

(1999) 12 GUJ CK 0063

In the Gujarat High Court

Case No : Civil Application No"s. 5779 to 5786 of 1999 in First Appeal No. 1913 to 1920 of 1999 and First Appeal No"s. 1913 to 1920 of 1999

State of Gujarat

APPELLANT

Vs

Jagdishbhai Kevarbhai

RESPONDENT

Date of Decision : 22-12-1999

Acts Referred:

Law Officers Rules — Rule 132, 133

Citation : (2001) GLR 342

Hon'ble Judges : Pradip Kumar Sarkar, J;M.R. Calla, J

Bench : Division Bench

Advocate : Premal Joshi, Government Pleader, for the Appellant; Mukesh R. Shah, for the Respondent

Final Decision : Dismissed

Judgement

M.R. Calla, J.—These eight First Appeals against the order dated 30-3-1998 passed by the Assistant Judge at Himatnagar in LAQ Cases

No. 3396/89 to 3403/89 were filed before this Court on 5-4-1999. Subsequently the Civil Applications seeking condonation of delay of fifty days

in filing the First Appeals were filed on 19-6-1999. Rule was issued in the civil applications on 27-9-1999 and in response to the rule issued by

this Court, which was made returnable on 15-10-1999 appearance was entered by Mr. Mukesh R. Shah, Ld. advocate appearing for the

claimants, that is Respondents No. 1 to 5.

2. On 22-11-199 in Civil Application No. 5799 of 1999 in First Appeal No. 1913 of 1999 the following order was passed by the Court:-

This application for condonation of delay is yet one more application showing the movement of file from table to table to explain the delay in filing

the appeal beyond limitation. The learned AGP is directed to furnish the report within two weeks that within five years" time how many Land

Acquisition appeals have been filed within the period of limitation prescribed by law, and how many appeals have been filed beyond the period of

limitation to know whether the appellants are taking the law of limitation to be non-existent as granted for them, or they are acting with due

diligence in prosecuting the litigation with some lapse in some cases. S.O. to 7th December,1999.

3. Today only the Civil Application No. 5779 of 1999 in First Appeal No. 1913 of 1999 was listed on the board, and therefore on the request of

Ld. counsel for both the parties, other seven matters were also called for and taken up as prayed for by both the parties. 4. We called upon Ld.

AGP to produce the report as was directed by this Court on 22-11-1999, and Ld. AGP Mr. Premal Joshi has produced before this Court a

statement dated 25-11-1999, which shows the year-wise break up from year 1995 to 1999 (Upto 31-10-1999) of the First Appeals filed by the

Government, within time and after expiry of the time. This statement is reproduced as under:-

Year In time Delay Total

1995 1071 1519 2590

1996 441 1938 2379

1997 1165 2206 3371

1998 1159 3643 4802

1999 152 4591 4743

(upto 31-10-1999)

3988 13897 17885

5. This statement reveals that, out of total number of 17885 appeals, 13897 appeals have been filed as time barred, that is about 77 % of the First

Appeals have been filed as time barred appeals by the State of Gujarat. In the year 1998 itself out of 4802, 3643 appeals were filed as time

barred appeals and in the year 1999 the situation is far more worse in as much as out of 4743 appeals, 4591 appeals have been filed as time

barred appeals and only 152 appeals have been filed within time upto to 31st October 1999. While we are taking up these eight appeals along

with civil applications moved therein for condonation of delay which were filed only on 5-4-99 and 19-6-1999 respectively, today on 22-12-

1999, we express our regrets that the State Government itself which is a mighty and virtuous litigant has been taking up the matters of filing the

appeals so lightly, that large number of cases have been filed after expiry of prescribed period of limitation. We were told by the Ld. Asst. Govt.

Pleader that in C.A. No. 3784/99 in F.A. No. 443/99 Division Bench of this Court directed the Chief Secretary of the State of Gujarat to file a

report before the Court by 10-12-1999 on the question of delays in filing appeals and action against erring officers, and such a report dated 9-12-

1999 has been filed in this Court by Chief Secretary on 10-12-99. We may also mention that today itself certain matters had come up before us in

which there is delay of more than 360 days and in those matters Civil Applications No. 3461/99 to 3468/99 in First Appeals Nos. 211/99 to

218/99 even certified copies of the impugned orders had been applied for much after the expiry of the period of limitation. 6. In this case the delay

has been sought to be condoned through the civil application on the ground that the impugned order was passed on 30-3-1998, the certified copy

was applied for on 2-4-1998 and the same was delivered on 20-11-998, District Government Pleader, Sabarkantha at Himatnagar had sent his

proposal vide letter dated 3-12-1998 not to file an appeal against said judgment, which was received by the "J" Branch of the Legal Department

on 12-1-1999. After receipt of aforesaid proposal, concerned Assistant had prepared a note calling for the report under Rule 132, 133 of Law

Officers Rules from the concerned administrative department and submitted to the concerned Dy. Secretary (J) for his approval on 14-1-1999.

Thereafter on 15-1-1999 the decision was taken by the Dy. Secretary (J) as proposed by the District Government Pleader. Thereafter on 16-2-

1999 the file was sent to R & B department for obtaining opinion. The file was then received back again with an opinion to file appeal against the

said judgment, that is the controlling branch in the Legal department on 22-2-1999. On the same day the concerned Assistant prepared a detailed

note to file an appeal and placed before the Dy. Secretary (J) for taking decision. The Dy. Secretary (J) instructed on 23-2-99 to discuss the

matter and therefore, after discussions the file was resubmitted to Dy. Secretary (J) for taking a decision for filing the appeal in this case. Dy.

Secretary (J) took a decision on 3-3-99 to file the appeal and this decision was approved by the concerned Secretary on the same day. Thereafter

on 8-3-1999 it was sent to Law Minister and on the same day draft of resolution was sent to typing branch. After receipt of the typed copy of the

resolution on 12-3-99 the resolution was sent to office of Govt. Pleader at Ahmedabad with an instruction to file appeal in this case. The matter

was thereafter handed over to concerned Assistant Govt. Pleader, who after going through the same prepared memo of the appeal and the same

was filed on 5-4-1999. On the basis of aforesaid reasons it has been pleaded that all the eight civil applications for condonation of delay be

granted. There was no inaction or negligence on the part of applicants in prosecuting the matters in time and that the delay has been taken due to

movement of file in taking appropriate decision for preferring the appeals and therefore there is sufficient cause which has prevented the applicant

from prosecuting the appeals in time.

7. From the above facts it is clear that the matter has not been taken up in right earnest at different levels. The file has been made to travel from one

table to another table, and the period of more than four months have been taken in deciding as to whether the appeals are to be filed or not. Such

matters seeking condonation of delay on similar grounds are coming up before this Court frequently and in most of the cases delays have been

condoned. In these matters since earlier the view was taken at the level of Dy. Secretary that the appeals are not required to be filed and

subsequently this decision has been changed and there is delay of 50 days only and these applications seeking condonation of delay have not been

contested on behalf of the respondents, we find it appropriate to condone the delay of fifty days in filing these appeals and accordingly these eight

civil applications seeking condonation of delay are allowed. Rule made absolute in each of these eight civil applications.

8. Since the delay stands condoned in the eight appeals, Ld. AGP and Mr. Mukesh R. Shah appearing for the respondents submitted that, the

appeals may also be taken up as the matters are short as far as facts are concerned and the same could be decided at this stage. The appeals are

therefore admitted. Mr. Mukesh Shah waives service in each of the eight appeals.

9. The land in question was acquired for the purpose of

Modasa-Tintoi-Shamlaji diversion route. Notification u/s 4 for acquiring the land in question was issued on 2-1-1986. The notification u/s 6 was

thereafter issued on 11-11-1986, and the award was passed by the Land Acquisition Officer on 18-2-1989 granting compensation at the rate of

Rs. 4-00 per sq. meter in respect of irrigated land and Rs. 2-00 per sq. meter for non-irrigated land. The subject matter came up before Reference

Court, the Reference Court passed a common order dated 30-3-1998 granting compensation at the rate of Rs. 32-00 per sq. meter in respect of

irrigated land and at Rs. 26-00 in case of non-irrigated land. Against this common order dated 30-3-1998 present appeals have been preferred.

10 At the very threshold Mr. Mukesh Shah appearing for the respondents-claimants submitted that the order dated 30-3-1998 has been passed

on the basis of an earlier decision of the Reference Court referred in Land Acquisition Case No. 1221/87 dated 30-12-1996 at Exhibit-20 (before

the Reference Court) whereby the compensation has been granted at the rate of Rs. 32-00 per sq. meter for irrigated land and Rs. 26-00 per sq.

meter for non-irrigated land. The land which was the subject matter of acquisition in the aforesaid judgment at Exhibit-20 rendered by the

Reference Court also belongs to the same village, that is Modasa and it was acquired for an irrigation project, and in the case of Exhibit-20 the

notification u/s 4 had been issued on 20-11-1983, whereas in the instant case it has been issued on 28-1-1986; while the land in question in both

the cases are of the same village and are exactly identical and therefore claimants have been rightly awarded the compensation at the rate of Rs.

32-00 and Rs. 26-00 per sq. meter for irrigated and non-irrigated lands respectively.

11. These factual aspects pointed out by Mr. Shah have not been disputed by Ld. AGP Mr. Premal Joshi. In this view of the matter, we find that

the order as has been passed by Ld. Assistant Judge, Sabarkantha at Himatnagar awarding compensation to the claimants at the rate of Rs. 32-00

and Rs. 26-00 respectively for irrigated and nonirrigated lands is justified and it does not warrant any interference. The order has been based on an

earlier decision of the Reference Court with regard to the same village and identically situated lands and it has been given out that the judgment

Exhibit-20 has attained finality and it has also been accepted by the Government and acted upon, and the compensation has been paid to the

claimants accordingly. Therefore in our opinion these appeals must fail.

12. Before parting with this judgment, we wish to express that, no doubt there are large number of cases pending in the Courts and the pendency

of cases is a matter of serious concern, but the duration of delay in disposal of the pending cases can be avoided provided due interest is shown by

the Government itself. The figures contained in the statement which has been referred to hereinabove itself goes to show that, none else, but the

Government itself is responsible for filing time barred appeals in large number. It was also given out by Ld. counsel for both the sides that, 95 % of

the First Appeals are in the matters of Land Acquisition. In such cases if the appeals are filed at belated stages merely on account of administrative

delays the process of justice stands thwarted and defeated by none else but by the functionaries of the Welfare State itself. We are constrained to

say that, in large number of cases adjournments are taken repeatedly, replies are not filed in time, matters are filed with inordinate and unexplained

delays and not only that the State Government files replies after considerable delays and that also after number of years and after seeking large

number of adjournments. Delay starts right from the stage of the service of notice, if notice is served and yet no appearance, then - Rule, and then

again the service of rule. Thereafter time is sought by Govt. Pleaders to take instructions from the department and despite repeated opportunities

replies are not filed. Even after filing the replies- the time is sought that officer incharge is not available and even if the officer incharge is available,

the time is sought on the ground that record is not available or that court fee is to be filed. At times it is stated by the learned Govt. Pleaders that

they had not received the papers from their own office. The time is also sought on the ground that on the previous date some other Asst. Govt.

Pleader had appeared and the copies of pleadings i.e. rejoinder or additional affidavit etc. given on the last date by other side have remained with

him and he is not available. These are only few illustrative grounds on the basis of which adjournments are sought and they may not be taken to be

exhaustive. In such cases if orders are passed without having the reply of the State Government on record and the matters are decided on the basis of the pleadings of the petitioners alone, the public interest and public exchequer may suffer and therefore, time is granted to the Government for filing replies and that itself delays the process of administration of justice and yet a voice is raised at the top level that, judiciary is responsible for delay in the disposal of the cases. If any survey is conducted by any researcher on this count and data are collected, it will be found that, it is not the judiciary but the State Government itself which is responsible to a great extent for delaying the process of disposal of the cases by not filing replies in time, by taking number of adjournments, by not keeping their officers present in the Court, by not keeping relevant records available before the Court, by not appointing adequate number of Law Officers and Public Prosecutors, and by not providing proper infrastructure to the offices of Govt. Pleaders and Courts. We do understand that the executive machinery or the office of the Govt. Pleader and its law officers may be having their own reasons and causes, compulsions or constraints, limitation or handicaps for seeking time or for not filing the matters and pleadings on time, but then, at least, let it not be complained by the executive and those at the helm of the affairs of the executive that judiciary should set its house in order or that judiciary is responsible for delays in disposal of cases; while judiciary has neither the adequate infrastructure nor adequate number of judges and presiding officers in courts to be compatible with the multitude of litigation on enormous increase. In large number of courts in this State at least there are no public prosecutors and in absence of public prosecutor no criminal trial can proceed. What to talk of the financial autonomy for judiciary, which is the need of the day, Law and Justice as such is not even included in the development plans except the building part of it. Thus even while working with so many handicaps, the judiciary does enjoy the mounting faith of the people and let this faith be not shaken by any remark or comment at any level of the executive to throw the entire burden on judiciary for delay in disposal of cases.

We do hope and believe that, these words and observations coming from the Bench addressed to the responsive Government will be taken in right

earnest and seriously and appropriate measures shall be taken to avoid the delays in future. 13. These eight civil applicataions for condonation of delay are allowed and rule is made absolute in each of them, but the eight First Appeals are hereby dismissed on merits. No order as to costs.