

**(2000) 01 KAR CK 0012**

**In the Karnataka High Court**

**Case No :** Civil Revision Petition No"s. 1275, 1289, 1945, 1946, 1947, 1948, 1949 of 1995 and 2524 of 1996

Sri. Yemunappa and Others

APPELLANT

Vs

The Land Acquisition Officer and Assistant Commissioner

RESPONDENT

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**Date of Decision :** 10-01-2000

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 9, 141, 151  
Land Acquisition Act, 1894 — Section 18, 20, 52  
Limitation Act, 1963 — Section 5

**Citation :** (2000) 2 KCCR 821

**Hon'ble Judges :** T.N. Vallinayagam, J

**Bench :** Single Bench

**Advocate :** Vidya, for Sri K. Raghavendra Rao, in Civil Revision Petition Nos. 1275, 1289, 1947, 1948, 1949, of 1995 and 2524 of 1996, for the Appellant; M.S. Basavaraj, High Court Government Pleader in Civil Revision Petition Nos. 1275, 1289, 1947, 1948, 1949, of 1995 and 2524 of 1996, for the Respondent

**Final Decision :** Allowed

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## Judgement

T.N. Vallinayagam, J. 1. All these revision petitions are preferred by the claimants in various L.A.C. Nos. started 149, 150, 151, 153, 154, 155, 156 and 157 of 1980. These L.A. Cs were filed in respect of various extent of the lands belonging to the Petitioners herein acquired for the purpose of constructing a tank in Basarihal village. It appears, there were acute famine in that area and when LA Cs were posted for hearing on 24.8.1980, all the matters were dismissed for default by the trial Court. Again there was acute famine and giving that as a reason, the application was filed in Misc. 11 of 1983. Again this restoration also was dismissed in 1993. It was represented that since the year 1990 there was a severe drought in the village, the Petitioners had to go to another village called Manvi to eke out their livelihood. Therefore, the Petitioners were not in a position to prosecute the reference cases. First time when they came back in 1983, they came to know of the dismissal and immediately

Miscellaneous petitions were filed. In 1986 again they were forced to leave out of the village, and they could not be present for the second time on 30.9.1986, on which date the Miscellaneous case has been dismissed for default again. It is also seen that the Counsel for the Petitioner was not keeping in good health and he could not be present when the matter was called on 30.9.1986. It is only in the year 1990, when the Petitioners came back to their village and when they were approached their Counsel they were informed about the dismissal. Immediately, they filed the present applications, out of which all the Civil Revision Petitions arisen for restoration of the L.A.C. cases. The Petitioners examined themselves and even their Counsel was examined. There was no contra evidence by the Counsel.

2. The fact that there were severe drought in the village on the two occasions between 1980 and 1990 was not disputed nor controverted. The learned Judge has dismissed the miscellaneous petition on the ground that the Petitioners have not stated the name of the village to which they migrated during the drought period in which reasons given and they have not intimated the exact month in which they were away. It is contended that they have specifically stated that they have gone to Manvi village. It is against the order of dismissal, the present revision petitions are preferred.

3. Mrs. Vidhya appearing for the Petitioners contended that the dismissal itself is non est in the eye of law and ab initio as the reference cases cannot be dismissed for default at all. She has also relied upon the dictum of the Supreme Court in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, and State of Karnataka Vs. Annegowda by LRs., .

4. On the other hand, the learned Government Pleader submitted that on two occasions they were not able to present themselves and consequently they are not eligible to have one more opportunity.

5. Heard the respective Counsel as well as the Government Pleader.

6. In Shyamsundar Mantri Vs. Land Acquisition Collector, Cuttack, , the High Court of Orissa has held as follows:

The court to which reference is made u/s 18 or 20 of the Act is a court and as such the inherent power u/s 151 CPC (CPC) is available to be exercised by such court if the circumstances so justify. A reference Court cannot dismiss a Land Acquisition case for non-appearance under Order 9, Rule 9 CPC (CPC) and therefore an application under Order 9, Rule 9 CPC (CPC) is not maintainable. Therefore order of dismissal of a case by the reference court for non-appearance of the claimant would be without jurisdiction and such an order is available to be recalled in exercise of powers of the Court u/s 151 CPC (CPC) The adequacy of the ground taken by the Petitioner to explain the default is, unnecessary to be examined as the order of dismissal itself was without jurisdiction and the same should be recalled to rectify the legal mistake committed by the Court. In these circumstances, the Petitioner's application for setting aside the order of dismissal

of the case for default can be treated as one u/s 151 CPC (CPC) and should be allowed.

A Division Bench of this Court in the case reported in AIR 1977 Kar. 9, which has overruled the earlier decision reported in AIR 1974 Kar. 122, has held as follows:

A bare perusal of the provisions of Section 26(1) would show that what it envisages is that an award if made shall be in the form indicated therein, that is, an award shall conform to the norms indicated in the aforesaid provision. This provision does not create any compulsion for the court which is trying a reference that it has to pass an award come what way, and is prevented from passing any other order. It cannot be said that reference proceeding once launched must culminate in an award and that the court has no discretion to pass any order other than the one that amounts to an award.

There is no provision in the Act directly dealing with the situation where a party to the reference absents, nor there is any provision which prevents the court to pass an order of dismissal of the reference for non-prosecution. Thus there being no bar express or implied in the Act to the applicability of any particular provision of the CPC (CPC) and the provisions of the CPC in general being made applicable by the provisions of Section 53 of the Act and Section 141 of the CPC (CPC) it cannot be said that the application for the setting aside of the order of dismissal of the reference in default is not maintainable.

In the light of the above dictum, the dismissal of LAC cases is prima facie illegal and such an order cannot be sustained.

7. On the question of sufficient cause, the Division Bench of this Court in State of Karnataka Vs. Annegowda by LRs., has held as follows:

In construing "sufficient cause" within the scope of Section 5 of the Limitation Act, the court must give a liberal construction to the said words. Each case must be judged in the context of the subject matter involved. The legislature has for the best of all reasons left those words undefined. It has conferred judicial power and discretion to courts to condone the delay. The approach of the courts in considering the cause shown should, therefore, be consonant with truth and justice with a view to advance substantial justice. They are the fundamental principles for which courts have been established. If courts fail to adhere to these principles, the people will lose confidence in courts and the law may fall into disrepute.

The State might be a party, but the Government is an impersonal body. The Government does not move like a Quartz Watch. There is a red-tape which causes inevitable delay in the functioning of Government Offices. .... The State has moved quickly when suspected entries in the revenue records have been detected. The State cannot be held guilty of negligence or inaction having regard to the peculiar circumstances of the case. There is sufficient cause for the belated application for review of judgment of this Court.

The Supreme Court in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, has held thus:

To condone, or not to condone, is not the only question. Whether or not to apply the same standard in applying the "sufficient cause". test to all the litigants regardless of their personality in the said context is another.

The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on merits. The expression "sufficient cause". employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. 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.

In the light of the above dictum, I am satisfied that the Petitioners ought to have been given a chance.

8. Even otherwise when the land is acquired by the Government, it is the basic duty to compensate the person from whom the land is taken and they cannot take technicality to avoid payment to the persons whose propriety has been inroad into by the modern Land Acquisition Act. It is quite unfair on the part of the Government to oppose to such an application. They should be generous and

the courts also could be equally generous to see that the person who lost the property is adequately compensated.

9. In this view, all the revision petitions are allowed with costs. The Land Acquisition Court is directed to take the matter on file and dispose of the case in accordance with law within a period of six months from the date of receipt of the records.

10. Government Pleader is permitted to file memo of appearance within four weeks in all the matters.