

(2012) 03 BOM CK 0061

In the Bombay High Court

Case No : Misc. Civil Application NO. 1065 of 2011

The Executive Engineer, P.W.D., Works Division XVIII, PWD,
Ponda, Goa

APPELLANT

Vs

Shri Subhash Vasudev Xete Tilve

RESPONDENT

Date of Decision : 22-03-2012

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2012) 03 BOM CK 0061

Hon'ble Judges : U.V. Bakre, J

Bench : Single Bench

Advocate : Susan Linhares, for the Appellant; Sudin Usgaonkar, for the Respondent

Final Decision : Allowed

Judgement

U.V. Bakre, J

1. This is an application for condonation of delay in filing the First Appeal against the judgment and award dated 03/02/2011 passed by the learned Adhoc District Judge, FTC Panaji, in LAC NO. 11 of 2010. By the impugned judgment dated 03/02/2011 the compensation for the acquired land has been enhanced from Rs. 150/- per square metre to Rs. 200/- per square metre. The applicant had applied for certified copy on 8/2/2011 and the copy was ready on 23/02/2011. The Appeal has been presented on 05/10/2011. Therefore there is delay of about 140 days in filing the appeal.

2. The applicant has stated that his office had received the certified copy of the judgment and order dated 03/02/2011 from the Government Advocate and he submitted the same along with the counsel's opinion to the Law Department for comments. The file was forwarded to the E.E. (legal) on 29/04/2011, who returned the file back to the Division for enclosing evidence and other details pertaining to the case. The file thereafter moved to the office of the

Superintending Engineer on 03/05/2011 and thereafter to the Sub-Division II, Division XVIII (roads) for compliance. The Sub-Division complied with the noting of the EE (legal) and thereafter file was resubmitted to the EE XVIII. On 13/06/2011, the file was forwarded to the Superintending Engineer Circle III (Roads) PWD. Thereafter the file moved to the EE (legal) who put up his noting that the file may be put up to the Law Department for their opinion in the matter. On 17/06/2011, the file was received in the office of the Principal Chief Engineer, who forwarded the file to the Law Department on 21/06/2011. The Superintendent (legal) after putting up his note submitted the file to the Under Secretary (legal), the Under Secretary (legal) put his notings on 04/07/2011 and submitted the file to the Law Secretary for directions. The Law Secretary on 07/07/2011 put up his notings and submitted the same to the Chief Engineer- I. The file was then forwarded to the office of the Principal Chief Engineer on 26/07/2011 and thereafter it was moved through various divisions and was later forwarded for the Government's approval for filing an appeal. Thereafter, the file again moved through various Government Departments for their opinion and comments and was submitted to the Office of the Advocate General on 14/09/2011. The file was thereafter allotted to the Additional Government Advocate. On receiving the file, it was noticed that the certified copy of Judgment and Decree dated 03/02/2011 was not available in the file. Therefore, the same was obtained on 01/10/2011. It is thereafter that the appeal was drafted and filed on 05/10/2011. Therefore, the delay of 140 days which is not deliberate or due to the negligence. There is sufficient cause for delay as stated above.

3. The Executive Engineer, Shri S.S. Salelkar of P.W.D., Works Division XVIII, PWD, Ponda, Goa has filed affidavit in support of the application.

4. Upon receipt of the notice of the application, by the reply. In the reply it is stated that the movement of file narrated by the applicant in the application is irrelevant. The purpose of said movement with reference to the specific duty of each officer vis-a-vis the decision of appeal on the said file is not pleaded, although it was very well known that appeal ought to have been filed on 19/05/2011. It thus proves that the said movement of file was purely mechanical. In any case, the first round was completed by 04/07/2011, when the appeal was already barred by limitation. The second movement of the file refers to movement through "various divisions" and "various Government Departments" without specifying the said Divisions and Departments. It is thus clear that the said various Divisions and Departments are imaginary. The above shows that the applicant is not all diligent in pursuing the appeal and the entire approach was very casual. It is seen that the file reached the Advocate General without impugned judgment and further time was taken to obtain the Certified copy although the certified copy was already available with the applicant. This shows that the applicant was totally negligent in pursuing the matter although appeal was already barred by limitation. The facts pleaded by the applicant do not make out sufficient cause for condonation of delay.

5. Ms. S. Linhares, learned Additional Government Advocate, argued that the movement of the file for the purpose of opinion for filing the appeal has been mentioned in detail in paragraphs NO. 7 and 8 of the application and the said facts have been stated on oath. She contended that the applicant being Government Department, is bound to follow the procedure which has been prescribed for the departments, which procedure takes some time due to which the Government is entitled for some latitude. It is her submission that the applicant cannot gain anything by filing the appeal late and therefore there is no malafide on the part of applicant. She argued that the matter is of public money and justice oriented approach should be taken. She therefore prayed that the delay be condoned. She has relied upon the case of "N. Balakrishnan v/s. M. Krishnamurthy" reported in (1998)7 SSC 123.

6. On the other hand, Shri Sudin Usgaonkar, learned counsel for the respondents, argued that the application is strongly opposed by the respondents as there is absolutely no cause showed by the applicant for condoning the delay. He argued that the Court has no power u/s 5 of the Limitation Act to arbitrarily condone the delay in the name of advancing substantial justice merely because the applicant happens to be the State. He further argued that no separate standards exist to determine sufficient cause at the instance of the private party and the State. In support of the contention, he relied upon Laxman N. Divekar Vs. State of Maharashtra, . He also relied upon "Pundlik Jalam Patil (Dead) by Lrs. V/s. Executive Engineer, Jalgaon Medium Project and another" reported in (2008) 17 SCC 448. He also replied upon the order dated 4th December, 2009 passed by the learned Single Judge of this Court (R.M. Sawant, J) in Misc. Civil Application NO. 345 of 2009 in Stamp Number Main NO. 1026 of 2009. He further argued that the recent trend of the Hon''ble Apex Court is not to grant condonation unless acceptable and cogent reasons sufficient to condone delays are given. He argued that condonation of delay is an exception and should not be used as anticipated benefits for the Government Department. He has relied upon the Judgment of the Hon''ble Supreme Court in Civil Appeals NO. 2474 - 2475 of 2012. It is the submission of Shri Usgaonkar, learned Counsel for the respondent that the averments made in paragraphs NO. 7 and 8 of the application do not make a sufficient cause for condonation of delay and therefore the application is liable to be dismissed with costs.

7. Perused the record, in the light of the arguments advanced by both the parties.

8. The appeal that has been preferred by the applicant is against the judgment and award in L.A.C. NO. 11/2010. Land ad-measuring 5750 square metres was acquired. The Land Acquisition Officer had offered the rate of Rs. 150/- per square metre. The learned Reference Court has enhanced the said rate to Rs. 200/- per square metre. Due to the above the Government will have to bear further expenditure and in order to avoid the same, the applicant has filed the appeal. In such circumstances, the applicant will not stand to benefit by lodging the appeal late.

9. In the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , the Hon''ble Apex Court has held 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 malafides. 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.

10. In the present case, the delay is of about 140 days which has been explained in paragraphs NO. 7 and 8 of the application. In support of the application, the applicant that is Executive Engineer, Shri S.S. Salelkar has filed affidavit. There is no affidavit-in-reply filed by the respondents or any of them thereby denying the ground stated by the applicants, on oath. A mere reply is filed by the learned Advocate for the respondents.

11. In the case of "N. Balakrishnan v/s. M. Krishnamurthy"(supra), it has been held by the Apex Court that the words "sufficient cause" should be construed liberally. It has been held that acceptability of explanation for delay is the sole criterion and length of delay is not relevant. The Apex Court has further held the in the absence of anything showing malafide or deliberate delay as a dilatory tactic, Court should normally condone the delay. However, while doing so Court should also keep in mind the consequent litigation expenses to be incurred by the opposite party and should compensate him accordingly. In the present case, the applicant has stated on oath that the delay is not deliberate. It is not the case of the respondents that there is malafide or deliberate delay as a dilatory tactic.

12. In the case of "Laxman N. Divekar"(supra), the Hon''ble Apex Court has held that the Court has no power to arbitrarily condone the delay in the name of advancing substantial justice merely because the applicant happens to be the

State. No separate standards exist to determine sufficient cause at the instance of the private party and the State. In the case *supra*, the appeal was barred by more than 750 days and it was found that in the facts and circumstances of that case the discretion exercised by the Appellate Court in condoning the delay was neither proper nor judicial and rather suffers from serious error of jurisdiction. However, in the case *supra*, the Hon''ble Apex Court has also observed that the Court, when the State is a applicant, may give certain amount of latitude because of impersonal nature of administrative working in the State.

13. In the case of "Pundlik Jalam Patil (Dead) by Lrs." (*supra*), the Hon''ble Supreme Court has held thus:

Public interest undoubtedly is a paramount consideration in exercising the courts'' discretion wherever conferred upon it by the relevant statutes. Pursuing stale claims and multiplicity of proceedings in no manner subserves public interest. Prompt and timely payment of compensation to the landlosers facilitating their rehabilitation/resettlement is equally an integral part of public policy. Public interest demands that the State or the beneficiary of acquisition, as the case may be, should not be allowed to indulge in any act to unsettle the settled legal rights accrued in law by resorting to avoidable litigation unless the claimants are guilty of deriving benefit which otherwise not entitled, in any fraudulent manner. One should not forget the basic fact that what is acquired is not the land but the livelihood of the landlosers. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed u/s 5 of the Limitation Act. Dragging the landlosers to courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. It serves no public interest."

14. In the case *supra*, there was inordinate long delay of 1724 days in which no sufficient cause was shown by the applicants.

15. In the Judgment in Civil Appeals NO. 2474 - 2475 of 2012, relied upon by the respondents, various cases on the subject of condonation of delay have been referred to. The Hon''ble Apex Court has observed that in the 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. However, the Hon''ble Apex Court has further observed that 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. It has been held that the Law of Limitation undoubtedly binds everybody including the Government and condonation of delay is an exception and should not be used as anticipated benefit for Government Departments. In the case *supra* there was a huge delay of 427 days in filing the appeal.

16. Considering the principles laid down by the Apex Court, it can be said that each case depends upon its own facts and circumstances. When no malafides can be attributed to the applicant; when there is no deliberate inaction and when there is no gross negligence, a liberal and justice oriented approach should be taken.

17. In the present case, I find that the delay is not inordinate or enormous. It is not the case of the respondents that modern technologies are available in the Departments in the State of Goa. The delay cannot be termed as malafide or deliberate. In my view inconvenience that is caused to the respondents can be made good by awarding appropriate costs. In the result, I hold that the delay has been sufficiently, explained. The application is allowed subject to costs of Rs. 1000/- to be paid to the respondents. Registry to register the Appeal.