
(2020) 08 MP CK 0187

In the Madhya Pradesh High Court

Case No : Writ Petition No. 8334 Of 2020

Ramprasad Baiswar

APPELLANT

Vs

State Of M.P. & Others

RESPONDENT

Date of Decision : 26-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

National Highways Act, 1956 — 3G(5) Limitation Act, 1963 — Section 5, Article 137

Citation : (2020) 08 MP CK 0187

Hon'ble Judges : Ajay Kumar Mittal, CJ; Anjuli Palo, J

Bench : Division Bench

Advocate : Chandrahas Dubey, Pushpendra Yadav

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, CJ

1. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner challenging an order dated 06.01.2020 (Annexure P-5) passed by the Commissioner/Arbitrator, Rewa Division, Rewa dismissing his application under Section 3G(5) of the National Highways Act, 1956 (in short "the Act") on the ground of delay.

2. According to the petitioner, vide judgment and decree dated 18.04.2011 passed by the Civil Judge, Class-II, Deosar, District Singrauli in Civil Suit No.92A/2004, the petitioner and respondent No.5, Jagram Baiswar, both have been declared as Bhumiswamis of the land bearing Khasra Nos.448, 449 and 469 (Old Nos.292 and 295) situate at village Mahdeiya. Thereafter, the Tehsildar vide order dated 19.12.2011 (Annexure P-3) also directed for recording their names in the revenue record. By award dated 02.09.2013 (Annexure P-1) passed by the respondent No.3 - Land Acquisition Officer cum Competent Authority under the Act the aforesaid land has been acquired and in lieu whereof, compensation has been awarded in favour of the respondent Nos.6 to 9 without granting any

opportunity to the petitioner. Against the award dated 02.09.2013, the petitioner moved an application under Section 3G(5) of the Act before the Commissioner, Rewa, who is designated Arbitrator under the Act, along with an application under Section 5 of the Limitation Act, 1963 (for brevity "the Limitation Act"), which has been dismissed vide order impugned herein on the ground that the same has been filed after expiry of period of three years from the date of the award and further the reasons ascribed in the application for condonation of delay do not appear to be bona fide.

3. Learned counsel for the petitioner submitted that the petitioner is an illiterate due to which he did not have knowledge of the publication of the Notification regarding acquisition of the land. Similarly, the petitioner did not come to know that even after the order passed by the Tehsildar dated 19.12.2011 (Annexure P-3) in relation to mutation of the name of the petitioner, no correction was made by the Patwari in the revenue record and Khasras and taking advantage of the same, the respondent Nos.6 to 9 have fraudulently received the amount of compensation in respect of the petitioner's land. It was only on 05.12.2019 that during discussion with the respondent No.6 the fact of acquisition of the land and grant of compensation came to his knowledge and after obtaining the certified copy of the award on 31.12.2019, immediately the application was filed before the Commissioner on 03.01.2020 along with an application for condonation of delay. In this background, it was urged that the Commissioner has erred in passing the impugned order and overlooking the bona fide reasons shown in the application for condonation of delay.

4. On the basis of the facts borne out from the material on record it is apparent that the petitioner is not aggrieved by the determination of the amount payable as compensation as envisaged under Section 3G of the Act. The grievance of the petitioner only pertains to the grant of compensation to him and the respondent No.5 being the joint owners of the land and not to the respondent Nos.6 to 9, who are not the owners of the said land. In this view of the matter, the Commissioner has correctly observed that the provisions of Section 3G(5) of the Act are not attracted in the present case. In this context, it would be apt to quote the relevant provisions of the Act, which read as under:-

"3G. Determination of amount payable as compensation -

(1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent of the amount determined under sub-section (1), for that land.

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government."

5. Still further, though there is no period of limitation prescribed under the Act for filing an application under Section 3G(5) thereof before the Arbitrator and therefore, limitation as prescribed under Article 137 of the Schedule appended to Limitation Act will be applicable, which is three years from the date of arising of cause of action. The cause of action arose on the date of passing of the award by the competent authority. A perusal of the impugned order shows that the Arbitrator has also considered the application of the petitioner for condonation of delay and the provisions of the Limitation Act and held that as against the award dated 02.09.2013, the petitioner ought to have filed the application within three years i.e. on or before 03.09.2016 but the petitioner has failed to give any bona fide reason for filing the application beyond the expiry of three years. Admittedly, the application was filed on 03.01.2020 which is much beyond the expiry of the prescribed period of three years. Thus, the application filed by the petitioner is barred by more than three years and four months from the date of expiry of the prescribed period of limitation. The only ground taken by the petitioner is that on account of being illiterate he was not having knowledge of the acquisition proceedings but the fact of the matter is that he claims to be the owner of the subject land by virtue of the decree passed by the Civil Court, which has been challenged by the said respondents before the Appellate Court. The petitioner has and is facing litigation with respect to the subject land and therefore, the ground of being not aware of the acquisition proceedings cannot be accepted.

6. In view of the said fact, the petitioner has failed to give reasonable explanation or justification for condonation of inordinate delay so as to warrant exercise of discretionary jurisdiction for condonation of delay. The view as such is supported by the judgment of the Supreme Court in *Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation* and another, (2010) 5 SCC 459 and *R.B. Ramlingam v. R.B. Bhavaneswari*, (2009) 2 SCC 689 wherein it is held that the Courts should adopt liberal approach where delay is of short period whereas the proof required should be strict where the delay is inordinate. Further, it was also observed that judgments dealing with the condonation of delay may not lay down any standard or objective test but is purely an individualistic test. The court is required to examine while adjudicating the matter relating to condonation of delay on exercising judicial discretion on individual facts involved therein. There does not exist any exhaustive list constituting sufficient cause. A litigant is required to establish that in spite of acting with due care and caution, the delay had occurred due to circumstances beyond his control and was inevitable. In our considered opinion, the case of the present petitioner does not rest in the category of short delay or that he had been vigilant in pursuing the remedy but was prevented by a sufficient cause.

7. In view of the foregoing reasons, the writ petition sans substance, is accordingly dismissed.