

(2013) 03 CHH CK 0032

In the Chhattisgarh High Court

Case No : First Appeal (Misc.) No's. 26, 27, 28 and 29 of 2007

Vijay Kumar Agrawal and Others

APPELLANT

Vs

State of C.G. and Another

RESPONDENT

Date of Decision : 22-03-2013

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23(1), 23(1A), 23(2), 28
Limitation Act, 1963 — Section 14, 5

Citation : (2013) 2 CGBCLJ 553 : (2013) 3 CGLJ 116 : (2013) 3 MPHT 98

Hon'ble Judges : Nawal Kishore Agarwal, J

Bench : Division Bench

Advocate : Raja Sharma, for the Appellant; G.D. Vaswani, Govt. Advocate for the State/Respondent No. 1 and Mr. Sanjay Patel, Advocate for the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Nawal Kishore Agarwal, J.—Since common questions have been raised for consideration in all these appeals, they are being disposed of by this common judgment. Brief facts leading to filing of these appeals are that in Land Acquisition Case No. 151-A/82 of the year 1989-90 pending before the Land Acquisition Officer, Raipur, a common award dated 5-8-1991 was passed by him and certain amounts were awarded to the appellants. Since the appellants had not accepted the award passed by the Land Acquisition Officer, they filed written applications to the Collector requiring the matters to be referred for the determination of the Court on certain grounds. On this, the matters were referred by the Collector to the District Court, on which, 4 M.J.Cs. vide Nos. 8/2005 (Deendayal Agrawal Vs. State of Chhattisgarh and another), 9/2005 (Gopal Das Agrawal Vs. State of Chhattisgarh and another), 10/2005 (Bhajanlal Agrawal Vs. State of Chhattisgarh and another) and 7/2005 (Vijay Kumar Agrawal Vs. State of Chhattisgarh and another) were registered and ultimately all were decided by the Trial Court vide separate awards dated 10-5-2005, 12-5-2005, 12-5-2005 and 10-5-2005 respectively. By the aforesaid awards, the

learned Additional District Judge enhanced the principal amount of compensation, also directed for payment of interest as per Clause 23(1-A) and 23(2) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") in their favour. The operative part, i.e., Clause 2 of the awards, which is almost common in all the cases, is quoted as under:--

2. After passing of the aforesaid awards, the matters were put to execution and in execution, the appellants/claimants filed their own calculations in relation to the respective awards passed in their favour. The calculations filed by the appellants in their execution case were opposed by the State.

3. The contentions of the appellants before the Executing Court were that the interest which has been awarded vide Clause 2 of the awards u/s 23(1-A) is the interest from the date of notification u/s 4(1) of the Act till the date of passing of the awards, which means that till the date of awards ultimately passed by the Reference Court u/s 18 of the Act and the appellants were entitled to get the interest from the date of notification u/s 4(1) till 10-5-2005 and 12-5-2005, i.e., the date of respective awards, which were passed by the Reference Court in their favour.

4. The above contention was opposed by the State and it was contended that no such interest was awarded by the Reference Court and the appellants are wrongly interpreting Clause 2 of the awards and they are wrongly claiming interest till the date of award passed by the Reference Court because the Reference Court has only awarded interest till the date of award passed by the Land Acquisition Officer or Collector and not till the date of awards passed by it in reference cases.

5. The Executing Court, vide order dated 14-12-2005, upheld the objections raised by the State and determined that under the provisions of Section 23(1-A) the power to award interest was till the date of passing of the award of the Collector, therefore, the claimants were not entitled to get the interest beyond that period.

6. Feeling aggrieved and dissatisfied with the order passed by the Executing Court, the appellants have preferred Writ Petition Nos. 1360, 1361, 1362 and 1363 of 2006. This Court, vide order dated 5-10-2005 dismissed all the writ petitions observing:--

11. The other argument of learned Counsel for the petitioners that Clause 2 of the award of Reference Court shows that the Reference Court has awarded interest till the date of passing of the reference award is totally misconceived. The wordings used by the Reference Court in Clause 2 of the award are clear and unambiguous. The Reference Court has clearly stated that under the provisions of Section 23(1-A) in addition to the market value of the land, the petitioners shall also be awarded interest from the date of notification u/s 4(1) till the date of award at the rate of 12 per cent per annum. After going through the entire award and also after going through the other provisions made in the award, this

clause is clear and unambiguous, in which, interest is awarded till the date of passing of the award by the Collector and it cannot be read that the Reference Court has awarded interest till the date of decision of the reference by it. Rather, it would appear that in fact, the interest which has been awarded u/s 23(1-A) is the interest till the date of award passed by the Collector and the word used like "award" and not saying as "award by the Collector" does not mean that it would be interpreted as the "award" passed by the Reference Court.

7. It is in the above backdrop, all the 4 appeals have been filed with an inordinate delay of 498 days along with application for condonation of delay.

8. The prayer for condonation of delay was vehemently opposed by the respondents/State.

9. As per Shri Raja Sharma, learned Counsel appearing for the appellants, the language of the award was ambiguous, and therefore, appellants were under bonafide belief that Reference Court had awarded interest from the date of publication of the notification u/s 4(1) of the Act till the date of passing of the award, which means till the date of awards ultimately passed by the Reference Court u/s 18 of the Act, and the position was only clarified by this Court while passing the order in the writ petitions filed by the appellants and immediately thereafter on 19-12-2006, the appellants have preferred the appeals, and therefore, the delay occurred in filing the appeals is bonafide and unintentional and the period spent in proceedings bonafide in a Court without jurisdiction deserves to be excluded/condoned in reckoning the limitation prescribed for filing the appeal, particularly, in light/analogy of Section 14 of the Limitation Act, 1963 (for short "the Limitation Act").

10. Shri Sharma by placing reliance upon the judgments of Supreme Court in the case of *Sunder Vs. Union of India*, and *Patel Joitaram Kalidas and Others Vs. Spl. Land Acquisition Officer and Another*, , would further submit that from a combined reading of Sections 23(1-A), (2), 28 and 34 of the Act, it is clear that grant of interest u/s 28 of the Act is automatic and does not involve any judicial discretion.

11. On the other hand, Shri G.D. Vaswani, learned Government Advocate for respondent No. 1/State and Shri Sanjay Patel, learned Counsel for respondent No. 2/Board submitted that the award of interest u/s 28 of the Act is discretionary and not mandatory. The language of the award passed by the Reference Court is clear, which shows that in its discretion, the Reference Court has not awarded interest u/s 28 of the Act. The Reference Court has awarded interest strictly in accordance with the provisions contained in Section 23(1-A) and (2) of the Act. It is not correct to say that the grant of interest u/s 28 of the Act is automatic and does not involve any judicial discretion. It was further contended, while deciding the application for condonation of delay, it is well-settled that the Court should not enter into merits of the case and should only see whether or not sufficient cause had been shown by the appellants for

condoning the delay in filing the appeal before it.

12. As per the respondents' Counsel, despite knowing fully well that the Reference Court had not awarded any interest u/s 28 of the Act, the appellants, instead of filing appeals, have tried their best to get the same by hook or crook by miscalculating the amount before the Executing Court and also by filing writ petitions and when they failed in this process the instant appeals have been preferred after an inordinate delay of 498 days, therefore, it cannot be said that they had been prosecuting bonafide and with due diligence the proceeding in a Court having no jurisdiction within the meaning of 14 of the Limitation Act and the appeals deserve to be dismissed as barred by limitation.

13. I have heard learned Counsel for the parties and perused the records of the Court below.

14. u/s 23(1-A) of the Act, in addition to the market value of the land, as may be determined by the Reference Court u/s 23(1), the appellants are also entitled for an amount calculated at the rate of 12% per annum of such market value for the period commencing on and from the date of publication of notification under sub-section (1), Section 4 in respect of such land to the date of award of the Collector or the date of taking possession of the land, whichever is earlier. u/s 23(2) of the Act, in addition to the market value of the land, as determined by the Reference Court u/s 23(1), the appellants are also entitled for a sum of 30% on such market value, in consideration of the compulsory nature of the acquisition.

15. The grievance of the appellants was that they are entitled for interest u/s 23(1-A) of the Act from the date of publication of notification u/s 4(1) till the date of passing of award by the Reference Court, which, on the face, was not correct, inasmuch as, u/s 23(1-A), the appellants are entitled for interest only upto the date of the award of the Collector and not till the date of passing of the award by the Reference Court.

16. So far as award of interest u/s 28 of the Act is concerned, the same is discretionary and not mandatory [please see: Union of India (UOI) Vs. Pramod Gupta (D) by L.Rs. and Others, and Commissioner of Income Tax, Faridabad Vs. Ghanshyam (HUF),

17. In Sunder's case (supra), the question referred to by the Hon'ble Supreme Court was: is the State liable to pay interest on the amount envisaged u/s 23(2) of the Land Acquisition Act, 1894? In other words, the question was whether or not for the purposes of Section 28 read with Section 34, solatium is a part of compensation? Answering the reference in the affirmative, the Hon'ble Supreme Court has held: the solatium provided u/s 23(2) forms an integral and statutory part of the compensation awarded to a land owner and the interest awardable u/s 28, therefore, would include within its ambit both the market value and the statutory solatium. The Supreme Court has nowhere held, the award of interest u/s 28 is mandatory, and therefore, the above judgments cited by Shri Sharma

are of no help to him in the facts and circumstances of the present case.

18. Further, it is also settled law while deciding the application for condonation of delay, the Court should not consider the merits of the case and should only see whether sufficient cause had been shown by the applicant for condoning the delay in filing the appeal before it or not. Now, I shall examine whether or not sufficient cause exists for not filing the appeals in time.

19. While analysing Section 14 of the Limitation Act, the Supreme Court in case of Consolidated Engg. Enterprises Vs. Principal Secy. Irrigation Deptt. and Others, has laid down following conditions to be fulfilled before granting relief:--

- (1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;
- (2) The prior proceeding had been prosecuted with due diligence and in good faith;
- (3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;
- (4) The earlier proceeding and the latter proceeding must relate to the same matter in issue; and
- (5) Both the proceedings are in a Court.

20. The appellants have invoked Sections 14 and 5 of the Limitation Act and have prayed that the delay in filing the appeals be condoned. The question, therefore, which falls for decision is as to whether in the facts and circumstances of the case, the appellants could be deemed to have been prosecuting bonafide and with due diligence the proceedings in Courts having no jurisdiction. The facts as detailed hereinabove go to show, the appellants were not prosecuting with due diligence another civil proceeding in good faith in a Court which, from defect of jurisdiction is unable to entertain it. On the contrary, the appellants were trying to get the relief earlier from the Executing Court and then from the Writ Court, which was not granted by the Reference Court. It is also incorrect to say that the language of the award of the Reference Court was ambiguous, inasmuch as, this Court, while deciding the writ petitions, had clearly held that the wordings used by the Reference Court in Clause 2 of the award are clear and unambiguous. Therefore, on the face, it cannot be said that the appellants are entitled for exclusion of the time spent in prosecuting execution proceedings as well as writ proceedings while computing the period of limitation for filing of instant appeals and certainly the appellants failed to assign sufficient cause for not filing of the appeals in time.

21. It is imperative for claiming the benefit of Section 14 that the initial filing of the appeal in a wrong Court must be proved to the satisfaction of the Court to have been initially done with due diligence. Further, the proceedings thereafter must be shown to have been prosecuted in good faith. This indicates that it is

only those allegations which really admit of some room for mistake and are the result either of inadvertence or a genuine inability to form a categorical opinion as to the Forum of the appeal which are intended to be covered by these protective clauses. The circumstances should be such that one could legitimately entertain a doubt with regard to the Forum of filing an appeal or that the appellant was handicapped by some inadvertent factor or helpless situation so that the proper Forum was missed. It is only in such cases that this section can be invoked.

22. In the light of above, it is crystal clear that the appellants are not entitled for exclusion of time during which they had been pursuing their remedy before Executing Court as well as before the Writ Court within the meaning of Section 14 of the Limitation Act.

23. It is also trite law "it is not every negligence that would be condoned. Only that species of negligence may be considered as amounting to sufficient cause which any reasonable person in all honesty commit", which is not the case here.

24. Section 5 of Limitation Act, 1963 confers power to condone delay if the appellants are successful in showing that it was prevented for preferring the appeals for sufficient cause. It is the sufficient cause which gives jurisdiction to a Court to condone the delay. Normally, after the expiry of the period right to sue extinguishes and the other side acquires right which normally should not be disturbed. Only in case of proving a sufficient cause the applicant/appellant is entitled to continue the litigation further.

25. Considering every aspect of the matter, in the instant cases, the appellants could not explain inordinate delay of 498 days in filing the appeal. The extent of liberal construction should not be such that it may totally ignore the public policy on which the law of limitation is founded and thereby defeat the very purpose of the law of limitation. The Court would not grant exemption from limitation on equitable consideration or on the ground of hardship. Therefore, delay occurred in filing the appeals cannot be condoned. Accordingly, I.A. No. 1, application for condonation of delay in filing the appeals is dismissed. Consequently, the appeals are also dismissed as barred by limitation. No order as to costs.