

(1995) 01 KAR CK 0001
In the Karnataka High Court
Case No : M.F.A. No's. 192 to 199 of 1995

Saibanna

APPELLANT

Vs

Assistant Commissioner and Land Acquisition Officer

RESPONDENT

Date of Decision : 11-01-1995

Acts Referred:

Citation : (1995) ILR (Kar) 1137 : (1995) 2 KarLJ 54

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : S.P. Shankar, for the Appellant; Government Advocate, for the Respondent

Judgement

M.F. Saldanha, J.—This is a set of Appeals preferred by a group of agriculturists whose lands were acquired by the State for a public purpose, namely, an irrigation project. The Appeals are basically for purposes of obtaining enhanced compensation and proceed on the basis that this Court has enhanced the compensation in certain other similar cases. There is a considerable delay in the presentation of these Appeals. Mr. Shankar, learned Counsel who represents the appellants in all these cases has filed the necessary affidavits in support of the I.As. for condonation of delay in each case. Basically, each of the appellants contends that the agricultural lands which were the source of livelihood have been acquired by the State, as a result of which the appellants had to migrate elsewhere in search of jobs. Admittedly, from a reading of the affidavits that have been filed, what emerges is that the appellants are all small agriculturists, obviously coming from a rural background and, possibly illiterate or semi-literate. Their status is such that the compensation that they receive for the acquisition of their lands is something of consequence because it is possibly, in the majority of cases, that these lands are the only family asset and source of livelihood. Under these circumstances, if a Judicial Authority, even at a subsequent point of time, has refixed the quantum of compensation and enhanced it, it is only just and fair that all other similarly situated persons should be beneficiaries of that order.

2. Undoubtedly, the procedural law requires that each of the appellants must formally agitate their claim separately for which purpose, the Appeals have been filed. Mr. Shankar, places reliance on the Decision of the Supreme Court reported in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, wherein the Supreme Court has advocated a benevolent approach in such cases and has also laid down certain guide lines which are reproduced below;

" xxx xxx xxx And such a liberal approach is adopted on principle as it is realized that:-

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 non-deliberate 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."

Relying on this Decision, the learned Counsel submits that even though there is gross delay, since it is adequately explained, that a Justice oriented approach would require that the delay be condoned and the appellants be afforded an opportunity of agitating their claim for enhancement.

3. The learned Government Advocate has opposed the application on two grounds. In the first instance, he submits that the appellants were satisfied with the compensation that was awarded and that they filed the requisite proceedings before the lower Court for claiming their compensation. He submits that the filing of the Appeals is not only belated, but that it is an after-thought in so far as merely because some other persons succeeded in securing enhanced compensation, that the appellants want the entire matter to be re-opened in their cases and that this is not permissible. He relies heavily on a Decision of the Supreme Court reported in Mewa Ram (Deceased) by his Lrs. and Others Vs. State of Haryana through The Land Acquisition Collector, Gurgaon, In that case,

which was also a proceeding under the Land Acquisition Act, the Supreme Court refused to condone the delay and has observed that merely because the petitioners desire to rely on an order for enhancement passed by the Supreme Court in some other cases, that they were not justified in approaching the Court after an extremely long time. It is true that the Supreme Court refused to condone the delay, but that case would be distinguishable as the Supreme Court itself observed that the delay was inordinate and unexplained and more importantly, that the petitioners were prosperous agriculturists, well-versed in litigation and that there appears to be no justification to permit the re-opening of the cases in that instance. On facts, therefore, that Decision is distinguishable, apart from which, the Decision in the Anantanag Case, referred to supra is a later Decision of the Supreme Court.

4. The second ground on which the learned Government Advocate has opposed the condonation of delay is perhaps more substantial. He points out to this Court that there must be some finality to proceedings at some point of time which is really the essence of the legislative intent embodied in the Limitation Act. If the reopening of proceedings is indiscriminately permitted, there would be virtually no finality and it is for this reason that the Law of Limitation must be strictly construed. There can be no two opinions with regard to the correctness of this submission except for the fact that the Limitation Act itself makes provision for a Court to distinguish all cases wherever grounds exist and to make an exception in appropriate ones. It is only in regard to this category of cases that the Court would adopt a liberal approach provided cogent and justifiable reasons are set out.

5. The present set of Cases, to my mind, qualify for such consideration.

6. The second limb of the submission canvassed by the learned Government Advocate is of equal consequence, because he points out that even if there is an obligation on the part of the State to pay just compensation, that the State is equally obliged to pay interest as prescribed by law and that, if the compensation comes to be enhanced, the State will be saddled with this heavy interest burden for no fault. As regards this aspect of the matter, the reliance is sought to be placed on a Division Bench decision in a set of interim applications in M.F.A. Nos. 1856 to 1862/93 dated 13.10.1993. The learned Government Advocate points out that in those Appeals, the Division Bench of this Court excluded a certain period of delay which worked out approximately to 10 months, while computing the interest payable by the State. It is his submission that if the delay were to be condoned by this Court, then an order ought to be passed that the State shall not be liable for the period of delay.

7. As far as this aspect of the matter is concerned it is virtually interwoven with the facts of the case and to my mind therefore, it would not be appropriate to impose any conditions while condoning the delay. This aspect of the matter is, however, kept open and the learned Government Advocate shall be permitted to agitate this point and obtain appropriate orders at the time when final orders are

passed on the present set of Appeals.

8. In the aforesaid circumstances, I.A.I is allowed in each of the Appeals and the delay is condoned.

9. In view of the aforesaid order, it is unnecessary for the office to formally list these Appeals on board again for purposes of admission. The appeals shall be treated as having been admitted and shall be listed for hearing along with M.F.A.No. 51/95.