

IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION NO. 227 OF 2013
IN
STAMP NUMBER MAIN NO. 479 OF 2013

STATE OF GOA THE CHIEF SECRETARY
AND 2 ORS.,

... Applicants

Versus

SHRI RAMESH MORTOBA DALVI AND 11
ORS.,

... Respondents

Ms. Neha Kholkar, Additional Government Advocate for the Applicants.

Shri Sudesh Usgaonkar, Advocate for the Respondent Nos. 1 to 9, 11 and 12.

CORAM:- C. V. BHADANG, J.

Date:- 14th AUGUST, 2015.

P.C:

Heard Ms. Kholkar, the learned Additional Government Advocate for the applicants and Shri Usgaonkar, the learned Counsel for the respondent nos. 1 to 9, 11 and 12.

2. By this application, the applicant-State is seeking condonation of delay of 1721 days, in filing the appeal.

3. The brief facts are that the respondents/plaintiffs had filed Civil Suit No. 23/2004 for recovery of possession, mesne profit and in the alternative for compensation. According to the plaint allegations, the respondent-State had undertaken widening of a road, in which area admeasuring 13,000 square metres, belonging to the plaintiffs came under the road. It was contended that the said land was neither acquired, nor compensation was paid in respect thereof. The suit came to be decreed directing the applicants to pay compensation at the rate fixed by the Land Acquisition Officer (vide Exhibit-61), together with all benefits/interest, as granted by the award. The learned District Judge accepted that an area of 13,000 square metres was utilised for the road, without acquisition/payment of compensation. It is not in dispute that insofar as, the award is concerned, the compensation was granted at the rate of Rs.20/- per square metre. It is submitted on behalf of respondent nos. 1 to 9, 11 and 12 that a compensation of about Rs.2,60,000/- alongwith other benefits/interest would be payable.

4. Be that as it may, coming to the issue of condonation, it is contended that after the suit was partly decreed on 28.11.2008,

a calculation sheet was prepared on 05.02.2009 and the file was forwarded to the Law Department for opinion. On 25.02.2009, the Law Secretary had recommended filing of an appeal. On 04.03.2009, the file was cleared by the P.W.D. Minister. It was on 17.03.2009, that the matter was allotted to Mr. Sameer Bandodkar, the then Additional Government Advocate, for filing appeal. However, it was only on 13.09.2012, that the officer on special duty (OSD), attached to the office of the then Advocate General, received a letter from Mr. Sameer Bandodkar, A.G.A., who had returned the file saying that, upon discussion with the then Advocate General, it was decided not to file an appeal and hence, the file was returned. Thereafter, clarification/explanation was obtained from Mr. Sameer Bandodkar, A.G.A. A letter was also written to Mr. Sameer Bandodkar, A.G.A., seeking confirmation letter from the then Advocate General, as to the alleged stand that on discussion with the then Advocate General, it was decided not to file the appeal. However, no such letter, was sent by Mr. Sameer Bandodkar, A.G.A. Thereafter, the file was allotted to another A.G.A. and it, was found that the certified copy of the impugned judgment was not there and the same was applied on 09.01.2013. It was received on 21.01.2013 and eventually, the

appeal came to be filed on 18.02.2013 alongwith an application for condonation of delay. It is contended that the major part of the delay (from March, 2009 to September, 2012) is on account of the then A.G.A., who failed to file the appeal. It is contended that the Government has necessarily to work and act in a hierarchical manner and the delay is not intentional.

On behalf of the applicants, reliance is placed on the following decisions:

- (i) N. Balakrishnan Vs. M. Krishnamurthy reported in (1998) 7 SCC 123;
- (ii) State of Nagaland Vs. Lipok A.O. and Others, reported in (2005) 3 SCC 752;
- (iii) G. Ramegowda, Major and Others Vs. Special Land Acquisition Officer, Bangalore and Basavalingappa Vs. Special Land Acquisition Officer, Bangalore, reported in (1988) 2 SCC 142;
- (iv) Collector (Land Acquisition), Anantnag and Another Vs. Mst. Katiji and Others, reported in (1987) 2 SCC 107;
- (v) The Deputy Collector (LA) and Another Vs. Mr. Isidore Gracias, order dated 04.05.2015 in M.C.A. No.

872 of 2014 passed by this Court;

(vi) The Deputy Collector and SDO and Another Vs. Shri Edgar F. Dias Valles, Order dated 05.04.2013 in M.C.A. No. 190 of 2013 passed by this Court.

5. The respondent nos. 1 to 9, 11 and 12 have filed a reply and have opposed the prayer. It is the material contention that the concerned officers of the State have not acted with due diligence. It is also contended that in the noting dated 23.02.2009 by the Under Secretary, Law Department, it was opined that "this was not a fit case for appeal, but the Department may take chance". Thus, the reason shown by Mr. Sameer Bandodkar, A.G.A. is probable, as the Government had decided not to file the appeal.

6. I have heard Ms. Kholkar, the learned Additional Government Advocate for the applicants and Shri Usgaonkar, the learned Counsel for respondent nos. 1 to 9, 11 and 12.

7. The only point which arises for determination is as to whether the applicants have made out sufficient cause for not

filing the appeal in time and whether the delay deserves to be condoned.

My answer is in the affirmative for the following reasons:

8. The law as to the consideration for condonation of delay is fairly well settled. The length of delay is not strictly material. The party has to demonstrate that it had sufficient cause for not filing the appeal in time. It has to be shown that the delay was neither on account of any negligence nor out of lack of diligence.

9. In the case of, **Collector (Land Acquisition), Anantnag and Another Vs. Mst. Katiji and Others**, reported in **(1987) 2 SCC 107** has held in para 3, as under:

"3. The legislature has conferred the power to condone delay by enacting Section 5 of the Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts 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. And such a liberal approach is adopted on principle as it is realized 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. Further, in the case of, **N. Balakrishnan Vs. M. Krishnamurthy**, reported in **(1998) 7 SCC 123**, it was been held in paras 9 and 11 thus:

"9. 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. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the

exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

11. 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."

11. In the case of, **Madhuri Goud Vs. Damodar Reddy**, reported in **(2012) 12 SCC 693**, the Hon'ble Apex Court *inter alia* held that the expression 'sufficient cause' is elastic enough to enable the Courts to apply the law in a meaningful manner which would serve the ends of justice.

12. Coming to the present case, the major part of the delay is from March, 2009 to September, 2012, which is attributed by the applicants to the then A.G.A., Mr. Sameer Bandodkar, who did not take steps for filing the appeal. It appears from the contents of the application that the State had sought clarification/explanation from the concerned Government Advocate and had also recommended an action. Be that as it may, this

substantial period, which is of about 3 ½ years, is on account of alleged lapse on the part of the then A.G.A. It is true that the State could have acted with more diligence and could have kept a track of the matter, after having allotted it to the concerned A.G.A. The conduct of the Government can be said to be perilously close to inaction. However, in the circumstances (attributed to the then A.G.A.), the State and the public exchequer cannot be made to suffer. As such, the delay can be condoned, subject to payment of costs of Rs.10,000/-, to the respondents, to be paid/deposited within a period of four weeks. The application is accordingly allowed. The delay in filling the appeal is hereby condoned, subject to payment/deposit of costs of Rs.10,000/-, within a period of four weeks. The payment/deposit of costs of Rs.10,000/-, within a period of four weeks is a condition precedent for condonation of delay. Let the appeal be registered on payment/deposit of the costs.

C. V. BHADANG, J.

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