

(2000) 06 MAD CK 0070

In the Madras High Court

Case No : C.M.P. No. 11598 of 1997 in A.S.S.R. No. 55885 of 1996

Special Tahsildar (ADW), Land Acquisition, Vellore, North
Arcot Ambedkar Dist.

APPELLANT

Vs

T.K. Jitendhar

RESPONDENT

Date of Decision : 21-06-2000

Acts Referred:

Citation : (2000) 06 MAD CK 0070

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : P. Peppin Fernando, for the Respondent

Final Decision : Allowed

Judgement

V. Kanagaraj, J.—Heard the learned counsel for both and perused the materials placed on record. This is a petition praying to condone the delay of 392 days in preferring the above appeal.

2. On perusal of the affidavit filed in support of the CMP and upon hearing, the learned counsel for both, what comes to be known is that certain lands falling under different Survey numbers in Thimiri village of Vellore District have been acquired for the purpose of providing house sites to Adi Dravidars; that the Land Acquisition Officer has fixed the land value at Rs. 144.70 per cent; that claiming more, the claimants requested the Government to refer the matter to the Court of Reference and accordingly, the subject matter had been referred to the Court of Subordinate Judge, Ranipet; that the learned Subordinate Judge, on enquiry, enhanced the compensation to Rs. 1,400/- per cent as per his order passed in LAOP No. 4 of 1993; that aggrieved by the said judgment and decree dated 28.2.1995, the petitioner intended to prefer an appeal before this Court, but there had been a delay of 392 days that had occurred in preferring the said appeal and hence they have come forward to file the above petition seeking to condone the said delay of 392 days in preferring the appeal.

3. The petitioner would account for the delay stating that even though the judgment was pronounced on 28.2.1995, the Government Pleader has applied for the certified copy on 2.3.1995 and the copy application was made ready on 20.4.1995 and it was taken delivery on 4.5.1995; that the Government Pleader has forwarded the certified copy of the judgment and decree on 5.5.1995 to the Special Tahsildar (ADW), Land Acquisition, Vellore, the petitioner herein, and after receipt of the certified copy from the Government Pleader, the same was forward to the District Adi Dravidar Welfare Officer, Vellore on 9.10.1995; that on other duties of the Government, the officer concerned had been deputed and the post fell vacant and some other Assistant was deputed to look after the matter; that the new Assistant joined duty only on 9.10.1995 and ultimately, the papers were forwarded to the Collector and then to the Commissioner of Land Administration and in these processes, the delay of 392 days had become inevitable and hence would pray for condoning the said delay.

4. In the counter affidavit filed by the respondent, it would be submitted that the copy was made ready on 31.4.1995 and it had been taken delivery of on 4.5.1995 and there is a delay of 4 days which had not been explained, but, it had been forwarded to the District Adi Dravidar Welfare Officer only on 09.10.1995; that the long delay from 5.5.1995 to 9.10.1995 had not been explained at all and hence this petition is to be rejected; that the other allegations that the post of the Officers and Junior Assistant concerned fell vacant, that there was a delay of five months due to issuing patta, that the Collector handed over the papers on 16.7.1996 are neither true nor properly explained to the satisfaction of this court and on such grounds, the respondent would pray for dismissing the above CMP.

5. During arguments, the learned counsel for the respondent would cite a number of decisions, such as,

(i) AIR 1992 A11.275 (Krishi Utpadan Mandi Samiti, Amroha v. Ganga Ram).

(ii) P.K. Ramachandran Vs. State of Kerala and Another,).

(iii) 1998-3-L.W. 648 (Siva Subramaniam and 4 others v. The Collector, Periyar District).

(iv) 1998-I-L.W.486 (Jayaverchand v. Balan).

(v) AIR 1999 Raj 216 (Union of India, v. Brij Lal Peabhu Dayal and others).

(vi) 1998 (111) CTC 170=1998-3-L.W.780 (Indian Oil Corporation Ltd. v. Sakuntla Ganapathy Rao)

So far as the first judgment cited above is concerned, it has been decided therein that the plea of public interest is not a ground to give any different footing for delay in filing the appeal, since the appellant is a body corporate and on account of the contradictory statements, gross negligence, absence of diligence and deliberate inaction apparent from depositions of appellant, the delay occurred therein had been decided not satisfactorily explained. It is not the same case in

hand wherein all the above evils have occurred, as that of the case of the Division Bench to arrive at the conclusion to reject the plea of the appellant to condone the delay since the facts on record regarding the above petition is concerned are totally different and they are to be decided on different footing.

6. So far as the second judgment cited above is concerned, the reason attributed for delay therein is that the "Advocate General's Office was fed up with so many arbitration cases pending consideration"; that the court below without recording any finding regarding the explanation offered and the reasonableness, arrived at the conclusion to condone the delay which had been resented by the Apex Court holding that it can be hardly taken as a reasonable, satisfactory or even a proper explanation further recording that the courts below have no power to extend the limitation on equitable grounds thereby setting aside the order of the High Court.

7. In the above cited case, the reason attributed for the delay is general in character that the Advocate General's office was fed up with so many arbitration cases pending consideration thereby making it clear to the effect that it is not only the delay that had already been committed, but also in future, they would continue to do the same with delay and hence the Apex Court has rightly held that it is not the satisfactory explanation or reasonable one and there is reason on the part of the Apex Court having dismissed the plea as not tangible or tenable. The generalised reason that is offered on the part of the respondents in the case cited could in no manner be compared with the reasons assigned on the part of the petitioner in the above CMP. Hence, this case cannot also be taken as the precedent to decide the case in hand..

8. So far as the third judgment cited above is concerned, it was dealt with by a single judge of this Court wherein the order of the lower court in allowing the petition for condoning the delay of 646 days was set aside thus rejecting the explanation offered on the part of the petitioner before the lower court therein, that due to change of clerks, the intimation had not been put up in the file, holding thereby that the said explanation cannot be accepted in the absence of any details or particulars. The case in hand being not one resting on the sole ground that forms part of the case cited by the respondent, but on many other reasons also for condoning the delay, the decision of this case could not also be taken as the precedent so as to apply the same norms to the facts of the case in hand.

9. So far as the fourth judgment cited above is concerned, it is a case of delay of 1650 days in filing a petition to set aside the ex parte order of eviction passed in a Rent Control matter and considering the facts and circumstances of the case, the learned single judge of this Court has held that the "Exercise of judicial discretion to excuse delay on sufficient cause must be based on some material-If there are no materials the order is perverse". It is true that the exercise of the discretion by the court to excuse the delay must be on sufficient cause and this court is also going to exercise its jurisdiction only on sufficient and reasonable materials to condone the delay. Hence, it cannot under any circumstance be said

that this Court is going to allow the above petition without sufficient cause being shown on the part of the petitioner and, therefore, this judgment could not also be applied to the case in hand.

10. So far as the fifth judgment cited above is concerned, the learned single Judge of the said Court has held that if the party which moves an application u/s 5 does not give facts to constitute "sufficient cause", the application would be liable to be rejected; that whether it is an application by a private person or by the state, the reason being that in the absence of the facts, the court cannot draw the presumption that the delay in filing the appeal must necessarily have been occasioned by some undisclosed sufficient cause. This remark is also true and accepted in toto; that without any reasonable cause being shown on the part of the petitioner and accordingly presuming that this must be sufficient cause for delay, no order could be passed by the court below. It is not the case of like nature wherein the petitioner has not assigned any reason or shown sufficient cause for the delay as it is in the above case cited. Instead, there are many tangible and acceptable reasons assigned on the part of the petitioner. Hence this case could not also come to the rescue of the respondent.

11. So far as the sixth and the last judgment cited above is concerned, the proposition arrived at by the Division Bench of this Court is that the "legal right accrued in favour of other party due to expiry of limitation for filing appeal should not be light heartedly disturbed and the discretion vested in Court to condone delay should be exercised to advance substantial justice when party approaching court is not guilty of negligence or inaction or want of bona fides". The case in hand is a case pertaining to the award of compensation in a land acquisition matter and it is only testifying the validity of the enhanced compensation awarded by the court below, on the part of the Government, the delay is sought to be condoned in preferring the appeal and it is nor a case that any other legal right has accrued in favour of the respondent as it is held in the above judgment nor is it a case wherein the petitioner is guilty of negligence or inaction not the petition suffering for want of bona fides. The petitioner has assigned numerous instances narrating the chain of events offering the dates and explaining the delay in a chronological order. Simply stating that a particular period from out of the chain of events is not sufficiently explained, the respondent cannot plead to reject all the reasons offered on the part of the petitioner. Moreover, by efflux of time during the delay caused, no novel right could accrue in favour of the respondent so far as the subject is concerned since it is a case of enhancement of compensation that is sought to be tested on appeal by the petitioner.

12. All the above judgments cited on the part of the respondents have not at all dealt with one major aspect that in the event of refusal to excuse the delay whatever be the period of delay. Merely on account of the delay caused on the part of the petitioners, such delay cannot under any circumstance, decide the main issue in favour of the respondent. Whether it is regarding the valuable

properties or regarding the marital status claim or regarding any other valuable rights of the party committing the delay, cannot, under any circumstance, decide the whole issue in favour of the other side. It should be mentioned here that on account of the delay caused by one party, the other party cannot at all become entitled to the whole relief sought for in any manner since basically, the delay cannot under any circumstance decide the valuable rights of parties.

13. Secondly, the moment the delay is refused to be condoned, it is certain that the party who has caused the delay is denied of his valuable right of opportunity to participate in the whole proceeding that pertains to the main issue and the order passed with such denial of opportunity is nothing but an order passed in violation of the high principles of natural justice, however longer the delay might be. It cannot also be held nor had it ever been held that once the party has caused the delay, be it the unexplained delay, the courts are at liberty to deny the due opportunity for him in violation of the principles of natural justice. Therefore, even in the worst cases of delay however it is not properly explained, no doubt, the petitioner seeking the condonation of delay should be punished, but whether the punishment could be regarding denial of his valuable right to be heard thus restraining him from contesting the very suit or petition or appeal by dismissing the petition for condonation of delay?

14. The answer for this question must be a big "NO". But at the same time, the party who has committed wilful default or caused delay deliberately and in a casual manner and the case suffers for want of bona fides nor is he able to explain the delay properly whether the delay is shorter or longer, no doubt, he must be punished, but by imposition of costs depending upon the duration of delay and the manner in which it had been caused. Under no circumstance, the same delay caused on the part of one party, in coming forward to file the petition can decide the main issue involved in the suit or application or appeal.

15. For all the above discussions held, the lower court should have concluded that the delay caused, on the part of the petitioner in the case in hand, had been reasonably explained and should have allowed the petition filed before it. There is no question of either denying the opportunity to the petitioner to contest the appeal or award costs. Consequently, the only conclusion that could be arrived at in these circumstances is to allow the above petition. In result, the above CMP is allowed condoning the delay of 392 days in preferring the appeal. No costs.