

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 304 OF 2006
WITH
CROSS OBJECTION NO. 10 OF 2007

1. Addl. Collector of Goa,
Land Acquisition Collector,
Panaji, Goa.
2. The Executive Engineer,
W.D. I, (Bldg),
P.W.D., Panaji, Goa.

... Appellants
(Original Respondents)

V e r s u s

1. Ernesto dos Merces Carvalho,
(since deceased, through his legal heirs)
 - a) Smt. Edviges Carvalho, wife
 - b) Joseph Carvalho,
son and his wife
 - c) Mrs. Mavimndo Ceu Fernandes
 - d) Mrs. Olive Carvalho,
daughter and her husband
 - e) Shri Filipe Vaz,
 - f) Mrs. Tereza Carvalho,
daughter and her husband
 - g) Shri Tau Matorgo Braganza
 - h) Mrs. Nilena Carvalho, daughter
and her husband
 - i) Shri Abel Coutinho,
 - j) Mrs. Filomina Carvalho,
daughter and her husband
 - k) Shri Ross D' Cruz
2. Edvigas Almeida Carvalho,

3. Fr. Filipe Carvalho (since deceased represented by his legal representatives)

a) Joseph Carvalho

b) Maria do Leu Carvalho,
both resident of house no. 180,
Velsao, Goa. (Pin 403712)

..... Respondents
(Original claimants)

Mr. A. N. S. Nadkarni, Advocate General with Mr. P. Dangui, Addl. Government Advocate for the Appellants.

Mr. Valmiki Menezes, Advocate for the Respondents.

Coram :- **F. M. REIS,**
 K. L. WADANE, JJ.

Date : **19th January, 2015**

ORAL JUDGMENT (Per F. M. Reis, J.)

Heard Shri A. N. S. Nadkarni, learned Advocate General appearing for the Appellants and Shri Valmiki Menezes, learned Counsel appearing for the Respondents.

2. The above Appeal challenges the Judgment and Award dated 19.06.1995 passed in Land Acquisition Case no. 37 of 1989, whereby, the reference under Section 18 of the Land Acquisition Act, 1894, filed by the Respondents was partly allowed and the market value of the land acquired in respect of the property surveyed under no. 272/2 having an area of 14,962 square metres is fixed at Rs.25/- per square metre and of the plot in survey no. 273/2

having an area of 4574 square metres at Rs.30/- per square metres besides statutory benefits.

3. The Appeal was filed beyond the time prescribed and as such an application for condonation of delay was also filed where this Court by an Order dated 13.11.2006, found that there was sufficient cause to condone the delay in filing an Appeal after a period of ten years nine months and twenty four days.

4. The Respondents being duly served, filed Cross Objections thereafter on 11.12.2006, inter alia, seeking for higher compensation than the one awarded by the Reference Court. The Division Bench of this Court by Judgment dated 27.11.2008, disposed of the above First Appeal as well as the Cross Objections, inter alia, reducing the amount awarded in the impugned Award by 50 percent.

5. Being aggrieved by the said Judgment passed by this Court, the Respondents preferred a Civil Appeal Nos. 6064-6067 of 2012 before the Hon'ble Apex Court which came to be disposed of by an Order dated 27.08.2012. While allowing the Appeal preferred by the Respondents, the Hon'ble Apex Court has noted that this Court should re-consider the question as to whether the Respondents have shown any sufficient ground for condonation of delay of 11 years to entertain the First Appeal no. 304 of 2006 and to decide the Cross Objections no. 10 of 2007 taken into consideration the evidence brought on record by the Respondents herein. The Judgment of this Court dated 27.11.2008 and as corrected by Order dated 01.07.2009 and Order dated 13.07.2009, was accordingly quashed and set aside. The Appeals were allowed and the matter was remanded

to this Court for fresh disposal in the light of the observations made therein. Accordingly, the above Appeal was considered first for the purpose of examining the application for condonation of delay.

6. Shri A. N. S. Nadkarni, learned Advocate General appearing for the Appellants, has pointed out that the Appellants have made out a sufficient cause within the meaning of Section 5 of the Limitation Act to condone the delay of nearly eleven years in filing such Appeal. Learned Advocate General has taken us through the application for condonation of delay to point out that there is an averment in para 3 of the said application that the concerned Government Advocate who was appearing before the Reference Court did not forward the certified copy of the impugned Judgment and Award nor informed the Appellants regarding the passing of the impugned Judgment. It is further contended by the learned Advocate General that only thereafter the Appellants learnt that the said Advocate had expired about four years back and, as such, there was no possibility of knowing the reasons for not filing the Appeal. It was further pointed out that para 7 of the said application, there was also an averment that the Respondent no. 1(b) who was working in the establishment had also not informed the Government regarding the passing of the impugned Judgment and Award. The learned Advocate General, as such, points out that upon receiving the claim from the Respondents, the certified copy of the Award was applied on 26.07.2005, which was delivered on 29.07.2005 and the approval for the filing Appeal was received on 20.06.2006 and the Appeal was filed on 11.06.2006. The learned Advocate General as such submits that due to administrative reasons, there was a delay in filing the Appeal which deserves to be condoned. The learned Advocate General

further points out that it is well settled that the Court should take a liberal view in condoning the delay and, as such, the Appellants have made out a case for condoning the delay.

7. Shri Valmiki Menezes, learned Counsel appearing for the Respondents, has disputed the said condonation. The learned Counsel has pointed out that there is no sufficient cause shown by the Appellants which would justify condoning such delay. Learned Counsel further pointed out that the delay of 11 years is not at all satisfactorily explained by the Appellants and, as such, no discretion is to be exercised in favour of the Appellants herein. Learned Counsel further pointed out that upon perusal of the alleged explanation given by the Appellants to condone the delay, there are yawning gaps therein where no explanation at all has been given for such delay. Learned Counsel further submits that though the certified copy was obtained in July, 2005, the Appeal was filed only in November, 2006 which does not at all justify the delay being condoned. The learned Counsel further submits that the alleged explanation is no explanation in law and, as such, the application deserves to be rejected.

8. Upon hearing the learned Counsel, it was also not disputed that in case the delay is not condoned, the Cross Objection filed by the Respondents would not be maintainable.

9. We have given out thoughtful considerations to the rival contentions and we have also gone through the records. On perusal of the records, it reveals that the impugned Judgment and Award came to be passed by the Reference Court

on 19.06.1995. The certified copy filed along with the above Appeal was applied on 26.07.2005 and delivered on 29.07.2005. The application for certified copy itself was filed nearly ten years from the date of the impugned Award. Such delay itself is a gross delay and as such there have to be extraordinary reasons for the Court to exercise its discretion in condoning such delays. It is the contention of the Appellants that the delay was as the Advocate appearing before the Reference Court had not forwarded the certified copy of the Judgment and Award passed by the Reference Court. It is further contended that only when the claim for compensation was put forward by the Respondents that they learnt that they had not filed the Appeal challenging the Judgment and Award. We find no justification to accept the said explanation. The delay of ten years has not at all been satisfactorily explained. The fact that the Advocate appearing in the Reference Court, expired four years from the date of such knowledge can also be curled out from the facts on record. The delay of first six years has not at all been explained. We are not at all impressed by the conduct of the officials of the Respondents of such an yawning delay in filing an Appeal challenging the impugned Judgment and Award. The records also reveal that there were other Appeals which were also filed by the Appellants. The rights which have accrued to the Respondents by such gross delay in filing the Appeal cannot be lightly taken away on the basis of vague allegations by the Appellants. It was incumbent upon the Appellants to get cogent material to justify the delay of such a long period of 11 years. Apart from that the gross inaction which caused the delay, the lack of urgency and in difference by the official of the Appellants is shown by the fact that though the certified copy was obtained in July 2005, the Appeal was filed only in November, 2006. This period of more than one and half year cannot in any way be justified as there is no

explanation at all by any justifiable reasons to exercise discretion in favour of the Appellants herein.

9. The explanation for delay can be considered along with the facts of the case, the position of the parties and the nature of the litigation and the period of delay and where such delay is found gross, it cannot be liberally construed.

10. As pointed out herein above, we find that there is no satisfactory explanation on record to justify the inordinate delay by the Appellants to file the above Appeal. The lack of diligence and the casual approach of the officials of the Respondents as pointed out herein above, clearly suggests that no discretion is to be exercised in favour of the Appellants to condone the delay in filing the Appeal. A distinction must be made between a case where the delay is inordinate and a case where the delay is of few days and in the former case, the considerations of prejudice to the other side are also relevant facts to be considered whilst condoning the delay. In the present case, it cannot be disputed that there is no justification shown by the Appellants to condone such delay. The Apex Court in a Judgment reported in **2013(12) SCC 649** in the case of **Esha Bhattacharjee v. Raghunathpur Nafar Academy** has observed at paras 21 and 22 thus :

“21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are

not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former

doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12. (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. (xiii) The State or a public body or an entity representing a collective cause

should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

22.1. (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2. (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3. (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4. (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.”

11. The Apex Court in another Judgment reported in **2013(4) SCC 52** in

the case of ***Amalendu Kumar Bera v. State of W.B.***, has observed at Para 9 thus :

“9. We have heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent State. There is no dispute that the expression “sufficient cause” should be considered with pragmatism in justice oriented approach rather than the technical detection of “sufficient cause” for explaining every day’s delay. However, it is equally well settled that the courts albeit liberally considered the prayer for condonation of delay but in some cases the court may refuse to condone the delay inasmuch as the Government is not accepted to keep watch whether the contesting respondent further put the matter in motion. The delay in official business requires its pedantic approach from public justice perspective. In a recent decision in *Union of India v. Nripen Sarma* the matter came up against the order passed by the High Court condoning the delay in filing the appeal by the appellant Union of India. The High Court refused to condone the delay on the ground that the appellant Union of India took their own sweet time to reach the conclusion whether the judgment should be appealed or not. The High Court also expressed its anguish and distress with the way the State conducts the cases regularly in filing the appeal after the same became operational and barred by limitation.”

12. Taking note of the said observations of the Apex court and the facts of the present case clearly shows the negligence on the part of the Appellants in taking steps to file the Appeal even after obtaining the certified copy would itself disclose that no discretion is to be exercised in favour of the Appellants to condone the delay. Hence, we find that there is no sufficient cause established by the Appellants to condone the delay in filing the above Appeal of nearly eleven years. The application for condonation of delay as such deserves to be dismissed.

13. Apart from that, on perusal of the impugned Award, we find that the land which was subject matter of the acquisition was located in the prime locality in the vicinity of Dona Paula which is close to Panaji City. Though the acquisition was of the year 1982, considering the strategic location of such land, it had high potentiality of being used for non-agricultural purpose and development. The scenic atmosphere where the land was located cannot be disputed. The Reference Court whilst passing the Judgment and Award has fixed the compensation depending on the nature of the land and other relevant factors at the rate of Rs.25/- and Rs.30/- per square metre. The Reference Court has relied upon the sale instances and also taken note of the Awards in other proceedings in the vicinity of the acquired land. The Reference Court has also considered that the land acquired was at a distance of 100 metres from Dona Paula – Bambolim road. The Reference Court has also considered the fact that there were development projects in the vicinity of the acquired land and the nature of the land which was sloppy as well as flat land, to fix the compensation for the land acquired. The sale instances which were produced were dated 20.10.1981, wherein the rate was Rs.132/- per square metre for a developed plot. It is not in dispute that the acquired

land was not developed nor any steps were taken in such direction. Though the Reference Court did not rely on the sale instances on the ground that the parties to the Sale Deed were not examined, nevertheless, the comparability with the land acquired and the Sale Deeds cannot be disputed. In such circumstances and taking note of the dissimilarities of the land acquired that it was undeveloped and sloppy in nature and not adjoining to the main road from Dona Paula – Bambolim which was not the case with the sale instances of developed plots relied upon by the Respondents, we find that the compensation fixed by the Reference Court in such circumstances is fair and just. Hence, though the application for condonation of delay filed by the Appellants stands rejected, nevertheless, we find that in any event, the compensation fixed by the Reference Court stands justified. In such circumstances, the question of examining Cross Objections would not arise at all in view of the submissions of the learned Counsel appearing for the parties.

14. In view of the above, the application for condonation of delay stands dismissed. The above Appeal and the Cross Objections are accordingly rejected.

W. L. WADANE, J.

F. M. REIS, J.

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