on public policy. In Halsbury's Laws of England, 4th Ed., Vol. 28, p. 266, para 605, the policy of the Limitation Acts is laid down as follows:

The courts have expressed at least three different reasons supporting the existence of statutes of limitation, namely, (i) that long dormant claims have more of cruelty than justice in them, (ii) that a defendant might have lost the evidence to dispute the stated claim, (iii) that persons with good causes of actions should pursue them with reasonable diligence.

22. Statutes of limitation are sometimes described as 'statutes of peace'. An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. This court in *Rajender Singh and others vs. Santa Singh and others* [(1973) 2 SCC 705] has observed : "the object of law of Limitation is to prevent disturbance and deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches". In *Motichand vs. Munshi* [(1969) 2 SCR 824] , this court observed that this principle is based on the maxim "interest republicae ut sit finis litum, that is, the interest of the State requires that there should be end to litigation but at the same time law of Limitation are a means to ensuring private justice suppressing fraud and perjury, quickening diligence and preventing oppression.

It needs no restatement at our hands that the object for fixing time limit for

litigation is based on public policy fixing a life span for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.

23. Public interest undoubtedly is a paramount consideration in exercising the courts discretion wherever conferred upon it by the relevant statutes. Pursuing stale claims and multiplicity of proceedings in no manner sub-serves public interest. Prompt and timely payment of compensation to the land losers facilitating their rehabilitation/resettlement is equally an integral part of public policy. Public interest demands that the State or the beneficiary of acquisition, as the case may be, should not be allowed to indulge in any act to unsettle the settled legal rights accrued in law by resorting to avoidable litigation unless the claimants are guilty of deriving benefit to which they are otherwise not entitled, in any fraudulent manner. One should not forget the basic fact that what is acquired is not the land but the livelihood of the land losers. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed u/s 5 of the Limitation Act. Dragging the land losers to courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. It serves no public interest.

24. It is true when the State and its instrumentalities are the applicants seeking condonation of delay they may be entitled to certain amount of latitude but the law of limitation is same for citizen and for Governmental authorities. Limitation Act does not provide for a different period to the government in filing appeals or applications as such. It would be a different matter where the Government makes out a case where public interest was shown to have suffered owing to acts of fraud or collusion on the part of its officers or agents and where the officers were clearly at cross purposes with it. In a given case if any such facts are pleaded or proved they cannot be excluded from consideration and those factors may go into the judicial verdict. In the present case, no such facts are pleaded and proved though a feeble attempt by the learned Counsel for the respondent was made to suggest collusion and fraud but without any basis. We cannot entertain the submission made across the Bar without there being any proper foundation in the pleadings.

25. For the aforesaid reasons, we hold that the High Court gravely erred and exercised its discretion to condone the inordinate delay of 1724 days though no sufficient cause has been shown by the applicants. It is for that reason, we interfere with the decision of the High Court and set aside the same. The appeals are accordingly allowed without any orders as to costs.