

(2024) 03 GUJ CK 0022

In the Gujarat High Court

Case No : R/Civil Application (For Condonation Of Delay) No. 1098 Of 2024 In F/
First Appeal No. 4877 Of 2024

Sagar Raja Nathu & Ors

APPELLANT

Vs

State Of Gujarat & Anr

RESPONDENT

Date of Decision : 05-03-2024

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2024) 03 GUJ CK 0022

Hon'ble Judges : Devan M. Desai, J

Bench : Single Bench

Advocate : Krushnakant D Patel, Tejas P Satta, Aditya D Davda

Final Decision : Allowed

Judgement

Devan M. Desai, J

1. Rule. Learned Assistant Government Pleader appears on advance copy, waives service of notice of Rule for respondent-State.
2. Heard learned advocates for the respective parties.
3. Learned advocate for the applicants places on record the copy of the order dated 08.02.2024 passed in Civil Application (For Condonation of Delay) No.641 of 2024 in F/First Appeal No.34390 of 2023 by this Court, which is taken on record.
4. By way of present application filed under Section 5 of the Limitation Act, 1963, the applicants have prayed to condone delay of 2754 days caused in preferring captioned First Appeal on the reasons stated in the application.
5. It is submitted that the present First Appeal is arising out of the same group of the Land Acquisition Reference Case Nos.111 of 1994 to 155 of 1994, wherein the delay has been condoned by this Court. The present First Appeal is arising out of the Land Reference Case No.127 of 1994 from the Land Acquisition

Reference Case Nos.111 of 1994 to 155 of 1994.

6. Learned advocate for the applicants has submitted that the applicants are not much literate and they are poor agriculturists. He has further submitted that the applicants were not aware about the procedure of the Court of law which could enable them to file Appeal within limitation. Learned advocate for the applicants would also emphasize on the decision of the Hon'ble Supreme Court in case of K. Subbarayadu & Ors vs. The Special Deputy Collector, (Land Acquisition) reported in 2017 (12) SCC 840 and would submit that considering the law laid down by the Hon'ble Supreme Court, the applicants-appellants would also waive their right to claim for interest upon enhanced compensation, if any, during the period of delay.

7. Per contra, this application is vehemently opposed by the learned Assistant Government Pleader for respondent-State by making submission that delay has not sufficiently been explained and whereas under such circumstances, the application may not be considered by this Court.

8. Heard the learned advocates for the respective parties and perused the documents on record and also perused the decisions of the Hon'ble Apex Court in case of Collector, Land Acquisition, Anantnag and Anr. Vs. Msr. Katji and Ors. reported in AIR 1987 SC 1353 and Dhiraj Singh (Dead) Through Legal Heirs Vs. State of Haryana and Ors. reported in 2014 (14) SCC 127 relied upon by the learned advocate for the applicants.

9. The Hon'ble Apex Court in case of Collector, Land Acquisition, Anantnag (supra) has observed as thus:

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a nondeliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing

injustice and is expected to do so."

10. The Hon'ble Apex Court in case of Dhiraj Singh (supra) has observed as thus :

"we can take judicial notice of the fact that villagers in our country are by and large illiterate and are not conversant with the intricacies of law. They are usually guided by their covillagers, who are familiar with the proceedings in the Courts or the advocates with whom they get in touch for redressal of their grievance. Affidavits filed in support of the applications for condonation of delay are usually drafted by the advocates on the basis of halfbaked information made available by the affected persons. Therefore, in the acquisition matters involving claim for award of just compensation, the Court should adopt a liberal approach and either grant time to the party to file better affidavit to explain delay or suo motu take cognizance of the fact that large number of other similarly situated persons who were affected by the determination of compensation by the Land Acquisition Officer, or the Reference Court have been granted relief." In Samiyathal v. Tahsildar decided on 5-7-2013, this Court took cognizance of the fact that many landowners may not have been able to seek intervention of this Court for grant of enhanced compensation due to illiteracy, poverty and ignorance and issued direction that those who have not filed special leave petition should be given enhanced compensation."

11. Furthermore, this Court also relies upon the decision of the Hon'ble Apex Court in case of K. Subbarayudu and Ors. (supra), whereby the Hon'ble Apex Court has inter alia condoned delay considering the submission on part of the claimants therein that they would not claim interest on the enhanced amount for the delay period.

12. Having regard to the law laid down by the Hon'ble Supreme Court, more particularly whereby an application for condonation of delay is required to be considered liberally and further having regard to the statement made by learned advocate for the applicants, upon instructions and as per the decision of the Hon'ble Supreme Court in case of K. Subbaryadu & Ors (supra) in the considered opinion of this Court the present Civil Application deserves consideration.

13. Delay of 2754 days which has occurred in preferring First Appeal challenging Judgment and Decree dated 15.05.2014 passed by learned Principal Senior Civil Judge, Khambhaliya in Land Reference Case No. 127/1994 in group of Land Acquisition Reference (LAR) Case Nos.111/1994 to 155/1994 is condoned, subject to the condition that the claimants shall not claim interest upon enhanced compensation, if any, for the period of delay.

14. With these observations and direction, the present Civil Application stands allowed. Rule is made absolute to the aforesaid extent.