

(2011) 01 MAD CK 0005

In the Madras High Court

Case No : M.P. (MD) No. 3 of 2010 in A.S. (MD) SR No. 10035 of 2010

The Revenue Divisional Officer

APPELLANT

Vs

M.S.A. Ibrahim (died) and Others

RESPONDENT

Date of Decision : 28-01-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 18
Limitation Act, 1963 — Section 5
Tamil Nadu Pension Rules, 1978 — Rule 9(2)

Citation : (2011) 3 CTC 337

Hon'ble Judges : R. Subbiah, J;N. Paul Vasanthakumar, J

Bench : Division Bench

Advocate : V. Chellammal, A.A.G., assisted by, R. Janakiramulu, Special Government Pleader, for the Appellant; P. Thilak Kumar and A.V. Arun, for Respondent Nos. 3 to 11, for the Respondent

Judgement

1. This Petition is filed to condone the delay of 3081 days in filing the Appeal against the judgment and decree, dated 29.6.2001 made in L.A.O.P.

No. 33/1997 on the file of the III Additional Sub-Court, Madurai.

2. The averments made in the Affidavit filed in support of this Petition are as follows:

An extent of 2.67.0 hectares of dry land in S. No. 37/2, Thoppur Village, Madurai Taluk was acquired for the purpose of formation of sufficient

approach to the lands which was already handed over to Tamil Nadu Housing Board in Thoppur Village. The Land Acquisition Officer has fixed

the compensation by considering all the material evidence available at the rate of Rs. 250/- per cent in his award No. 5/1991, dated 26.12.1991.

Since the First Respondent did not agree to the compensation amount, the matter was referred to the Sub-Court, Madurai u/s 18 of the Land

Acquisition Act. The said reference was numbered as L.A.O.P. No. 33 of 1997. The Sub-Court, Madurai has enhanced the compensation

amount fixed by the Land Acquisition Officer to Rs. 2,500/- per cent. The Sub-Court, Madurai has delivered the judgment on 29.6.2001 and

immediately, Application for getting certified copy of the judgment was made by the learned Government Pleader and after receiving the certified

copy, the same was communicated to the Petitioner's office. It is claimed that the copy was misplaced by the Petitioner's office. Subsequently, the

concerned Assistant, who was dealing with the legal section, was transferred and hence, the said post was lying vacant for considerable time.

Hence, immediate follow up action could not be taken by the Petitioner. During the review of land acquisition cases made in December 2008, it

was found that the certified copy of the judgment made in L.A.O.P. No. 33 of 1997 was missing. Hence, on instructions another Copy

Application was filed on 5.12.2008. The said order copy was made ready on 8.12.2008. After collecting all the records, the Government Pleader

office attached to this Court was contacted in the month of January 2010 and the Appeal was preferred on 4.3.2010. In the said process, the

delay of 3081 days in filing the Appeal has caused. It is claimed that the delay is neither wilful nor wanton but only due to the bona fide

administrative delay and if the delay is not condoned the interest of the Petitioner/Government would be put up irreparable loss and severe

hardship.

3. Opposing the Application filed by the Petitioner, the Respondent has filed Counter Affidavit stating that the averments made in the Affidavit filed

by the Petitioner is with falsehood and it is an attempt to mislead the Court. After obtaining the decree the Respondents 3 to 11 filed Execution

Petition on 29.11.2005 in E.P. No. 246 of 2005. In the said Execution proceedings the Special Tahsildar for Land Acquisition and Tamil Nadu

Housing Board had entered appearance on 27.1.2006 and after entering appearance, the Respondents in the Execution Petition were taking time

repeatedly for filing Counter from 27.1.2006, 3.3.2006, 21.4.2006, 23.6.2006 and finally on 25.7.2006. When the Execution Petition was posted

for hearing on 25.7.2006, the request made by the Respondent, the matter was adjourned to 24.8.2006. It was further posted on 25.9.2006 to

deposit the amount. Since the deposit was not made finally on 20.4.2007 the attachment was ordered by the Execution Court. Though hectic steps

were taken by the Respondents to execute the order of attachment, the Attachment proceedings is still pending for want of Police help.

4. Therefore, it is claimed that the Petitioner is well aware about the judgment and decree of the Sub-Court and also about the Execution

proceedings. In the said circumstances, the averments made in the Affidavit to condone the delay of 3081 days are not bona fide and mischievous.

5. When the said Application came up before this Court, this Court on a specific question to the learned Additional Advocate General as to what

are the steps taken regarding the erring officials who did not take timely action in the pending Execution proceedings and on subsequent hearing,

the Petitioner has filed an additional Affidavit stating that 12 officers were identified who are responsible for causing inordinate delay in preferring

the Appeal. Out of 12 officers, four officers had retired from service on superannuation. Hence, proposals have been sent to the Government,

Revenue Department through the Commissioner of Revenue Administration, Chennai to pursue appropriate action under Rule 9(2) of the Tamil

Nadu Pension Rules by enclosing draft charge for each individual and charges were framed u/s 17(b) of the Tamil Nadu Civil Services (Discipline

and Appeal) Rules, 1973 and so far as the rest of the officials are concerned, they served only short span of time namely, 18, 7, 17 and 31 days

respectively, since no disciplinary action is being contemplated against them.

6. It is also stated that the Housing Board as requisitioning body is also responsible for the inordinate delay in preferring the Appeal before this

Court. Hence, a letter was addressed to the Managing Director, Tamil Nadu Housing Board in Roc/B3/66168/2010, dated 4.12.2010 to take

action against the four Executive Engineers who were found responsible for the serious lapse.

7. Learned Additional Advocate General submitted that if the delay is not condoned, it would be irreparable loss to the public exchequer, since the

Court below has enhanced the compensation amount 10 times over and above the amount fixed by the Land Acquisition Officer. Moreover, the

Petitioner also initiated action as against the erring officials who are responsible for not filing the Appeal within the time. Further, learned Additional

Advocate General submitted that in connected matters where the Appeals has been filed by the Petitioner, the amount fixed by the Court below

was drastically reduced. Under such circumstances, if the delay is not condoned, it would cause great prejudice and irreparable loss to the State

Government. In support of her contentions, she relied upon the following judgments:

- (i) State of Nagaland Vs. Lipok AO and Others, ;
- (ii) State of Haryana Vs. Chandra Mani and others, ;
- (iii) G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore, ;
- (iv) Special Tehsildar, Land Acquisition, Kerala Vs. K.V. Ayisumma, ;
- (v) State of U. P. and others Vs. Harish Chandra and others, ;
- (vi) State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, ;
- (viii) In State (NCT of Delhi) v. Ahmed Jaan 2008 (14) SCC 582;
- (viii) State of Karnataka Vs. Y. Moideen Kunhi (dead) by Lrs. and Others, .

8. Countering the said submissions made by the learned Additional Advocate General for the Petitioner, learned Counsel appearing for the

Respondent submitted that no sufficient cause has been made out in the Affidavit to condone the inordinate delay of 3081 days. In fact, the

Petitioner had entered appearance in the Execution proceedings initiated by the Respondents before the Execution Court as early as in the year

2006 itself. While that being so, the reason assigned by the Petitioner that they came to know about the missing of certified copy of the judgment

only during 2008 is nothing but a falsehood. Though an order of attachment was made in the Execution proceedings as early as on 20.4.2007

without depositing the amount by dragging the land losers to the Court of law after several years this Appeal has been filed. Hence, no indulgence

would be shown to the Appellant in condoning the delay. In support of his contentions, learned Counsel for the Respondents relied upon the

judgment reported in Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project and Anr. 2008 (5) CTC 663 (SC): 2009 (2) MLJ 1047.

9. Learned Counsel appearing for the Respondents has also relied upon a judgment reported in Oriental Aroma Chemical Industries Ltd. Vs.

Gujarat Industrial Development Corporation and Another, , in support of his

contentions that unless plausible/tangible explanation was offered for the long delay, the High Court will not be justified in condoning such delays.

10. Learned Counsel appearing for the Respondents has also relied upon another judgment reported in United India Insurance Company Ltd.,

Division Office Vs. Pravin Paul and Another, in which this Court has relied upon a decision reported in Hindustan Petroleum Corpn. Ltd. Vs.

Yashwant Gajanan Joshi and others, , wherein it has been held as follows:

If the Courts were to accept the mere procedure of the working in Government offices as sufficient cause for the delay in filing of the Appeal, then

the delay would have to be condoned in almost every case and the period of limitation prescribed for filing of the Appeal would, for the State

Government, become a misnomer.

11. Thus, by relying upon the decisions, learned Counsel for the Respondents submitted that since no sufficient cause has been made out to

condone the inordinate delay of 3081 days, the Petition has to be dismissed.

12. We have considered the submissions made on either side and perused the materials available on record.

13. It is true that the delay of 3081 days is an inordinate delay. It is the submission of the learned Additional Advocate General that if the said

delay is not condoned, it would cause loss to the Government exchequer, since the Sub-Court has enhanced the amount 10 times from Rs. 250/-

per cent to Rs. 2,500/-per cent. Per contra, it is the contention of the learned Counsel for the Respondents that no sufficient cause has been made

out in the Affidavit to condone the delay of 3081 days and the land losers should not be made to wait indefinitely by dragging the proceedings. It is

also the submission of the learned Counsel for the Respondents that the averments made in the Affidavit are falsehood, since the Petitioner was

well aware of the Execution proceedings before the Execution Court. No doubt, either side relied upon catena of cases in support of their

submissions. In our considered opinion, it has to be seen whether any loss would be caused to the public exchequer, if the delay is not condoned.

On a perusal of the award, the Land Acquisition Officer has passed an award at the rate of Rs. 1,48,385.30, Rs. 250 per cent and the same was

enhanced to Rs. 16,48,725/- by enhancing the compensation from Rs. 250/- to Rs. 2,500/- per cent. Moreover in connected cases, in the Appeal

filed before this Court, the compensation amount awarded by the Court below was reduced. Therefore, we are of the view that for the mistakes

committed by the erring officials, the public exchequer cannot be made to sustain the loss. Moreover, pursuant to the order passed by this Court

dated 30.11.2010, the Petitioner has also initiated disciplinary action against the erring officials. In fact, the judgment relied upon by the learned

Additional Advocate General will give a fitting answer to the issue involved in this matter.

14. The judgment relied upon by the learned Additional Advocate General for the Petitioner in State of Karnataka Vs. Y. Moideen Kunhi (dead)

by Lrs. and Others, , the Supreme Court has condoned the delay of 6500 days in filing the Appeal against the original order, wherein it has been

held as follows:

21. The case at hand is a classic example where the circumstances are the same. More than 4000 acres of land are involved out of which,

according to the State, nearly 3500 acres constitute forest land. Ultimately, the Court has to protect the public justice. The same cannot be

rendered ineffective by skilful management of delay in the process of making challenge to the order which prima facie does not appear to be legally

sustainable.

22. The expression ""sufficient cause"" as appearing in Section 5 of the Limitation Act, 1963 (in short ""the Limitation Act"") must receive a liberal

construction so as to advance substantial justice as was noted by this Court in G. Ramegowda v. Special Land Acquisition Officer, Paras 16-17 of

the judgment reads as follows: (SCC pp. 148-49)

16. 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.

17. 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. Governmental decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process 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 function - of course, within reasonable limits - is necessary if the judicial approach is not to be 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. Implicit in the very nature of Governmental functioning is procedural delay incidental to the decision-making process. In the opinion of the High Court, the conduct of the Law Officers of the Government placed the Government in a predicament and that it was one of those cases where the mala fides of the officers should not be imputed to Government. It relied upon and trusted its Law Officers. Lindley, M.R., in *National Bank of Wales Ltd., In re.*, observed, though in a different context: (Ch p. 673)

... Business cannot be carried on upon principles of distrust. Men in responsible positions must be trusted by those above them, as well as by those below them, until there is reason to distrust them.

23. Keeping in view the importance of questions of law, which are involved, we are inclined to condone the delay subject to payment of exemplary costs which we fix at rupees ten lakhs to be paid within a period of eight weeks to the Respondents. The delay is condoned subject to the payment of the aforesaid amount as costs. After making the payment the receipt thereof shall be filed before this Court along with an Affidavit. Only after the payment is made, the Special Leave Petitions shall be listed for admission. We make it clear that we have not expressed any opinion on the merits of the case.

15. In *State (NCT of Delhi) v. Ahmed Jaan*, 2008 (14) SCC 582, the Hon'ble Supreme Court held as follows:

11. In *State of Kerala v. E.K. Kuriyipe*, it was held that whether or not there is sufficient cause for condonation of delay is a question of fact

dependent upon the facts and circumstances of the particular case. In *Milavi Devi*

v. Dina Nath, it was held that the Appellant had sufficient cause for not filing the Appeal within the period of limitation. This Court under Article 136 can reassess the ground and in appropriate case set aside the order made by the High Court or the Tribunal and remit the matter for hearing on merits. It was accordingly allowed, delay was condoned and the case was remitted for decision on merits.

12. In O.P. Kathpalia v. Lakhmir Singh, a Bench of Three Judges had held that if the refusal to condone the delay results in grave miscarriage of

justice, it would be a ground to condone the delay. Delay was accordingly condoned. In Collector, Land Acquisition v. Katiji, a Bench of Two

Judges considered the question of limitation in an Appeal filed by the State and held that Section 5 was enacted in order to enable the Court to do

substantial justice to the parties by disposing of matters on merits. The expression "sufficient cause" is adequately elastic to enable the Court 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. This Court reiterated that the expression "every day's delay must be

explained" does not mean that a pedantic approach should be made. The doctrine must be applied in a rational, common sense, pragmatic manner.

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. 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. Judiciary is not respected on account of its power to legalise injustice on technical grounds but because it is

capable of removing injustice and is expected to do so. Making a justice-oriented approach from this perspective, there was sufficient cause for

condoning the delay in the institution of the Appeal. The fact that it was the State which was seeking condonation and not a private party was

altogether irrelevant. The doctrine of equality before law demands that all

litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step motherly treatment when the State is the Applicant. The delay was accordingly condoned.

16. By applying the dictum laid down to the facts of the present case, we are of the view that each case has to be decided on the facts of the concerned case. In the instant case, if the delay is not condoned, it would cause great prejudice to the public exchequer. Therefore, we are of the opinion, it would be appropriate to condone the delay on payment of cost of Rs. 13,500/- to the Respondents by the Petitioner.

17. Accordingly, the delay is condoned on condition that the Petitioner shall pay a sum of Rs. 13,500/- to the Respondents 3 to 11 (Rs. 1,500/- each) within ten days from the date of receipt of a copy of this order, failing which the Delay Petition shall stand dismissed without any further reference to this Court.