

(2023) 03 SHI CK 0047

In the High Court Of Himachal Pradesh

Case No : Civil Miscellaneous Petition (Main) No. 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1229, 1230, 1231, 1232, 1253, 1254, 1255, 1256, 1257 Of 2022

?State Of H.P. & Others

APPELLANT

Vs

Kanshi Ram (Deceased) Through His Lrs Raj Kumar & Others

RESPONDENT

Date of Decision : 17-03-2023

Acts Referred:

Land Acquisition Act, 1894 — Section 4
Limitation Act, 1963 — Section 5

Citation : (2023) 03 SHI CK 0047

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : I.N. Mehta, Varun Chandel,, J.L. Bhardwaj, Sanjay Bhardwaj, Hirday Ram

Final Decision : Dismissed

Judgement

.

Satyen Vaidya, J

1. All these applications have been heard and are being decided together, as common questions of facts and law are involved.
2. The State of Himachal Pradesh acquired land in village Tepra, Sub Tehsil Namhol, District Bilaspur, H.P. for construction of Namhol-Bahadurpur road. Notification under Section 4 of the Land Acquisition Act was issued on 30.7.2005. The publication of above referred notice was made in Himachal Pradesh Rajpatra and in vernacular news papers 'Dainik Bhaskar' and 'Divya Himachal' on 13.8.2005. The Land Acquisition Collector offered the market value of the acquired land at different rates as per the specification of the land.
3. The respondents herein preferred separate reference petitions against the assessment offered by Land Acquisition Collector, which came to be registered

before the reference Court i.e. the District Judge, Bilaspur as LAC Nos. 135, 129, 130, 131, 132, 133, 134, 136, 137, 138, 139, 141, 142, 143, 148, 149, 150 and 151 of 2008/2019. The reference Court vide a common award dated 5.5.2021 decided all the reference petitions and awarded enhanced compensation at uniform rate of Rs. 35,000/- per biswa (Rs. 7,00,000/- per bigha).

4. Applicants herein have sought to assail the common award dated 5.5.2021 passed by the reference Court, but they have not been able to prefer the appeals within the prescribed period of limitation. Hence, delay in filing the appeals has been prayed to be condoned by way of instant applications.

5. The grounds, as urged on behalf of the applicants, in all the applications, seeking condonation of delay, are common. It is averred that the award was passed on 5.5.2021 by the reference Court. Application for obtaining certified copy of the award was filed on the same day. The certified copy of the award was supplied on 30.6.2021. Thereafter, the District Attorney, Bilaspur forwarded the file, alongwith his opinion, to Executive Engineer, Bilaspur on 8.7.2021, who received the same in his office on 12.7.2021. The Executive Engineer forwarded the file to the Deputy District Attorney, office of the Chief Engineer, HPPWD, Hamirpur on 13.7.2021 for legal opinion, from where the case was further forwarded to the office of Engineer-in-Chief, HPPWD, Shimla on 29.7.2021. The said office also forwarded the file to the office of Additional Chief Secretary (PW) to the Government of Himachal Pradesh on 23.8.2021.

6. The Additional Chief Secretary (PW) remitted the file back to Engineer-in-Chief, HPPWD on 1.10.2021 with direction to file appeals. The file thereafter again was sent to the office of Executive Engineer, Bilaspur on 11.10.2021. The draft appeal was prepared in the office of Superintending Engineer, Bilaspur and was again submitted to the office of Engineer-in-Chief, HPPWD for approval. The office of Engineer-in-Chief, HPPWD vetted the appeal on 13.12.2021 and thereafter was forwarded to the office of Advocate General, Himachal Pradesh. The fair draft was again submitted to the office of Superintending Engineer, Bilaspur, who after appending his signature forwarded the same to the office of Advocate General on 23.7.2022. This entire process is stated to have caused delay of 367 days in filing the appeal. As per applicants, the delay is neither intentional nor wilful.

7. The application has been opposed by the respondents. In reply (ies) filed on behalf of the respondents, it has been submitted that the applicants have failed to show any cause for condonation of delay in filing the appeal. It has specifically been pointed out that there is no explanation for delay between 8.10.2021 and 13.12.2021, as the appeal was stated to have been prepared on 8.10.2021, but was not got vetted till 13.12.2021. Once, the office of Advocate General had vetted the appeal on 13.12.2021, the final draft was not prepared and signed till 23.7.2022. It is specifically submitted on behalf of the respondents that there is absolutely no explanation for delay between 13.12.2021 i.e. the date of preparation of final draft and 23.7.2022 when the file was allegedly sent to the

office of Advocate General for filing the appeal.

8. The applicants have filed rejoinder(s). It has been submitted that when the appeal was vetted by the office of Advocate General, it transpired that only one certified copy of the award had been obtained. Accordingly, the certified copies were applied on 7.12.2021 and were supplied to the applicants on 12.1.2022. It is further submitted that the delay in filing the appeal is bonafide.

9. I have heard learned counsel for the parties and carefully gone through the record available on the file.

10. Noticeably, as per the averments made in the application, the applicants have taken a specific stand that the certified copy of award sought to be impugned by way of appeal was supplied by the Copying Agency on 30.6.2021. Thereafter, the final draft of the appeal could be vetted on 13.12.2021. The channels exhausted for obtaining legal opinion(s) and administrative approval(s), as explained on behalf of the applicants, have already been noticed in paras supra.

11. Record reveals that the appeal was filed in the Registry of this Court on 6.8.2022. Even as per their own saying, the applicants after preparation of final draft of the appeal on 13.12.2021 had forwarded the same for filing to the office of Advocate General on 23.7.2022. By way of averments made in the rejoinder(s), it has been stated that after preparation of final draft, it had transpired that the certified copies of award to be attached in all the appeals, were not available. Accordingly, the certified copies were again applied on 7.12.2021 and were received by the applicants from Copying Agency on 12.1.2022. Taking all the averments of the applications as gospel truth, it is clearly found that there is absolutely no explanation whatsoever for not filing the appeal, immediately after 12.1.2022, when the applicants had received the certified copies.

12. There is no doubt that the conduct of applicants has throughout been reckless and negligent in dealing with the matters having serious repercussion. The entire approach of applicants, without any doubt, can be stated to be lackadaisical.

13. The prayer for condonation of delay in filing the appeal can be allowed only if the Court is satisfied that the delay has been caused by sufficient reasons and such reasons are bonafide.. However, in the given facts of the case, the applicants have failed to show any cause much less sufficient cause for not filing the appeal within prescribed period of limitation. The applicants took about six months for preparation and vetting of the appeals after receipt of certified copy of the award. It cannot be assumed that the applicants, who are assisted by legal experts at every stage, were not aware about the period of limitation for filing the appeals. It being so, the applicants should have acted with sufficient promptness and expedition. The facts, however, reveal otherwise. At no stage, urgency was shown at the end of applicants. Above all, for the period of more

than seven months between 12.1.2022 when the applicants allegedly received certified copies of the award and 6.8.2022 when the appeals were filed before this Court, no explanation whatsoever has been preferred.

14. The rigors of Limitation Act apply equally to all including the Government. The sufficiency of a cause for condonation of delay can be assessed keeping in view the facts and circumstances of each particular case. As noticed above, what to talk of sufficient cause, applicants have not been able to assign any reasons whatsoever for delay in filing the appeal specially after 12.1.2022. Undue laxity of government officials needs strongest deprecation. The law has equal balance for all. Though, some leeway is permissible in the case of government but that cannot be construed as an absolute license to flout the law at whims. In *State of Madhya Pradesh Vs. Bherulal*, (2020) 10 SCC 654, Hon'ble Supreme Court observed as under:-

"2. We are constrained to pen down a detailed order as it appears that all our counseling to Government and government authorities have fallen on deaf ears i.e., the Supreme Court of India cannot be a place for the Governments to walk in when they choose ignoring the period of limitation prescribed. We have raised the issue that if the Government machinery is so inefficient and incapable of filing appeals/petitions in time, the solution may lie in requesting the Legislature to expand the time period for filing limitation for Government authorities because of their gross incompetence. That is not so. Till the Statute subsists, the appeals/petitions have to be filed as per the Statutes prescribed.

3. No doubt, some leeway is given for the Government inefficiencies but the sad part is that the authorities keep on relying on judicial pronouncements for a period of time when technology had not advanced and a greater leeway was given to the Government (*LAO V. Katiji*). This position is more than elucidated by the judgment of this Court in *Post Master General V. Living Media (India) Ltd.* (2012) 3 SCC 563 where the Court observed as under:(Post master General case, SCC pp. 573-74, paras 27-30)

"27) It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28) Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and

inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

29) In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/ years due to considerable degree of procedural red- tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.”

Eight years hence the judgment is still unheeded!

4. A reading of the aforesaid application shows that the reason for such an inordinate delay is stated to be only “due to unavailability of the documents and the process of arranging the documents”. In paragraph 4 a reference has been made to “bureaucratic process works, it is inadvertent that delay occurs.”

The same reiteration is again found in State of Odisha and ors. Vs. Sunanda Mahakude, (2021) 11 SCC 560, in which it has been observed as under:-

“3. A reading of the aforesaid shows that there is no reason much less sufficient and cogent reason assigned to explain the delay and the application has also been preferred in a very casual manner. We may notice that there are number of orders of this State Government alone which we have come across where repeatedly matters are being filed beyond the period of limitation prescribed. We have been repeatedly discouraging such endeavours where the Governments seem to think that they can walk in to the Supreme Court any time they feel without any reference to the period of limitation, as if the statutory Law of Limitation does not exist for them.

4. There is no doubt that these are cases including the present one where the Government machinery has acted in a inefficient manner or it is a deliberate endeavour. In either of the two situations, this court ought not to come to the rescue of the petitioner. No doubt, some leeway is given for Government inefficiency but with the technological advancement now the judicial view prevalent earlier when such facilities were not available has been over taken by the elucidation of the legal principles in the judgment of this Court in the Office of the Chief Post Master General & Ors. v. Living Media India Ltd. & Anr. – (2012)

3 SCC 563. We have discussed these aspects in SLP [C] Diary No.9217/2020, State of Madhya Pradesh v. Bheru Lal decided on 15.10.2020 and thus, see no reason to repeat the same again.

5. In the present case, the State Government has not even taken the trouble of citing any reason or excuse nor any dates given in respect of the period for which condonation is sought. The objective of such an exercise has also been elucidated by us in the aforesaid judgment where we have categorized such cases as "certificate cases".

15. Thus, there is no escape from the conclusion that the applicants have failed to make out any case for condonation of delay in filing the appeals.

16. Learned Senior Additional Advocate General further sought the indulgence of this Court on the ground that provisions of Section 5 of Limitation Act be interpreted liberally and the delay caused in filing the appeals be condoned. Such prayer also deserves rejection for the reasons that liberal interpretation does not mean that the party can be allowed to approach the Court at any time without showing any cause, which can be termed to be sufficient. Considering such aspect, Hon'ble Supreme Court in Brahampal Alias Sammy and Another Vs. National Insurance Company, (2021) 6 SCC 512, has held as under:-

"18. The Court in the abovementioned cases, highlighted upon the importance introducing the concept of "reasonableness" while giving the clause "sufficient cause" a liberal interpretation. In furtherance of the same, this Court has cautioned regarding the necessity of distinguishing cases where delay is of few days, as against the cases where the delay is inordinate as it might accrue to the prejudice of the rights of the other party. In such cases, where there exists inordinate delay and the same is attributable to the party's inaction and negligence, the Courts have to take a strict approach so as to protect the substantial rights of the parties.

22. Undoubtedly, the statute has granted the Courts with discretionary powers to condone the delay, however at the same time it also places an obligation upon the party to justify that he was prevented from abiding by the same due to the existence of "sufficient cause". Although there exists no strait jacket formula for the Courts to condone delay, but the Courts must not only take into consideration the entire facts and circumstances of case but also the conduct of the parties. The concept of reasonableness dictates that, the Courts even while taking a liberal approach must weigh in the rights and obligations of both the parties. When a right has accrued in favour of one party due to gross negligence and lackadaisical attitude of the other, this Court shall refrain from exercising the aforesaid discretionary relief."

17. Accordingly, there is no merit in the applications and the same are dismissed, without any orders as to costs.