
(2010) 12 MAD CK 0148
In the Madras High Court
Case No : CRP (NPD) No. 2684 of 2004

T.M. Parswanatha Nainar

APPELLANT

Vs

Revenue Divisional Officer

RESPONDENT

Date of Decision : 22-12-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Land Acquisition Act, 1894 — Section 18(1)
Limitation Act, 1963 — Section 5

Citation : (2010) 12 MAD CK 0148

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : D. Rajagopal, for the Appellant; P. Shanthi Rakkappan, AGP, for the Respondent

Final Decision : Allowed

Judgement

T.S. Sivagnanam, J.—This revision petition has been preferred u/s 115 of the Code of Civil Procedure, (hereinafter referred to as the "CPC") against the fair and decretal order dated 23.12.2003 in I.A. No. 138 of 1996 in L.A.O.P. No. 74 of 1993 on the file of the Principal Sub Court, Tindivanam.

2. The claimant in LAOP No. 74 of 1993 is the Petitioner and the Respondent is the acquiring body. The Petitioner's land comprised in old survey No. 52/2 (New survey No. 52/4), Uranithangal village, Gingee Taluk measuring an extent of 0.23.0 hectares was acquired for construction of a Microwave Repeater Tower. Pursuant to an award, in award No. 1/92 dated 09.04.1992, the Petitioner was awarded a total compensation of Rs. 7,019/-. The Petitioner claimed enhanced compensation at the rate of Rs. 4000/-per cent and a reference was made u/s 18(1) of the Land Acquisition Act to the Sub-Court, Tindivanam. It was contended by the Petitioner that a portion of the land in survey No. 52/2 was sold by the Petitioner during 1988 for Rs. 6800/-and the land value was fixed by the registering authority at Rs. 8000/-and deficit stamp duty was collected from

the purchaser; that sale transactions in the vicinity would establish the value at the rate of Rs. 4000/-per cent as that was the prevailing market rate during 1993 and the just compensation would be Rs. 4,00,000/-. The reference was entertained by the Sub-Court, Tindivanam on 27.07.1993. The reference Court took up the petition for enquiry on 07.09.1995, and heard the counsel for the claimant and the Respondent having failed to appear, passed an expert award fixing the total compensation payable at Rs. 2,96,400/-and after deducting the sum of Rs. 7019/-already deposited, directed to pay Rs. 2,88,381/

3. Thereafter, the Respondents herein filed an application in I.A. No. 138 of 1996 to condone the delay of 320 days in filing the petition to set aside the ex-parte award in L.A.O.P. No. 74 of 1993 dated 07.09.1995. This application u/s 5 of the Limitation Act, was filed on 22.08.1996. It is seen that the affidavit filed in support of I.A. No. 138 of 1996 was sworn to by one V. Joythi, who is stated to have been working as an office Assistant in the office of the Sub-Collector, Tindivanam. In the affidavit, it has been stated that the deponent joined the office of the Sub-Collector on 28.03.1996 and is looking after the files relating to land acquisition and that he met the Government Pleader on 22.08.1996 (date of filing of Section 5 Application) and was informed about the ex-parte decree passed on 07.09.1995 and that the Department has an excellent case on merits and objections are also filed by the Department and prayed for condoning the delay of 320 days in filing the application for setting aside the ex-parte decree.

4. The Petitioner herein resisted the application in I.A. No. 138 of 1996 by filing a counter, inter alia contending that no reasons were mentioned by the Respondents in the affidavit filed in support of the application u/s 5 of the Limitation Act, that the Respondents did not appear for the hearings and the case was adjourned for several times and finally ex-parte decree was passed on 07.09.1995. Therefore, it was contended that in the absence of any reasons for the delay the petition deserves to be dismissed.

5. The reference Court by its order dated 23.12.2003 allowed the application and condoned the delay. Aggrieved by such order the present revision petition has been filed.

6. The learned Counsel appearing for the Petitioner would submit that in the absence of any valid explanation for the inordinate delay of 320 days the Court below erred in exercising its discretion and condoned the delay. Further, the deponent to the affidavit, filed in support of I.A. No. 138 of 1996, is not competent to speak about the ex-parte decree dated 07.09.1995; and the reference application was entertained in 1993, no counter was filed and only in 1995 the expert award was passed. The learned Counsel would further submit that only when there is sufficient cause the Court could exercise discretion and as there are absolutely no reasons given by the Respondent there cannot be a different yardstick for the Government, therefore the order passed by the reference Court deserves interference.

7. Per contra, the learned Additional Government Pleader (CS) appearing for the Respondent would contend that a liberal approach should be adopted in such matters and the Court should not have a hyper technical approach and the discretion exercised by the Court below is perfectly valid and calls for no interference. In support of her contention the learned Counsel relied on the judgment of the Hon''ble Supreme Court in Improvement Trust, Ludhiana Vs. Ujagar Singh and Others,

8. Heard the learned Counsel for the Petitioner and the learned Additional Government Pleader (CS) for the Respondent.

9. Before considering the facts of the present case, it would be necessary to look into the recent judgment of the Hon''ble Supreme Court in the case of Improvement Trust, relied on by the learned Additional Government Pleader (CS). In the said case the lands of the Respondents 1 to 4 therein were acquired by the Appellant trust, and the reference Court determined the compensation and passed an award. The Appellant did not deposit the award amount and the erstwhile land owner approached the executing Court for recovery of the amount awarded; the property in question was attached; brought for auction sale and also sold in favor of a third party. At that stage the Appellant therein first filed their objection before the executing Court, this application was dismissed for default. The sale in favor of the third party was confirmed, bid amount was deposited and the erstwhile land owners also realized the compensation awarded. Thereafter, the trust filed a belated appeal along with application to condone the delay of about 2 months, this application was dismissed by the Appellate Court. The Appellant therein filed second appeal before the High Court of Punjab & Haryana, which was converted as a revision, which was dismissed by the High Court and the review petition was also dismissed. As against the orders of the High Court of Punjab & Haryana, appeal was preferred to the Hon''ble Supreme Court. The Hon''ble Supreme Court in the said case held that the delay of about 2 months has not been so huge warranting dismissal on hyper technical grounds. In paragraph 16 of the judgment their Lordship''s observed:

16. While considering the application for condonation of delay no straitjacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not. Each case has to be weighed from its facts and the circumstances in which the party acts and behaves. From the conduct, behavior and attitude of the Appellant it cannot be said that it had been absolutely callous and negligent in prosecuting the matter.

10. The facts of the case before the Hon''ble Supreme Court were entirely different and cannot be applied to the facts of the present case that too when the delay in the present case is 320 days. However, as held by the Hon''ble Supreme Court each case has to be weighed from its facts and circumstances in which the party acts and behaves and it is the conduct, behavior and attitude of the parties in prosecuting the matter.

11. Admittedly, in the instant case the affidavit filed in support of the petition is devoid of any reasons or particulars. The deponent has stated that he joined as an office assistant in the office of the Sub-Collector, Tindivanam on 28.03.1996, and he met the Government Pleader on 22.08.1996 and was informed about the ex-parte decree passed on 07.09.1995 and on the same day (i.e.,) 22.08.1996 filed the application to set aside the ex-parte decree along with their counter. Firstly the deponent is only an office assistant attached to the office of the Sub-Collector who had been posted in the said office only on 28.03.1996 which was much after the ex-parte decree which was passed on 07.09.1995. Therefore, the deponent could not have been aware of the developments or event which had taken place between 07.09.1995 to 28.03.1996. In any event no attempt has been made to give the relevant dates and events which led to the filing of the application belatedly. Nothing prevented the Sub-Collector from swearing to an affidavit giving all particulars. These would go to establish the callous and negligent attitude of the officials in prosecuting the matter. In the absence of sufficient cause being pleaded before the Court, the question of exercising discretion does not arise. However, the Court below exercised its discretion by stating that the Government would be put to prejudice if the delay is not condoned. Yet another factor which was not properly considered by the reference Court is that though the petition for setting aside the ex-parte order was filed during 1996 no steps was taken by the Respondent till 2003 to obtain orders from the Court. In my view the Court below ought to have rejected the petition on this sole ground. However, the Court below noted this with disapproval and yet chose to condone the delay on payment of cost of Rs. 500/-. From the above stated facts it is clear that the Respondent was not diligent in prosecuting the matter, the delay of 320 days remains unexplained and no reasons have been given as to why the Respondent did not take steps to move the application filed during 1996 for nearly seven years (2003). Therefore, the Respondent is not entitled for any indulgence and the reference Court erroneously exercised its discretion which puts a premium on the callous and negligent attitude of the Respondent.

12. This Court (Hon"ble Justice R. Banumathi) in G. Jayaraman v. Devarajan (2007) 3 L.W. 1034 considered a similar question and while examining manner in which discretion should be excused u/s 5 of the Limitation Act, held thus:

14. As rightly pointed out by the learned Counsel for the Petitioner, while considering the plea relating to affording an opportunity to advance substantial justice, the right accrued to the other side ought to be kept in view. When there is deliberate delay, the Respondent herein cannot be heard to plead that substantial justice deserve to be preferred as against technical consideration.

16. As stated earlier, delay cannot be excused as a matter of judicial generosity. Rendering substantial is not to cause prejudice to the opposite party. Money suit was filed way back in 1998 and Revision Petitioner/Plaintiff has been pursuing the matter for nearly 7 to 8 years. The matter could not reach finality because of

one application or another filed by the Respondent/Defendant. The party claiming indulgence must prove that he has reasonable diligent in prosecuting the matter. This test for condoning the delay is not satisfied in this case. Liberal exercise of jurisdiction u/s 5 of the Act would cause prejudice to the Plaintiff/decreed holder, who has been pursuing the money suit for quite a long time. In condoning the delay, there is improper exercise of discretion and therefore, the impugned order cannot be sustained.

The above decision applies with full force to the facts of the present case as held by her Lordship, the delay cannot be excused as a matter of judicial generosity and if liberal exercise of jurisdiction would cause prejudice to the Petitioner, who has lost his property and is languishing for all these orders to get just compensation, this Court has no hesitation to hold that the exercise of discretion by the reference Court in condoning the delay is improper.

13. For all the above reasons, I hold that the exercise of discretion of the Court below in the peculiar facts and circumstances of the case is erroneous and calls for interference.

14. In the result, the Civil Revision petition is allowed and the Respondent is directed to settle the balance amount of compensation payable to the Petitioner in terms of the judgment and decree dated 07.09.1995 in LAOP No. 74 of 1993 on the file of the Sub-Court, Tindivanam. No costs.