

(2000) 10 KL CK 0059

In the High Court Of Kerala

Case No : CMP. No. 1215 of 1996 in LAA. No. 200 of 1996

State of Kerala

APPELLANT

Vs

Sukumaran Nair and Others

RESPONDENT

Date of Decision : 31-10-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Land Acquisition Act, 1894 — Section 54
Limitation Act, 1963 — Section 5

Citation : (2000) 2 KLJ 852

Hon'ble Judges : K.S. Radhakrishnan, J;G. Sasidharan, J

Bench : Division Bench

Advocate : Thottatbil B. Radhakrishnan, for the Respondent

Final Decision : Dismissed

Judgement

Radhakrishnan, J.—This C.M.P. is preferred by the State of Kerala for condoning the delay of 1775 days in filing L.A.A. No. 200 of 1996. Appeal was preferred against the judgment in L.A.R. No. 76 of 1986, which relates to acquisition of 36.41 Ares of land in Sy. No. 2995/7 of Irianimuttom Village for the development of Nedumcaud U.P. School. Section 3(1) notification was published on 8.7.1980. The award was passed on 9.3.1984. Possession was taken on 20.3.1984. Land Acquisition Officer fixed the land value at Rs. 6,130/- per Are, which was enhanced to Rs. 12,580/- per Are by the Land Acquisition Court. Challenging the said award, the State has preferred the appeal. We may indicate the grounds of appeal:

1. The order of the Court below is opposed to law, facts and circumstances of the case.
2. The court below ought to have found that the Land Acquisition Officer had given fair and reasonable compensation to the land acquired after considering the market value of similarly situated land at the time of Section 3(1) notification.

3. Eventhough the court below came to the conclusion that Ext. A1 sale deed cannot be relied upon for fixing the market value of the land acquired, the court below enhanced the land value and fixed the same at Rs. 12,580/- per Are without any basis whatsoever.

4. In the absence of any evidence to enhance the land value, the reference ought to have been rejected by the court below.

5. The court below went wrong in granting the benefits under the amended Central Act.

6. At any rate the enhancement given is exorbitant, excessive and without any basis.

As we have already indicated, there is a delay of 1775 days. Consequently, a Petition u/s 5 of the Limitation Act is preferred for condoning the delay along with the affidavit of Deputy Collector (LA) Collectorate, Trivandrum and Addl. Government Pleader, Smt. Gracy John. A detailed counter affidavit has been filed by the claimants opposing the application for condonation of delay. The matter was argued at length. It is therefore necessary to examine the question whether State has shown sufficient cause for condoning the delay in accordance with Section 5 of the Limitation Act.

The reasons for condoning the delay are stated in the affidavit are as follows:

The decree and judgment was passed by the Sub Court on 26.11.1990. The Additional Government Pleader at Thiruvananthapuram applied for copies on the judgment and decree on 18.2.1995. The stamp papers were called for on 2.3.1995 and it was produced on 4.3.1995. Copy was made ready on 4.3.1995 itself and date fixed for receiving the copy was 7.3.95. The copy was received by the Government Pleader on 4.3.95. After receiving the judgment and decree, Government Pleader by her letter dated 3.6.95 forwarded the same to the District Collector along with her opinion regarding the scope of filing appeal. It was received in the Collectorate on 17.3.95. The concerned Section Clerk put up the note on 30.3.95 and it was approved by the District Collector on 1.4.95. Draft suggestion for filing the appeal was put up by the concerned Section Clerk on 5.4.95 and the District Collector approved the same on 5.4.95 itself. The District Collector by her letter dated 5.4.95 requested the Advocate General, Ernakulam to file an appeal from the judgment and decree and records along with the said letter. It was despatched from the office of the District Collector on 25.4.95 and received in the office of the Advocate General on 29.4.95. The file was put up in the concerned section clerk in the office of the Advocate General on 2.5.95 and the records were placed before the concerned Government Pleader on 4.5.95. The Government Pleader examined the records and offered the remarks regarding the scope of filing the appeal on 6.6.95, since it is seen that there is inordinate delay in applying and forwarding the decree and judgment. The opinion of the Government Pleader was placed before the Addl. Advocate General on 8.6.95. The Addl. Advocate General wanted the Deputy Collector (LA)

to meet him with all connected files to examine the unexplained delay in applying the certified copies of the judgment. As such District Collector directed this respondent to go over to the District Government Pleader's office at Thiruvananthapuram and ascertain the reasons for the delay for applying the copies. It was revealed on enquiry that LAR No. 76/86 was conducted by Smt. Vimala K. Nambiar who is not in service now. It is also seen that the claimants filed a petition to correct the decree as per I.A. No. 1269 of 1992 which was allowed on 4.11.92 for deducting the amount already paid by the Land Acquisition Officer. Again claimant filed another petition to correct the decree and judgment as per I.A. No. 6146 of 1993 allowed on 21.1.94 for including the interest as per the amended L.A. Act, 1984. The present Government Pleader took charge only on 6.3.92. Pendency of the petitions for correcting the decree and judgment also contributed to the delay in applying for the copies. The present Government Pleader came to know about the corrected decree only on 18.2.95 and on the same day she applied for the copies of the judgment and decree....

Counter affidavit has been filed by respondents 2 and 3. Counter affidavit states as follows:

4. The decree against which L.A.A. No. 200 of 1996 has been filed was passed on 5.12.1990. On the same day, Smt. Vimala K. Nambiar, Additional Government Pleader, Thiruvananthapuram, who appeared in the case on behalf of the State filed application No. A 3648 for certified copies of the judgment and decree. That application was notified on 27.8.1991 for production of stamp papers. Since stamp papers were not produced, the copy application was rejected on 4.9.91.

5. The decree in the case was drawn up on 20.6.1991. It was seen from the certified copy of that decree, that the decree as drawn up was not in terms of the judgment. Therefore the decree holders filed I.A. No. 1269 of 1992 for correction of the decree. Notice of that application was served on the State. Copy of that application was served on Smt. Vimala K. Nambiar on 24.9.1992 as ordered by court and memo of service was filed in Court on 24.9.1992. I.A. No. 1269 of 1992 was heard on 21.10.1992. An order was passed in that application on 4.11.1992 and in the B diary of the Court, it was stated that the application was allowed.

6. On 20.8.1993, the counsel of claimants applied for a certified copy of the order dated 4.11.1992 in I.A No. 1269 of 1992. Copy was issued on 27.8.1993. It was then found that the order dated 4.11.1992 was not according to law and in terms of the prayer in I.A. No. 1269 of 1992. Therefore on 16.9.1993 the claimants filed LA. No. 6146 of 1993 to review the order dated 4.11.1992 and I.A. No. 6145 of 1993 to condone the delay in applying for review. Copies of these petitions were served on the Government Pleader and memo was filed in court on 25.11.1993. The petitions were heard on 21.1.1994. The delay was condoned. The order in the petitions to review the order dated 4.11.1992 reads as follows:

No objection filed. Back file incorporated.

Heard both sides. Petition allowed. Decree is allowed to be corrected as prayed for in I.A. No. 1269 of 1992 which was partly allowed earlier. Carry out the correction in the copies also.

Pronounced in open court this 21st day of January, 1993.

7. In the meantime, Smt. Vimala K. Nambiar, Additional Government Pleader filed a second application A. No. 4035 on 2.11.1992 for certified copies of the judgment and decree passed in that case. That application was also rejected on 25.9.1993 for the reason that stamp papers were not produced.

8. There after the claimants applied for execution of the decree. Notice of the execution petition was served on-the State and a sum of Rs. 10,96,088/- being part of the decree debt was deposited on 21.10.1995. I, as the power of attorney holder of the claimants, applied on 10.7.1996 for payment of the amount. Notice of that petition was served on the Government Pleader and the petition was allowed and a cheque for the amount was issued.

2. On the basis of the above averments of the parties, we may examine the question as to whether the delay of 1775 days in filing the appeal be condoned and whether sufficient reasons are made out for condoning the delay. Before examining the rival contentions of the parties, we may refer to some of the decisions of the Apex Court on the question of condonation of delay. Dealing with Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the CPC and Section 5 of the Limitation Act, the Apex Court in G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore, held as follows :

There is no general rule saving the party from all mistakes of its counsel. If there is bona fides on the part of the party or its counsel, there is no reason why the opposite side should be exposed to a time barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression "sufficient cause" in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay.

The law of limitation is, no doubt, the same for a private citizen as" for Governmental authorities. Government, like any other litigant must take responsibility for the acts or omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it.

Therefore, in assessing what, in a particular case, constitutes "sufficient cause" for purposes of Section 5, it might perhaps be somewhat unrealistic to exclude

from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the Government decisions are proverbially slow encumbered, as they are, by a considerable degree of their making. A certain amount of latitude is therefore not impermissible. It is, rightly said that those who bear responsibility of Government must have "a little play at the joints. Due recognition of these limitations on Governmental functioning - of course, within a reasonable limit is necessary if the judicial approach is not rendered unrealistic. It would perhaps be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters.

In the above mentioned case, a common award was passed on 17.7.1970. Application for certified copies was made on 31.8.1971. Copies were obtained on 5.1.1972 and M.F.A. No. 289 of 1973 was filed on 19.1.1972 and the other two appeals, M.F.A. Nos. 290 and 293 of 1993 were filed on 10.4.1972. Again the Apex Court in State of Haryana Vs. Chandra Mani and others, examined the scope of Section 5 of the Limitation Act, and held as follows:

11. It is notorious and common knowledge that delay in more than 60 per cent of the cases filed in this Court - be it by private party or the State - are barred by limitation and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits. It is equally common knowledge, that litigants including the State are accorded the same treatment and the law is administered in an even-handed manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note making, file pushing and passon the buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay - intention or otherwise - is a routine". Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The facts which are peculiar to and characteristic of the functioning of the Governmental conditions would be cognizant to and requires adoption of pragmatic approach injustice oriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at the appropriate level should constitute legal cells to examine the cases whether, any legal principles are

involved for decision by the courts or whether cases require adjustment and should authorised the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while state is an impersonal machinery working through its officers or servants. Considered from this perspective, it must be held that the delay of 109 days in this case has been explained and that it is a fit case for condonation of the delay.

Apex Court again in *N. Balakrishnan v. M. Krishnamurthy*, (1998) 7 S.C. 123 dealing with Section 5 of the Limitation Act held as follows:

It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. In every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. The words "sufficient cause" u/s 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice.

It is evident from the above mentioned decision that the primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time limit fixed for approaching the court in different situations is not because on the expiry of such time, a bad cause would transform into a good cause. On the basis of the above mentioned principle, the Apex Court further held as follows:

Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the

courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

3. In view of the abovementioned judicial decisions, we may examine as to whether explanation given by the State are sufficient enough for condoning the delay of 1775 days. In the instant case, land was acquired by notification dated 8.7.1980. Award was passed by the Land Acquisition Court on 9.3.1984, and possession was taken on 23.4.1984. Judgment was delivered by the Land Acquisition Court on 26.11.1990 after a period of 10 years. In paragraph 3 of the affidavit of the Deputy Collector it is stated that Addl. Government Pleader, Trivandrum had applied for copy of the judgment and decree on 18.2.1995. In the counter affidavit filed by the claimants, it is stated that the court passed the decree on 5.12.1990. On the same day, Smt. Vimala K. Nambiar, Addl. Government Pleader who appeared in the case on behalf of the State filed application No. A 3648 for certified copies of the judgment and decree. That application was notified on 27.8.1991 for production of stamp papers. Since stamp papers were not produced, the copy application was rejected on 4.9.1991.

This important fact was not disclosed by the State in their affidavit or by filing a reply affidavit. Further we may also notice from the facts that decree was subsequently corrected in I.A. No. 1269 of 1992. Order to that effect was passed by the Court on 21.1.1993. In the meantime, Smt. Vimala K. Nambiar filed a second application A No. 4035 on 2.11.1992 for certified copy of the judgment and decree. That application was also rejected on 25.9.1993 for the reason that stamp papers were not produced. The facts reveal that on two occasions that is first application No. A 3648 was rejected on 27.8.1991 for non-production of stamp papers and again after correcting the decree another application was filed as A 4035 on 2.11.1992 which was also rejected for non production of stamp papers. These facts are not disclosed in the affidavit filed by the State. We may notice from the affidavit filed by the State that Addl. Government Pleader applied for certified copy on 18.2.1995, which is factually incorrect. There were two other applications earlier. Those applications were rejected for non-production of stamp papers. Even with regard to the application preferred on 18.2.1995, stamp paper was called for on 2.3.1995 and the same were produced on 4.3.1995. Copy was made ready on 4.3.95 and date fixed for receiving the copy was on 7.3.1995. Eventhough the copy of the judgment and decree was received by the Government on 4.3.1995, she forwarded the same to the District Collector along with her opinion regarding the scope of filing appeal on 6.3.1995. The same was received in the office of the Collectorate on 17.3.1995. Later it was approved by the District Collector on 1.4.1995. Draft suggestion for filing the appeal was put

up by the concerned Section Clerk on 5.4.1995, and the District Collector approved the same on the same day. The District Collector vide her letter dated 5.4.1995 requested the Advocate General to file against the judgment and decree, and the same was despatched from the office of the District Collector on 25.4.1995, and received by the office of the Advocate General on 29.4.1995. The file was put up in the concerned Section Clerk in the office of Advocate General on 2.5.95 and the records were placed before the concerned Government Pleader on 4.5.1995. The Government Pleader examined the records and offered his remarks regarding the scope of filing the appeal on 6.6.1995. It took more than one month to examine the scope for filing the appeal. Later the matter was placed before the Addl. Advocate General on 8.6.1995. The Addl. Advocate General wanted the Deputy Collector (LA) to meet him with all connected files to examine the unexplained delay in applying the certified copies of the judgment. It was noted that Government Pleader in charge of the case was not in service and one Smt. Gracy John was the Addl. Government Pleader. Therefore an affidavit was sworn to by her and the same was produced along with the petition for condonation of delay.

4. On going through the above mentioned facts, we are of the view that State has not shown sufficient cause for condonation of delay. On the other hand, rejection of copy application twice on 4.9.91 and on 25.9.1993 for non-production of stamp papers was not disclosed in the affidavit. It is a serious lapse on the part of the State. We do not also approve some of the statements made in the affidavit by the concerned Deputy Collector. Some of the statements are extracted below:

There is no wilful laches or negligence on the part of anybody concerned and the present Government Pleader has sworn to the affidavit explaining the reasons for the delay and it is produced herewith and marked as Annexure I.....Further delay is due to time take for completing the procedural formalities in filing the appeal. There is no wilful negligence on the part of anybody, concerned.

We do not approve the above statements that there is no wilful negligence on the part of anybody concerned. There is negligence on the part of the office of the Collectorate (LA) for not providing necessary stamp papers. Eventhough copy application was twice rejected on 4.9.91 and 25.9.1993 no steps were taken by the concerned office to apply for the same in time and provide necessary stamp papers. We also notice even after a lapse of so many years, files were made available to the office of the Advocate General only on 29.4.1995 and appeal was preferred on 20.1.1996, more than seven months thereafter. This delay has also not been explained at all.

In the facts and circumstances of the case, and the attitude taken by the State Government in the affidavit, we are not inclined to exercise our discretion in condoning the delay. Government has taken up the stand in this case that there is no negligence on the part of anybody concerned. We are of the view that there is wilful laches and negligence on the part of the office of Collectorate (LA),

Trivandrum. We are therefore constrained to dismiss the application for condonation of delay. We may also notice in this case notification was issued as early as in 1980. After 20 years the claimants have not received the amount, and the parties are litigating the matter. We are not inclined to allow the parties for another round of litigation for another decade.